FEDERAL REGISTER

Vol. 87 Friday

No. 93 May 13, 2022

Pages 29217–29646

OFFICE OF THE FEDERAL REGISTER

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Contents

Federal Register

Vol. 87, No. 93

Friday, May 13, 2022

Separate Parts In This Issue

Reader Aids

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Notices:

Notice of May 12, 2022 29645

10 CFR

Proposed Rules:

430.....29576

14 CFR

39.....29217

71 (2 documents) 29220, 29222

Proposed Rules:

71 (3 documents) 29238, 29239, 29243

15 CFR

922.....29606

17 CFR

Proposed Rules:

210.....29458

229.....29458

230.....29458

232.....29458

239.....29458

240.....29458

249.....29458

270.....29458

33 CFR

165 (2 documents) 29226, 29228

Proposed Rules:

165 (2 documents) 29244, 29246

40 CFR

52 (2 documents) 29228, 29232

47 CFR

Proposed Rules:

15.....29248

20.....29248

22.....29248

24.....29248

25.....29248

27.....29248

30.....29248

73.....29248

74.....29248

76.....29248

78.....29248

80.....29248

87.....29248

90.....29248

95.....29248

96.....29248

101.....29248

50 CFR

622.....29236

Proposed Rules:

17.....29272

Rules and Regulations

Federal Register
Vol. 87, No. 93
Friday, May 13, 2022

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0504; Project Identifier MCAI–2022–00531–T; Amendment 39–22035; AD 2022–09–15]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes. This AD was prompted by brake system failures during landing due to a brake servo-valve failure resulting from application of an inappropriate oil type during production and maintenance. This AD requires relocating affected servo-valves and revising the existing airplane flight manual (AFM) to provide temporary information necessary to operate airplanes fitted with at least one affected brake servo-valve, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also limits or prohibits the installation of affected brake servo-valves. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective May 31, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 31, 2022.

The FAA must receive comments on this AD by June 27, 2022.

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

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

For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0504.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0504; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *Tom.Rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0504; Project Identifier MCAI–2022–00531–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *Tom.Rodriguez@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2022–0068–E, dated April 14, 2022 (EASA Emergency AD 2022–0068–E) (also referred to as the MCAI), to correct an unsafe condition for all Model

FALCON 2000 and FALCON 2000EX airplanes.

This AD was prompted by brake system failures during landing. Subsequent investigation determined the root cause to be a brake servo-valve failure. A batch of brake servo-valves has been identified during airplane production and maintenance with an internal oil type that does not meet the manufacturer's cold temperature specifications, which can lead to their failure. The FAA is issuing this AD to prevent temporary failure of the brake servo-valves, which could lead to reduced braking performance during landing including degraded or dissymmetric braking, possibly resulting in reduced control of the airplane, lateral excursion of the runway, and consequent damage to the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA Emergency AD 2022–0068–E specifies procedures for, among other actions, relocating affected brake servo-valves between the left-hand and right-hand brake control systems to ensure that at least one of the two independent brake systems has no affected parts. EASA Emergency AD 2022–0068–E also specifies revising the existing AFM to provide temporary information necessary to operate airplanes fitted with at least one affected brake servo-valve. EASA Emergency AD 2022–0068–E also limits or prohibits the future installation of affected brake servo-valves. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA Emergency AD 2022–0068–E described previously, except for any differences identified as exceptions in the regulatory text of this AD, and except as discussed under ''Differences Between this AD and the MCAI.''

EASA Emergency AD 2022–0068–E requires operators to ''inform all flight crews'' of revisions to AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this AD does not specifically require those actions as they are already required by FAA regulations. FAA regulations require that operators furnish to pilots any changes to the AFM (for example, 14 CFR 135.81(c)), and to ensure that pilots are familiar with the AFM (for example, 14 CFR 91.505(a)). FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA Emergency AD 2022–0068–E is incorporated by reference in this AD. This AD requires compliance with EASA Emergency AD 2022–0068–E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA Emergency AD 2022–0068–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA Emergency AD 2022–0068–E. Service information required by EASA Emergency AD 2022–0068–E for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0504 after this AD is published.

Difference Between This AD and the MCAI

The MCAI specifies to replace each affected brake servo-valve within 12 months. The FAA is considering requiring that action, but the planned compliance time would allow enough time to provide notice and opportunity for prior public comment on the merits of the replacement. The FAA considers that this AD is interim action. The FAA may consider additional rulemaking that would require the replacement of affected brake servo-valves.

FAA's Justification and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because a brake servo-valve failure due to application of an inappropriate oil could lead to reduced braking performance during landing including degraded or dissymmetric braking, possibly resulting in reduced control of the airplane, lateral excursion of the runway, and consequent damage to the airplane. Given the significance of the risk presented by this unsafe condition, it must be immediately addressed. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 441 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 10 work-hours × $85 per hour = $850	$11,690	$12,540	Up to $5,530,140.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–09–15 Dassault Aviation: Amendment 39–22035; Docket No. FAA–2022–0504; Project Identifier MCAI–2022–00531–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 31, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by brake system failures during landing due to a brake servo-valve failure resulting from application of an inappropriate oil type during production and maintenance. The FAA is issuing this AD to prevent temporary failure of the brake servo-valves, which could lead to reduced braking performance during landing including degraded or dissymmetric braking, possibly resulting in reduced control of the airplane, lateral excursion of the runway, and consequent damage to the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) Emergency AD 2022–0068–E, dated April 14, 2022 (EASA Emergency AD 2022–0068–E).

(h) Exceptions to EASA Emergency AD 2022–0068–E

(1) Where EASA Emergency AD 2022–0068–E refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA Emergency AD 2022–0068–E requires operators to ''inform all flight crews and, thereafter, operate the aeroplane accordingly'' after revision of the existing airplane flight manual (AFM), this AD does not require those actions.

(3) Where paragraph (4) of EASA Emergency AD 2022–0068–E requires replacement of all affected brake servo-valves within 12 months, this AD does not require this action; except, for those conditions that require replacement, as specified in the relocation service information identified in paragraph (1) of EASA Emergency AD 2022–0068–E, this AD requires replacement, prior to further flight, of one or two affected servo-valves as described in the relocation service information for cases when 3 or 4 affected servo-valves are found, as applicable.

(4) The ''Remarks'' section of EASA Emergency AD 2022–0068–E does not apply to this AD.

(i) No Reporting

Although the service information referenced in EASA Emergency AD 2022–0068–E specifies to submit certain information and send removed parts to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must

be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *Tom.Rodriguez@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2022–0068–E, dated April 14, 2022.

(ii) [Reserved]

(3) For EASA Emergency AD 2022–0068–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

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

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

Issued on April 21, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–10459 Filed 5–11–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0919; Airspace Docket No. 21–ASO–32]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–215 and Establishment of RNAV Route T–408; Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route T–215 in the central United States due to the decommissioning of the Holston Mountain, TN, (HMV) VHF Omnidirectional Range Tactical Air Navigation (VORTAC), and the Hazard, KY, (AZQ) Distance Measuring Equipment (DME) in support of the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) program. Additionally, this action extends T–215 to the north and south of its current limits to expand the availability of RNAV in the National Airspace System (NAS). This action also establishes T–408 that was proposed previously in a separate docket action.

DATES: Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, 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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0919, in the **Federal Register** (86 FR 61722; November 8, 2021), amending T–215. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received that did not pertain to the proposal.

United States RNAV T-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 routes listed in this document will be subsequently published in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends 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.

Difference From the NPRM

The FAA is adding the establishment of a new route, designated T–408, to this docket action. The establishment of T–408 was proposed in the **Federal Register** under Docket No. FAA–2021–0991 (86 FR 67373; November 26, 2021). No comments were received in response to the NPRM. However, the required documentation for T–408 was delayed and could not be completed in time to meet the planned chart date for Docket No. FAA–2021–0991. Therefore, T–408 is being added to this final rule.

The Rule

This action amends 14 CFR part 71 by amending RNAV route T–215 by extending the route further to the north and southeast in the central United

States. This action is necessary due to the planned decommissioning of the Holston Mountain, TN, (HMV) VORTAC, and the Hazard, KY, (AZQ) DME. Additionally, this action adds the establishment of T–408, previously proposed as described above, to this docket action.

T–215: T–215 currently extends between the Holston Mountain, TN, VORTAC, and the GAMKE, IN, waypoint (WP). This amendment includes replacing the Holston Mountain, TN, VORTAC with the HORAL, TN, WP, and replacing the Hazard, KY, DME with the DACEL, KY, WP. The route is extended south of the HORAL WP to the BURGG, SC, WP. Additionally, the route is extended to the north of the GAMKE, IN, WP ending at the CPTON, IL, WP, which is approximately 15 nautical miles east of the Bradford, IL, (BDF) VORTAC. The HILTO, VA, FIX; FLENR, VA, WP; and RISTE, KY, WP, are not needed for defining the track of T–215 so they are removed from the route legal description. In addition, the HUGEN, KY, FIX is removed from the route because it does not denote a route turn point. Because a VOR is not a required component for navigating on T–215, removal of the Holston Mountain VORTAC does not affect the alignment or navigation along T–215. As amended, T–215 extends between the BURGG, SC, WP, and the CPTON, IL, WP.

T–408: T–408 is a new route that extends between the NOKIE, GA, WP (replacing the Macon, GA, (MCN) VORTAC), eastward to the TBERT, GA, WP (replacing the Savannah, GA, (SAV) VORTAC). T–408 overlies VOR Federal airway V–154 between the Macon VORTAC, and the Savannah VORTAC. This route expands the availability of RNAV routing in the NAS.

The full route legal descriptions are listed in ''The Amendment'' section, below.

These changes expand the availability of RNAV to reduce the NAS dependency on ground based navigational systems and assist with the transition to a more efficient Performance Based Navigation route structure.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending RNAV route T–215, and establishing T–408, in support of efforts transitioning the NAS from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

■ 1. The authority citation for 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–215 BURGG, SC to CPTON, IL [Amended]

BURGG, SC	WP	(Lat. 35°02′00.55″ N, long. 081°55′36.86″ W)
GENOD, NC	FIX	(Lat. 35°33′06.04″ N, long. 081°56′57.05″ W)
HORAL, TN	WP	(Lat. 36°26′13.99″ N, long. 082°07′46.48″ W)
DACEL, KY	WP	(Lat. 37°23′10.68″ N, long. 083°14′52.13″ W)
Lexington, KY (HYK)	VOR/DME	(Lat. 37°57′58.86″ N, long. 084°28′21.06″ W)
GAMKE, IN	WP	(Lat. 38°46′12.99″ N, long. 085°14′35.37″ W)
MILAN, IN	WP	(Lat. 39°21′21.98″ N, long. 085°19′00.63″ W)
DEEKS, IN	WP	(Lat. 40°12′38.37″ N, long. 085°58′05.38″ W)
BONOY, IN	FIX	(Lat. 40°30′24.11″ N, long. 086°01′16.88″ W)
CLEFT, IN	WP	(Lat. 41°04′51.95″ N, long. 086°02′29.28″ W)
MAPPS, IN	WP	(Lat. 41°10′53.94″ N, long. 086°56′32.63″ W)
CPTON, IL	WP	(Lat. 41°06′51.57″ N, long. 089°11′58.93″ W)

* * * * * * *

T–408 NOKIE, GA to TBERT, GA [New]

NOKIE, GA	WP	(Lat. 32°41′28.86″ N, long. 083°38′49.88″ W)

GUMPY, GA	WP	(Lat. 32°33′48.15″ N, long. 082°49′48.76″ W)
LOTTS, GA	FIX	(Lat. 32°20′11.64″ N, long. 081°51′18.42″ W)
TBERT, GA	WP	(Lat. 32°08′46.76″ N, long. 081°11′57.44″ W)

* * * * *

Issued in Washington, DC, on May 9, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–10316 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0991; Airspace Docket No. 21–ASO–7]

RIN 2120–AA66

Amendment and Establishment of Area Navigation (RNAV) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends 3 low altitude United States Area Navigation (RNAV) routes, designated T–224, T–258, T–323, and establishes 9 new low altitude RNAV routes, designated T–404, T–406, T–410, T–412, T–414, T–423, T–425, T–427, and T–429, in the eastern United States. The routes enhance the efficiency of the National Airspace System (NAS) by expanding the availability of RNAV routing and supporting the transition of the NAS from ground-based to satellite-based navigation, under the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, 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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0991, in the **Federal Register** (86 FR 67373; November 26, 2021), amending 3, and establishing 10 low altitude RNAV routes in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States RNAV 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 routes listed in this document would be subsequently published in FAA Order JO 7400.11.

Differences From the NPRM

The description of T–323 in the regulatory text of the NPRM differed from that contained in the preamble text. A number of points were inadvertently omitted from the route description and four points were incorrectly stated as removed from the route. Specifically, the LRSEY, GA, waypoint (WP) was not stated as added in the preamble discussion, but it was included in the regulatory text. The preamble incorrectly stated that the following four WPs would be removed from the route: BOBBR, GA; BIGNN, GA; ZADOT, TN; and WELLA, KY. However, as an unintended consequence, this would result in a higher minimum enroute altitude requirement for segments of the route, which would adversely affect efficiency. Therefore, these points are reinserted in the description of T–323 as described below.

The NPRM also proposed to establish T–408 to extend between the NOKIE, GA, WP, and the TBERT, SC WP. The FAA has decided to delay the implementation of T–408 until a later date, therefore T–408 is removed from this action.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends 14 CFR part 71 by amending 3 low altitude RNAV routes, designated T–224, T–258, T–323, and establishing 9 new RNAV routes, designated T–404, T–406, T–410, T–412, T–414, T–423, T–425, T–427, and T–429, in the eastern United States. The purpose of the routes is to expand the availability of RNAV and improve the efficiency of the NAS by supporting the transition of the NAS from ground-based to satellite-based navigation, under the VOR MON program. The following is a general description of the proposed routes.

T–224: T–224 currently extends between the Palacios, TX, (PSX) VOR and Tactical Air Navigational System (VORTAC), and the Lake Charles, LA, (LCH) VORTAC. This amendment extends T–224 to the northeast to a new end point at the existing COLIN, VA, FIX. The amended route generally overlies VOR Federal airway V–20 between the Lake Charles VORTAC and the COLIN, VA, FIX. Due to the planned decommissioning of various VORs under the VOR MON Program, the following WPs are used in the T–224 description in place of the VORs. The SHWNN, TX, WP replaces the Beaumont, TX (BPT) VOR/Distance Measuring Equipment (DME). The Lake Charles VORTAC is replaced by the KNZLY, LA, WP. The DAFLY, LA, WP replaces the Lafayette, LA, (LFT) VORTAC. The KJAAY, LA, WP replaces the Reserve, LA, (RQR) VOR/DME. The

WTERS, MS, WP replaces the Gulfport, MS, (GPT) VORTAC. The LYNRD, AL, WP replaces the SEMMES, AL, (SJI) VORTAC. The WIILL, AL, WP replaces the Monroeville, AL, (MCV) VORTAC. The MGMRY, AL, WP replaces the Montgomery, AL, (MGM) VORTAC. The RSVLT, GA, WP replaces the Columbus, GA, (CGS) VORTAC. The UGAAA, GA, WP replaces the Athens, GA, (AHN) VOR/DME. The ECITY, SC, WP replaces the Electric City, SC, (ELW) VORTAC. The STYLZ, NC, WP replaces the Sugarloaf Mountain, NC, (SUG) VORTAC. The BONZE, NC, WP replaces the Barretts Mountain, NC, (BZM) VOR/DME. The MCDON, VA, WP replaces the South Boston, VA, (SBV) VORTAC. As amended, T–224 extends between the Palacios, TX, (PSX) VORTAC, and the COLIN, VA, FIX.

T–258: T–258 currently extends between the MINIM, AL, FIX, and the CANER, GA, FIX. This amendment extends T–258 easterly to the GMINI, NC, FIX. T–258 overlies VOR Federal Airway V–66 between the CANER, GA, FIX, and the GMINI, NC, WP. In support of the transition from ground-based to satellite-based navigation, WPs are used to replace VORTACs in the T–258 route description as follows. The DAYVS, AL, WP replaces the Brookwood, AL, (OKW) VORTAC. The BRAVS, GA, WP replaces the La Grange, GA, (LGC) VORTAC. The UGAAA, GA, WP replaces the Athens, GA, (AHN) VORTAC. The HRTWL, SC, WP replaces the Greenwood, SC, (GRD) VORTAC. The GMINI, NC, WP replaces the Sandhills, NC, (SDZ) VORTAC. As amended, T–258 extends between the MINIM, AL, FIX, and the GMINI, NC, WP.

T–323: T–323 currently extends between the CROCS, GA, WP, and the Hazard, KY, (AZQ) DME. This amend extends T–323 southward from the CROCS, GA, WP to a new starting point at the MARQO, FL, WP (located adjacent to the Taylor, FL, (TAY) VORTAC). The DACEL, KY, WP replaces the Hazard DME as the route end point. The following WPs and one FIX are added to the route: LRSEY, GA; HELNN, NC; OCOEE, NC; CRECY, TN; and the KNITS, TN, FIX. The ZPPLN, NC; HIGGI, NC; and KIDBE, TN WPs are removed from the route. Contrary to the proposal in the NPRM, the ZADOT, TN; WELLA, KY; BOBBR, GA; and BIGNN, GA, WPs are retained in the T–323 route description. As amended, T–323 extends between the MARQO, FL, WP, and the DACEL, KY, WP.

T–404: T–404 is a new route that extends from the TYGRR, AL, WP, (60 feet northeast of the Eufaula, AL, (EUF) VORTAC), eastward to the CAYCE, SC, WP (60 feet west of the Columbia, SC, (CAE) VORTAC). T–404 overlies VOR Federal airway V–323 between the Eufaula VORTAC, and the Macon, GA, (MCN) VORTAC; and VOR Federal airway V–56 from the Macon, GA, (MCN) VORTAC to the Columbia, SC, (CAE) VORTAC. In T–404 description, the TYGRR WP replaces the Eufaula VORTAC. The NOKIE, GA, WP replaces the Macon VORTAC. The WANSA, SC, WP replaces the Colliers, SC, (IRQ) VORTAC. The CAYCE, SC, WP replaces the Columbia, SC, (CAE) VORTAC.

T–406: T–406 is a new route that extends from the KNZLY, LA, WP (replacing the Lake Charles, LA, (LCH) VORTAC), eastward to the DURBE, SC, WP (replacing the Allendale, SC, (ALD) VOR). The route essentially overlies VOR Federal airway V–70.

T–410: T–410 is a new route that extends from the existing SINCA, GA, FIX (located 23 nautical miles (NM) north of the Macon, GA, (MCN) VORTAC), eastward to the WANSA, SC, WP (replacing the Colliers, SC, (IRQ) VORTAC), then continuing to the existing WIDER, SC, FIX (located 21 NM northwest of the Columbia, SC, (CAE) VORTAC. T–410 overlies those segments of VOR Federal airway V–155 between the SINCA FIX and the WIDER FIX.

T–412: T–412 is a new route that extends from the KNZLY, LA, WP, (replacing the Lake Charles, LA, (LCH) VORTAC), eastward to the TIROE, GA, FIX (60 feet southwest of the Colliers, SC, (IRQ) VORTAC). The route overlies those segments of VOR Federal airway V–222 that extend between the Lake Charles VORTAC and the TIROE FIX.

T–414: T–414 is a new route that extends between the existing LOGEN, GA, FIX (located 29 NM northeast of the Atlanta, GA, (ATL) VORTAC), and the BOJAR, VA, FIX (.55 NM northwest of the Lynchburg, VA, (LYH) VORTAC). The route overlies those segments of VOR Federal airway V–222 that extend between the LOGEN FIX and the BOJAR FIX.

T–423: T–423 is a new route that extends between the STYLZ, NC, WP, (replacing the Sugarloaf Mountain, NC, (SUG) VORTAC), and the Charleston, WV, (HVQ) VOR/DME. The route overlies those segments of VOR Federal airway V–35 that extend between the Sugarloaf Mountain VORTAC, and the Charleston VORTAC.

T–425: T–425 is a new route that extends between the SIROC, GA, WP, (replacing the Brunswick, GA, (SSI) VORTAC), and the HUSKY, GA, FIX. The route overlies VOR Federal airway V–362 between the Brunswick VORTAC and the HABLE, GA, FIX. It overlies airway V–179 between the RIPPI, GA, FIX and the HUSKY, GA, FIX. T–425 also parallels V–179 between the CROCS, GA, WP and the RIPPI FIX. Additionally, it parallels VOR Federal airway V–267 between the HABLE, GA, FIX and the CROCS, GA, WP.

T–427: T–427 is a new route that extends from the CAYCE, SC, WP (replaces the Columbia, SC, (CAE) VORTAC), westward to the UGAAA, GA, WP (replaces the Athens, GA, (AHN) VORTAC), to the WOMAC, GA, FIX, and terminating at LOGEN, GA, FIX. The route overlies VOR Federal airway V–325.

T–429: T–429 is a new route that extends from the HOKES, AL, FIX (5 NM southeast of the Gadsden, AL, (GAD) VOR/DME) westward to the HAGIE, AL, WP (replaces the Muscle Shoals, AL, (MSL) VORTAC). T–429 overlies those segments of VOR Federal airway V–325 that extend between the Gadsden VOR/DME and the Muscle Shoals VORTAC.

The full legal descriptions of the above routes are listed in ''The Amendment'' section, below. These changes provide RNAV routing to supplement VOR Federal airways that will be impacted by the VOR MON program, and support the transition to a more efficient Performance Based Navigation route structure.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending 3 low altitude United States Area Navigation (RNAV) routes, designated T–224, T–258, T–323, and establishes 9 new low altitude

RNAV routes, designated T–404, T–406, T–410, T–412, T–414, T–423, T–425, T–427, and T–429, in the eastern United States, in support of efforts to transition the NAS from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

■ 1. The authority citation for 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–224 PALACIOS, TX (PSX) to COLIN, VA [Amended]

Palacios, TX (PSX)	VORTAC	(Lat. 28°45′51.93″ N, long. 096°18′22.25″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 095°16′35.83″ W)
SHWNN, TX	WP	(Lat. 29°56′45.94″ N, long. 094°00′57.73″ W)
WASPY, LA	FIX	(Lat. 30°01′33.88″ N, long. 093°38′50.45″ W)
KNZLY, LA	WP	(Lat. 30°08′29.48″ N, long. 093°06′19.37″ W)
DAFLY, LA	WP	(Lat. 30°11′37.70″ N, long. 091°59′33.94″ W)
KJAAY, LA	WP	(Lat. 30°05′15.06″ N, long. 090°35′19.73″ W)
SLIDD, LA	FIX	(Lat. 30°09′46.08″ N, long. 089°44′02.18″ W)
WTERS, MS	WP	(Lat. 30°24′24.36″ N, long. 089°04′37.04″ W)
LYNRD, AL	WP	(Lat. 30°43′33.26″ N, long. 088°21′34.07″ W)
AXEJA, AL	FIX	(Lat. 31°02′32.36″ N, long. 087°57′01.58″ W)
WIILL, AL	WP	(Lat. 31°27′33.96″ N, long. 087°21′08.62″ W)
MGMRY, AL	WP	(Lat. 32°13′20.78″ N, long. 086°19′11.24″ W)
GONDR, AL	WP	(Lat. 32°22′01.98″ N, long. 085°45′57.08″ W)
RSVLT, GA	WP	(Lat. 32°36′55.43″ N, long. 085°01′03.81″ W)
SINCA, GA	FIX	(Lat. 33°04′52.28″ N, long. 083°36′17.52″ W)
UGAAA, GA	WP	(Lat. 33°56′51.32″ N, long. 083°19′28.42″ W)
ECITY, SC	WP	(Lat. 34°25′09.62″ N, long. 082°47′04.58″ W)
STYLZ, NC	WP	(Lat. 35°24′22.83″ N, long. 082°16′07.01″ W)
BONZE, NC	WP	(Lat. 35°52′09.16″ N, long. 081°14′24.10″ W)
MCDON, VA	WP	(Lat. 36°40′29.56″ N, long. 079°00′52.03″ W)
NUTTS, VA	FIX	(Lat. 37°04′34.16″ N, long. 078°12′13.69″ W)
WAVES, VA	WP	(Lat. 37°35′13.54″ N, long. 077°26′52.03″ W)
TAPPA, VA	FIX	(Lat. 37°58′12.66″ N, long. 076°50′40.62″ W)
COLIN, VA	FIX	(Lat. 38°05′59.23″ N, long. 076°39′50.85″ W)

* * * * * * *

T–258 MINIM, AL to GMINI, NC [Amended]

MINIM, AL	FIX	(Lat. 33°32′31.14″ N, long. 088°02′23.62″ W)
CAYAP, AL	FIX	(Lat. 33°19′27.01″ N, long. 087°39′08.35″ W)
CRMSN, AL	WP	(Lat. 33°15′31.80″ N, long. 087°32′12.70″ W)
ZIVMU, AL	FIX	(Lat. 33°14′58.61″ N, long. 087°23′53.53″ W)
DAYVS, AL	WP	(Lat. 33°14′03.93″ N, long. 087°12′07.88″ W)
HEENA, AL	FIX	(Lat. 33°12′24.62″ N, long. 086°52′15.28″ W)
KYLEE, AL	FIX	(Lat. 33°09′41.04″ N, long. 086°21′57.72″ W)
CAMPP, AL	FIX	(Lat. 33°06′10.39″ N, long. 085°44′51.08″ W)
BRAVS, GA	WP	(Lat. 33°02′56.44″ N, long. 085°12′22.93″ W)
LANGA, GA	FIX	(Lat. 32°55′34.17″ N, long. 084°56′59.00″ W)
CANER, GA	FIX	(Lat. 32°45′21.48″ N, long. 084°35′51.42″ W)
SINCA, GA	FIX	(Lat. 33°04′52.28″ N, long. 083°36′17.52″ W)
UGAAA, GA	WP	(Lat. 33°56′51.32″ N, long. 083°19′28.42″ W)
HRTWL, SC	WP	(Lat. 34°15′05.33″ N, long. 082°09′15.55″ W)
NATCH, NC	FIX	(Lat. 35°01′34.52″ N, long. 080°06′29.28″ W)
GMINI, NC	WP	(Lat. 35°12′23.01″ N, long. 079°34′01.98″ W)

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T–323 MARQO, FL to DACEL, KY [Amended]

MARQO, FL	WP	(Lat. 30°30′53.57″ N, long. 082°32′45.62″ W)
LRSEY, GA	WP	(Lat. 31°16′09.34″ N, long. 082°33′23.20″ W)
CROCS, GA	WP	(Lat. 32°27′17.69″ N, long. 082°46′29.06″ W)
BOBBR, GA	WP	(Lat. 33°19′57.07″ N, long. 083°08′19.47″ W)

BIGNN, GA	WP	(Lat. 34°20′34.38″ N, long. 083°33′06.80″ W)
HELNN, NC	WP	(Lat. 35°00′55.11″ N, long. 083°52′09.85″ W)
OCOEE, NC	WP	(Lat. 35°07′34.11″ N, long. 083°53′45.00″ W)
KNITS, TN	FIX	(Lat. 35°41′01.18″ N, long. 083°53′58.56″ W)
CRECY, TN	WP	(Lat. 35°58′52.61″ N, long. 083°38′24.36″ W)
ZADOT, TN	WP	(Lat. 36°35′32.17″ N, long. 083°28′40.09″ W)
WELLA, KY	WP	(Lat. 37°02′15.68″ N, long. 083°21′31.07″ W)
DACEL, KY	WP	(Lat. 37°23′10.68″ N, long. 083°14′52.13″ W)

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T–404 TYGRR, AL to CAYCE, SC [New]

TYGRR, AL	WP	(Lat. 31°57′01.21″ N, long. 085°07′49.13″ W)
NOKIE, GA	WP	(Lat. 32°41′28.86″ N, long. 083°38′49.88″ W)
WANSA, SC	WP	(Lat. 33°42′26.10″ N, long. 082°09′43.99″ W)
CAYCE, SC	WP	(Lat. 33°51′26.13″ N, long. 081°03′14.76″ W)

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T–406 KNZLY, LA to DURBE, SC [New]

KNZLY, LA	WP	(Lat. 30°08′29.48″ N, long. 093°06′19.37″ W)
DAFLY, LA	WP	(Lat. 30°11′37.70″ N, long. 091°59′33.94″ W)
RCOLA, LA	WP	(Lat. 30°29′06.52″ N, long. 091°17′37.96″ W)
PELLO, MS	WP	(Lat. 30°33′40.17″ N, long. 089°43′50.44″ W)
GARTS, MS	WP	(Lat. 31°05′52.39″ N, long. 088°29′10.68″ W)
WIILL, AL	WP	(Lat. 31°27′33.96″ N, long. 087°21′08.62″ W)
RUTEL, AL	FIX	(Lat. 31°42′57.69″ N, long. 086°21′36.33″ W)
TYGRR, AL	WP	(Lat. 31°57′01.21″ N, long. 085°07′49.13″ W)
DOOLY, GA	WP	(Lat. 32°12′48.02″ N, long. 083°29′50.66″ W)
DURBE, SC	WP	(Lat. 33°00′44.75″ N, long. 081°17′32.69″ W)

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T–410 SINCA, GA to WIDER, SC [New]

SINCA, GA	FIX	(Lat. 33°04′52.28″ N, long. 083°36′17.52″ W)
WANSA, SC	WP	(Lat. 33°42′26.10″ N, long. 082°09′43.99″ W)
WIDER, SC	FIX	(Lat. 34°09′27.05″ N, long. 081°16′26.39″ W)

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T–412 KNZLY, LA to TIROE, GA [New]

KNZLY, LA	WP	(Lat. 30°08′29.48″ N, long. 093°06′19.37″ W)
ICEKI, MS	WP	(Lat. 31°18′16.12″ N, long. 090°15′28.85″ W)
SSLAW, MS	WP	(Lat. 31°25′07.18″ N, long. 089°20′16.05″ W)
WIILL, AL	WP	(Lat. 31°27′33.96″ N, long. 087°21′08.62″ W)
MGMRY, AL	WP	(Lat. 32°13′20.78″ N, long. 086°19′11.24″ W)
HHRVY, AL	WP	(Lat. 32°57′47.52″ N, long. 085°19′35.23″ W)
BRAVS, GA	WP	(Lat. 33°02′56.44″ N, long. 085°12′22.93″ W)
TIROE, GA	FIX	(Lat. 33°18′23.23″ N, long. 084°51′57.71″ W)

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T–414 LOGEN, GA to BOJAR, VA [New]

LOGEN, GA	FIX	(Lat. 33°59′16.98″ N, long. 084°03′24.43″ W)
MILBY, SC	WP	(Lat. 34°41′02.23″ N, long. 083°18′42.53″ W)
STYLZ, NC	WP	(Lat. 35°24′22.83″ N, long. 082°16′07.01″ W)
BONZE, NC	WP	(Lat. 35°52′09.16″ N, long. 081°14′24.10″ W)
AYARA, VA	FIX	(Lat. 37°03′40.36″ N, long. 079°31′24.92″ W)
BOJAR, VA	FIX	(Lat. 37°15′43.97″ N, long. 079°14′33.36″ W)

* * * * * * *

T–423 STYLZ, NC to CHARLESTON, WV (HVQ) [New]

STYLZ, NC	WP	(Lat. 35°24′22.83″ N, long. 082°16′07.01″ W)
HORAL, TN	WP	(Lat. 36°26′13.99″ N, long. 082°07′46.48″ W)
GAUZY, VA	WP	(Lat. 36°49′29.79″ N, long. 082°04′44.40″ W)
Charleston, WV (HVQ)	VOR/DME	(Lat. 38°20′58.83″ N, long. 081°46′11.69″ W)

* * * * * * *

T–425 SIROC, GA to HUSKY, GA [New]

SIROC, GA	WP	(Lat. 31°03′02.32″ N, long. 081°26′45.89″ W)
HABLE, GA	FIX	(Lat. 31°21′09.68″ N, long. 082°06′09.96″ W)
CROCS, GA	WP	(Lat. 32°27′17.69″ N, long. 082°46′29.06″ W)
RIPPI, GA	FIX	(Lat. 32°54′20.25″ N, long. 083°20′19.52″ W)
WEMOB, GA	FIX	(Lat. 33°16′06.20″ N, long. 083°53′01.92″ W)
HUSKY, GA	FIX	(Lat. 33°19′49.65″ N, long. 083°58′48.75″ W)

* * * * * * *

T–427 CAYCE, SC to LOGEN, GA [New]

CAYCE, SC	WP	(Lat. 33°51′26.13″ N, long. 081°03′14.76″ W)
UGAAA, GA	WP	(Lat. 33°56′51.32″ N, long. 083°19′28.42″ W)
WOMAC, GA	FIX	(Lat. 34°07′48.86″ N, long. 083°54′20.77″ W)
LOGEN, GA	FIX	(Lat. 33°59′16.98″ N, long. 084°03′24.43″ W)

* * * * * * *

T–429 HOKES, SC to HAGIE, AL [New]

HOKES, AL	FIX	(Lat. 33°55′30.08″ N, long. 085°59′33.20″ W)
HAGIE, AL	WP	(Lat. 34°42′25.87″ N, long. 087°29′29.76″ W)

* * * * *

Issued in Washington, DC, on May 5, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–10315 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0131]

RIN 1625–AA00

Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its safety zones established for recurring marine events and fireworks displays that take place within the Fifth Coast Guard District area of responsibility. This action is necessary to address minor revisions to the listing of events that informs the public of regularly scheduled fireworks displays that require additional safety measures provided by regulations. Through this final rule, the current list of recurring marine events requiring safety zones will be updated with two additional events that take place in the Sector Virginia area of responsibility. This regulation prohibits persons and vessels from being in the safety zones unless authorized by the Captain of the Port Virginia or a designated representative.

DATES: This rule is effective June 13, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type Docket Number USCG–2022–0131 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Chief, Waterways Management Division, Sector Virginia, U.S. Coast Guard; telephone 757–668–5580 email *Ashley.E.Holm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard regularly updates the regulations for recurring safety zones within the Fifth Coast Guard District at 33 CFR 165.506, and its respective tables. These recurring safety zones are for fireworks displays that take place either on or over the navigable waters of the Fifth Coast Guard District as defined at 33 CFR 3.25. These regulations were last amended October 15, 2021 (86 FR 57358). Since then, two recurring marine events within the Fifth Coast Guard District have changed in a way that require establishment of a safety zone for protection of life, property and the environment. Hazards associated with these events include potential falling debris and possible fire, explosion, projectile, and burn hazards. The purpose of this rule is to ensure the safety of persons, vessels, and the navigable waters within close proximity to fireworks displays before, during, and after the scheduled events. In response, on March 20, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District (87 FR 15347). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these fireworks displays. During the comment period that ended April 19, 2022, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Virginia (COTP) has determined that potential hazards associated with the fireworks events present a safety concern for anyone within the safety zones. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published on March 20, 2022. The commenter was interested in understanding more about how these safety zones were developed, particularly how the Coast Guard determined how big each zone needs to be, where they are located, whether the Coast Guard regulates the types of fireworks used in the event, and environmental analysis. The Coast Guard creates safety zones under the authority in 46 U.S.C. 70034. The Coast Guard carefully determines the appropriate size of the safety zone using the shell diameter as a referential factor and uses the National Vessel Inspection Circular (NVIC) No. 7–02, Marine Safety at Fireworks Displays, and the National Fire Protection Agency (NFPA) 1123, Code for Fireworks Display, to determine applicable size of the awarded safety zone using the established criteria. In general, fireworks shows are common occurences both on land and on the waterway. The Coast Guard reviews each individual proposed waterborne event on a case-by-case basis. Marine event permit applications are submitted to the Coast Guard by sponsors of proposed marine events. They include a good faith estimate of spectator craft that are expected to be drawn to the event based on the ''triggering event'' itself. In each of the two safety zones proposed, the fireworks shows or ''triggering events'' are expected to draw a significant number of spectator craft based on historical precedent, general public interest and the best projections for attendance communicated to the Coast Guard via the marine event application process. Part of the marine event application process is the National Environmental Protection Act (NEPA) consideration the Coast Guard completes for all federal actions taken. The issuance of a marine event permit constitutes a ''federal action'', thus requiring the NEPA review to be completed. The NEPA review considers the proposed event location and evaluates the potential impact to environmentally sensitive areas that may need to be addressed and mitigated. The issuance of a rule creating the safety zone is a seperate federal action. The fireworks events in this regulation are legacy events that were inadvertently removed due to administrative error when the Coast Guard revised 33 CFR 165.506, and its respective tables, in 2021. This regulatory action was taken to re-establish the two safety zones rather than establish them as new occurences.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The first safety zone would be enforced on the third or fourth Saturday in July of each year, beginning in July 2022, between 9:30 p.m. and 10 p.m. and cover all waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37′51″

N, longitude 078°32′50″ W, located near the center span of the State Route 15 Highway Bridge.

The second safety zone would be enforced on the evening of the first or second Saturday or Sunday in June of each year, beginning in June 2022, between 9:30 p.m. and 10 p.m. and cover all waters of the Elizabeth River within a 500-yard radius of approximate position of the fireworks barge at latitude 36°50′41″ N, longitude 076°17′47″ W, located near Town Point Park in Norfolk, VA.

Dates and times are subject to change in accordance with existing regulatory text found in 33 CFR 165.506(c).

The duration of the zones are intended to ensure the safety of vessels and these navigable waters before, during, and after each scheduled fireworks display. No vessel or person would be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the short amount of time that vessels will be restricted from certain parts of the waterway and the small size of these areas that are usually positioned away from high vessel traffic zones. Generally vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the regulated areas. Advance notifications will also be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and Marine Safety Information or Security Bulletins so mariners can adjust their plans accordingly. Notifications to the public for most events will typically be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these safety zones will only be enforced for limited durations, less than 24 hours, occurring on specific dates throughout the year.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves 2 recurring safety zones lasting less than 1 hour each that will prohibit entry within. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket.

For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 1.2.

■ 2. In § 165.506, amend table 3 to paragraph (h)(3) by adding entries 12 and 13 to read as follows:

§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.

* * * * *

(h) * * *

(3) * * *

TABLE 3 TO PARAGRAPH (h)(3)

*	*	*	* * *
12	July—3rd or 4th Saturday	John H. Kerr Reservoir, Clarksville, VA; Safety Zone.	All waters of John H. Kerr Reservoir within a 400-yard radius of approximate position latitude 36°37′51″ N, longitude 078°32′50″ W, located near the center span of the State Route 15 Highway Bridge.
13	June—first or second Saturday or Sunday.	Elizabeth River, Town Point Reach, Norfolk, VA; Safety Zone.	All waters of the Elizabeth River, Town Point Reach within a 500-yard radius of approximate position of the fireworks barge latitude 36°50′41″ N, longitude 076°17′47″ W, in vicinity of Town Point Park in Norfolk, VA.

* * * * *

Dated: May 9, 2022.

L.M. Dickey,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2022–10345 Filed 5–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0377]

Safety Zone; Military Ocean Terminal Concord Safety Zone, Suisun Bay, Military Ocean Terminal Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone in the navigable waters of Suisun Bay, off Concord, CA, in support of explosive on-loading to Military Ocean Terminal Concord (MOTCO) from May 12, 2022 through May 16, 2022. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The safety zone is open to all persons and vessels for transitory use, but vessel operators desiring to anchor or otherwise loiter within the safety zone must obtain the permission of the Captain of the Port San Francisco or a designated representative. All persons and vessels operating within the safety zone must comply with all directions given to them by the Captain of the Port San Francisco or a designated representative.

DATES: The regulations in 33 CFR 165.1198 will be enforced from 12:01 a.m. on May 12, 2022 until 11:59 p.m. on May 16, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Junior Grade William Harris, Coast Guard Sector San Francisco, Waterways Management Division, 415–399–7443, *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.1198 for the Military Ocean Terminal Concord, CA (MOTCO) regulated area from 12:01 a.m. on May 12, 2022 until 11:59 p.m. on May 16, 2022, or as announced via marine local broadcasts. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The regulation for this safety zone, § 165.1198, specifies the location of the safety zone which encompasses the navigable waters in the area between 500 yards of MOTCO Pier 2 in position 38°03′30″ N, 122°01′14″ W and 3,000 yards of the pier. During the enforcement periods, as reflected in § 165.1198(d), if you are the operator of a vessel in the regulated area you must comply with the instructions of the COTP or the designated on-scene patrol personnel. Vessel operators desiring to anchor or otherwise loiter within the safety zone must contact Sector San Francisco Vessel Traffic Service at 415–556–2760 or VHF Channel 14 to obtain permission.

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

Dated: May 6, 2022.

Taylor Q. Lam,

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

[FR Doc. 2022–10412 Filed 5–11–22; 11:15 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2021–0931; FRL–9541–02–R8]

Air Plan Conditional Approval; Colorado; Revisions to Regulation Number 7 and Oil and Natural Gas RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is conditionally approving portions of State Implementation Plan (SIP) revisions submitted by the State of Colorado on May 14, 2018 and May 13, 2020. The revisions are to Colorado Air Quality Control Commission (Commission or AQCC) regulations of ozone precursor and hydrocarbon emissions from oil and gas operations, and address Colorado's SIP obligation to require reasonably available control technology (RACT) for sources covered by the 2016 oil & natural gas control techniques guidelines (CTG or CTGs) for Moderate nonattainment areas under the 2008 ozone National Ambient Air Quality Standard (NAAQS). These revisions address the final pieces of the May 14, 2018 and May 13, 2020 submittals that we have not previously acted on. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective June 13, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2021–0931. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6563, email address: *fulton.abby@epa.gov.*

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

I. Background

The background for this action is discussed in detail in our February 17, 2022 proposal.[1] We proposed to conditionally approve various revisions to the Colorado SIP that were submitted to the EPA in two separate SIP submittals, which the EPA received on May 14, 2018, and May 13, 2020. In particular, we proposed to conditionally approve into the SIP certain Reg. 7 rules to meet the 2008 8-hour ozone NAAQS oil and gas CTG RACT requirements for Moderate nonattainment areas that were not acted on in our July 3, 2018,[2] February 24, 2021,[3] and November 5, 2021 [4] rulemakings. The proposal describes the background for this action, explains the revisions in detail, and the explains rationale for the EPA's proposed actions.

II. Comments

There were no comments received on the proposal.

III. Final Action

The EPA is conditionally approving revisions to Sections XII.J.1 of Reg. 7 from the State's May 14, 2018 submittal and Part D, Sections I.D., I.E., I.F., and I.J.1. of Reg. 7 from the State's May 13, 2020 submission as shown in Table 1.

The EPA is conditionally approving revisions to Reg. 7, Part D, Sections I.E.3. (including subsections (a)(i) through (iii)) and I.J.1.g.through i. Additionally, the EPA is conditionally approving Colorado's determination that Reg. 7, Part D satisfies RACT requirements for the Colorado ozone SIP for the 2016 oil and natural gas CTG. Under section 110(k)(4) of the Act, the EPA may approve a SIP revision based on a commitment by a state to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. On October 20, 2021, Colorado submitted a letter committing to adopt and submit specific revisions by June 30, 2022.[5] Specifically, the State has committed to add requirements for performance testing of certain combustion devices consistent with the EPA's oil and gas CTG by using the same frequency, testing protocol, and recordkeeping requirements that will apply to storage vessels and wet seal centrifugal compressors required to be controlled under the EPA's oil and gas CTG (*i.e.,* storage vessels that have the potential for VOC emissions equal to or greater than 6 tpy). Now that we are finalizing our conditional approval, Colorado must adopt and submit the specific revisions it has committed to by June 30, 2022 in order for the conditional approval to convert to full approval. We note that the Colorado AQCC adopted the revisions as outlined in the commitment letter on December 17, 2021, and we anticipate that the State will meet its deadline to submit these measures as SIP revisions. However, if Colorado does not comply with its commitment by June 30, 2022, if we find Colorado's SIP submission provided to fulfill the commitment to be incomplete, or if we disapprove the SIP submission, this conditional approval will convert to a disapproval. If any of these occur and our conditional approval converts to a disapproval, that will constitute a disapproval of a required plan element under part D of title I of the Act, which will start an 18-month clock for sanctions [6] and the two-year clock for a federal implementation plan.[7]

TABLE 1—LIST OF COLORADO REVISIONS TO REG. 7 THAT THE EPA IS CONDITIONALLY APPROVING

Revised Sections in May 14, 2018 and May 13, 2020 Submittals for Conditional Approval:
May 14, 2018 Submittal:
XII.J.1.
May 13, 2020 Submittal:
Part D, Sections I.D.–D.3.a.(i), I.D.3.b.–b.(i), I.D.3.b.(ii), I.D.3.b.(v), I.D.3.b.(vii), I.D.3.b.(ix), I.D.4.–I.E.1.a., I.E.2.–.c.(ii), I.E.2.c.(iv)–c.(viii), I.F.–1.d., I.F.1.g.–g.(xii), I.F.1.h.–F.2.a., I.F.2.c.–c.(vi), I.F.3.–3.a, I.F.3.c.–c.(i)(C), and I.J.1.–j. (renumbering).

[1] 87 FR 8997.

[2] Final Rule, Approval and Promulgation of State Implementation Plan Revisions; Colorado; Attainment Demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions, 83 FR 31068, 31069–31072.

[3] Final Rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7 and RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 11125, 11126–11127.

[4] Final Rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7;

Aerospace, Oil and Gas, and Other RACT Requirements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 61071, 61072.

[5] Although CAA section 110(k)(4) allows the EPA to make a conditional approval based on a commitment to act within one year of the final conditional approval, Colorado has committed to act on a much more accelerated schedule.

[6] *See* CAA section 179(a)(2).

[7] *See* CAA section 110(c)(1)(B).

TABLE 1—LIST OF COLORADO REVISIONS TO REG. 7 THAT THE EPA IS CONDITIONALLY APPROVING—Continued

Revised Sections from Colorado's Oct. 20, 2021 Commitment Letter: Part D, Sections I.E.3.–a.(iii), I.J.1.g.–h., I.J.1.i., and I.J.1.i.(i)(E)–(F).	

IV. Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state be adopted by the state after reasonable notice and public hearing.

The Colorado SIP revisions that the EPA is conditionally approving do not interfere with any applicable requirements of the Act. The Reg. 7 revisions submitted by the State on May 13, 2018 and May 14, 2020 are intended to strengthen the SIP and to serve as RACT for certain sources for the Colorado ozone SIP. Colorado's submittals provide adequate evidence that the revisions were adopted after reasonable public notices and hearings. Therefore, CAA section 110(l) requirements are satisfied.

V. Environmental Justice Considerations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law.

To identify potential environmental burdens and susceptible populations in the DMNFR area, a screening analysis was conducted using the EJScreen [8] tool to evaluate environmental and demographic indicators within the area, based on available data from the Census Bureau's American Community Survey. The results of this assessment are discussed in detail in our February 17, 2022 proposal.[9]

As explained in our February 17, 2022 proposal, we believe that this action will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns, and will contribute to the increased protection of those residing, working, attending school, or otherwise present in those areas.

VI. Incorporation by Reference

In this document, the EPA is finalizing regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference Colorado AQCC Regulation 7 pertaining to the control of ozone via ozone precursors and control of hydrocarbons from oil and gas emissions. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 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 the EPA for inclusion in the SIP, have been incorporated by reference by the 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 the EPA's conditional approval, and will be incorporated by reference in the next update to the SIP compilation.[10]

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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, 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. 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

[8] EJSCREEN is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators; available at *https://www.epa.gov/ejscreen/what-ejscreen.*

[9] 87 FR 8997.

[10] 62 FR 27968 (May 22, 1997).

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 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 July 12, 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, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 9, 2022.

KC Becker,

Regional Administrator, Region 8.

40 CFR part 52 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 G—Colorado

■ 2. Add § 52.319 to subpart G to read as follows:

§ 52.319 Conditional approval.

(a) The EPA is conditionally approving portions of the Colorado SIP revisions submitted on May 14, 2018 and May 13, 2020. The conditional approval is based upon the October 20, 2021 commitment from the State to submit a SIP revision consisting of rule revisions that will cure the identified deficiencies by June 30, 2022. If the State fails to meet its commitment, the conditional approval will be treated as a disapproval with respect to the rules and CTG category for which the corrections are not met. The following are conditionally approved:

(1) Regulation number 7, Section XII.J.1. from the May 14, 2018 submittal and Part D, Sections I.D.–D.3.a.(i), I.D.3.b.–b.(i), I.D.3.b.(ii), I.D.3.b.(v), I.D.3.b.(vii), I.D.3.b.(ix), I.D.4.–I.E.1.a., I.E.2.–c.(ii), I.E.2.c.(iv)–c.(viii), I.F.–1.d., I.F.1.g.–g.(xii), I.F.1.h.–F.2.a., I.F.2.c.–c.(vi), I.F.3.–3.a, I.F.3.c.–c.(i)(C), and I.J.1.–j. from the May 13, 2020 submittal.

(2) Colorado's determination that Reg. 7, Part D satisfies 2008 ozone NAAQS SIP RACT requirements for the following category, ''Control Techniques Guidelines for the Oil and Natural Gas Industry'' EPA–453/B–16–001, October 2016.

(b) [Reserved]

■ 3. In § 52.320:

■ a. In the table in paragraph (c), revise the entry for ''I. Volatile Organic Compound Emissions from Oil and Gas Operations'' under the heading ''5 CCR 1001–09, Regulation Number 7, Control of Ozone Via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions, (Emissions of Volatile Organic Compounds and Nitrogen Oxides), Part D, Oil and Natural Gas Operations''; and

■ b. In the table in paragraph (e), under the subheading ''Denver Metropolitan Area'', add an entry for ''Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)'' after the entry ''2008 Ozone Moderate Area Attainment Plan''.

The revision and addition read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

Title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	* * *
5 CCR 1001–09, Regulation Number 7, Control of Ozone Via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions, (Emissions of Volatile Organic Compounds and Nitrogen Oxides), Part D, Oil and Natural Gas Operations				
I. Volatile Organic Compound Emissions from Oil and Gas Operations.	2/14/2020	6/13/2022	[insert **Federal Register** citation], 5/13/2022.	Previous SIP approval 2/13/2008. Substantive changes to Section XII; state-only provisions excluded, approved 7/3/2018. Substantive changes approved 11/25/2021 except no action on Sections I.D., I.E., I.F. and I.J.1. Conditional approval of Sections I.D., I.E., I.F., and I.J.1. 5/13/2022.
*	*	*	*	* * *

* * * * *

(e) * * *

Title	State effective date	EPA effective date	Final rule citation/date	Comments
* * *	*	*	* *	* *
Denver Metropolitan Area				
* * *	*	*	* *	* *
Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP).	11/21/2017	6/13/2022	[insert **Federal Register** citation], 5/13/2022.	Previous SIP approvals 7/03/2018, 2/24/202, and 11/05/2021. Conditional approval of oil and gas RACT 5/13/2022.
* * *	*	*	* *	* *

[FR Doc. 2022–10212 Filed 5–12–22; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2020–0644; FRL–9164–02–R8]

Air Plan Approval; Colorado; Denver Metro/North Front Range Nonattainment Area; Nonattainment NSR Permit Program Certification for the 2015 8-Hour Ozone Standard

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 Colorado. The submittal certifies that the State of Colorado has fulfilled, through previous SIP revisions, Nonattainment New Source Review (NNSR) Permit Program requirements under the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the Denver Metro/North Front Range (DMNFR) area. The State of Colorado submitted the certification to meet the nonattainment requirements for Marginal ozone nonattainment areas (NAAs) for the 2015 8-hour ozone NAAQS. The EPA is taking this action pursuant to sections 110, 172, 173, and 182 of the Clean Air Act (CAA).

DATES: This rule is effective on June 13, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2020–0644. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Matthew Lang, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6709, email address: *lang.matthew@epa.gov*.

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

I. Background

The background for this action is discussed in detail in our November 2, 2021 proposal.[1] In that document we proposed to approve a NNSR permit program certification for the DMNFR Marginal NAA because the certified NNSR permit program was prepared in accordance with requirements of sections 172(c)(5) and 173 of the CAA and fulfills the specific minimum SIP requirements of 40 CFR 51.165. The EPA is finalizing its proposed approval of the NNSR certification submitted by the State of Colorado for the DMNFR Marginal NAA under the 2015 8-hour ozone NAAQS. With this final rulemaking Colorado will have met the NNSR permit program requirement stemming from the Marginal nonattainment designation of the DMNFR area.

EPA held a 30-day comment period on the proposed rulemaking beginning on November 1, 2021 and closing on December 2, 2021. We received comments on the proposal from two commenters. One individual expressed support for our proposed rulemaking. We also received comments from the Center for Biological Diversity (CBD) claiming that EPA must hold a new comment period and that Colorado's SIP is inadequate with respect to NNSR permit program requirements. We thank the commenters and our responses to the comments received are included below.

II. Response to Comments

Commenter 1

One commenter expressed support of the proposed approval and provided a general suggestion that sources be given time to make any needed changes to practices.

Response: With respect to the commenter's concern that sources be given time to make changes to practices, we note that this rulemaking does not impose any additional regulatory requirements on sources that would take time to implement. NNSR is a preconstruction review program that only applies to new sources and major modifications at existing sources. This action solely approves the certification submitted by the State of Colorado explaining that the existing federally-approved NNSR permit program meets the requirements of 172(c)(5) and 173 of the CAA and fulfills the specific minimum SIP requirements of 40 CFR 51.165 for NNSR permit programs for the 2015 8-hour ozone NAAQS.

[1] Approval and Promulgation of Implementation Plans; Colorado; Denver Metro/North Front Range Nonattainment Area; Nonattainment NSR Permit Program Certification for the 2015 8-Hour Ozone Standard, 86 FR 60434 (November 2, 2021).

Comments From the Center for Biological Diversity

Comment 1

CBD asserts that EPA must hold a new comment period since EPA did not include the regulatory provisions that it is proposing to approve in the docket.

Response: In this rulemaking, EPA proposed to approve a NNSR permit program certification that was submitted by Colorado and which certified that the State's existing SIP-approved NNSR permit program meets the marginal nonattainment requirement for implementation of a NNSR permit program. As such, our action does not approve any actual revisions to the text of the Colorado SIP, as was stated in our proposed rulemaking. The provisions which have been approved by EPA into the Colorado SIP via past rulemaking actions are publicly available, and were publicly available at the time of our proposed rulemaking, on EPA's web page showing approved statutes and regulations in the Colorado SIP.[2] Links to the EPA actions that have most recently approved revisions to each section of the Colorado SIP are available at this EPA web page and can also be found at 40 CFR part 52, subpart G.[3]

Furthermore, the provisions of Colorado's SIP that the state certified as meeting the requirements for NNSR programs for new major sources and major modifications at existing sources in ozone nonattainment areas are specifically listed in the ''Clean Air Act Elements Table'' provided at attachment 7 of Colorado's SIP submittal. Attachment 7 of the submittal was referenced in the proposed rulemaking as being the NNSR provisions that Colorado is certifying. See 86 FR 60435. According to that attachment, the relevant SIP provisions for the NNSR permit program are found in sections I, II, and V of Regulation 3, Part D of the Colorado Code of Regulations (CCR). Instead of approving new revisions to the text of the existing SIP, this action approves those existing regulations which have already been incorporated into the SIP as meeting NNSR permit program requirements for ozone NAAs under the 2015 8-hour ozone NAAQS. Since no revisions to the Colorado SIP were submitted by the State and because, as mentioned previously, the existing SIP is available to the public and specific sections of the submittal highlighted the relevant provisions in the SIP, it is not necessary to include a copy of the SIP-approved NNSR permit program in the docket of the proposed rulemaking. Furthermore, it is not necessary to include a copy of the SIP-approved NNSR permit program in the docket since the opportunity for public comment was previously provided on each occasion that revisions to the NNSR permit program were approved into the SIP. This is consistent with other actions taken by EPA in approving certification SIP submittals to meet the 2008 and 2015 Marginal area SIP revision requirement for NNSR permit programs in which the State submittals and EPA approvals make reference to the relevant State regulations that are already federally approved while noting the most recent approval of revisions to the NNSR provisions.[4]

Comment 2

CBD asserts that EPA must disapprove Colorado's NNSR permit program certification because the NNSR program does not address the designation of northern Weld County as nonattainment given that this designation is effective beginning on December 30, 2021.

Response: This comment concerns the applicability of Colorado's NNSR permit program to the portion of Weld County that was newly designated as nonattainment as part of the DMNFR NAA, effective on December 30, 2021. Colorado's SIP-approved NNSR program applies generally to all ozone NAAs within the State of Colorado.[5] Thus, upon the effective date of designation of northern Weld County as nonattainment through inclusion in the DMNFR NAA, the existing NNSR permit program applies by operation of law to new major sources and major modifications in the portion of northern Weld County that has been newly designated as nonattainment. Since the 2015 nonattainment boundary was remanded without vacatur, the NAA boundary that did not include northern Weld County was effective at the time of publication of our proposed rule. Therefore, our proposed rule noted that to the extent that EPA's designation changes on remand, Colorado will be required to address the change as part of a future SIP revision. Upon further review, EPA acknowledges that the footnote in EPA's proposal that commenters reference (footnote 6 at 86 FR 60435) could be clearer.[6] That footnote was not intended to speak directly to the NNSR permit program requirement, but rather was intended to make a general point that additional supplements or revisions could be needed to fulfill Marginal area SIP revision requirements should a change in the NAA boundary be made final. This footnote is consistent with the language used in EPA's final action regarding designations for remanded areas at 86 FR 67869.[7] Since EPA interprets Colorado's NNSR permit program as being generally applicable to any ozone NAA within the State, it became applicable to the newly-designated portion of Weld County on the effective date of this designation (Dec. 30, 2021). There is no need for additional revisions to the existing NNSR permit program to make it applicable to the area of northern Weld County designated as nonattainment in 2021.[8]

Comment 3

CBD asserts that EPA must disapprove Colorado's certification of the state's NNSR permit program because the program does not ensure that minor sources in the DMNFR NAA will not cause or contribute to increment violations.

Response: The NNSR permit program requirements that are the focus of this action are specific to new major sources and modifications at existing sources in

[2] See *https://www.epa.gov/sips-co/epa-approved-statutes-and-regulations-colorado-sip.* We note that this compilation of EPA-approved statutes and regulations had not yet been updated at the time of our proposed rulemaking to reflect the revisions to Colorado's NNSR program that were approved by EPA in 2019 at 84 FR 18991 (May 3, 2019). However, that action (84 FR 18991) was specifically referenced in our notice of proposed rulemaking as being the most recent approval of revisions to Colorado's SIP-approved NNSR permit program.

[3] See *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-52/subpart-G.*

[4] Air Plan Approval; Texas; Clean Air Act Requirements for Nonattainment New Source Review and Emission Statements for the 2015 Ozone National Ambient Air Quality Standards, 86 FR 50456 (September 9, 2021). Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nonattainment New Source Review Requirements for 2008 8-Hour Ozone Standard, 84 FR 5598 (February 22, 2019).

[5] 5 CCR 1001–5:3D.II.A.25.b; 5 CCR 1001–5:3D.V.A.3.

[6] Footnote 6 at 86 FR 60435 of EPA's proposal is copied here for reader convenience: The EPA excluded part of Weld County from the DMNFR NAA, but that designation was remanded without vacatur in *Clean Wisconsin* v. *EPA,* 964 F.3d 1145, 1167–69, 1177 (D.C. Cir. 2020). To the extent the EPA's designation with respect to Weld County changes on remand, CO will be required to address the change in a future SIP revision.

[7] Additional Revised Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards: El Paso County, Texas and Weld County, Colorado, 86 FR 67864 (November 30, 2021).

[8] EPA acknowledges that 2021 revised designations action amending the boundary line for Denver Metro/North Front Range NAA to include the northern portion of Weld County has been challenged in court. *Board of County Commissioners of Weld County, CO* v. *EPA,* No. 21–1263 (D.C. Cir., Dec. 15, 2021). On March 15, 2021, the court denied Petitioners' request to stay the Agency's revised designations action. If the court eventually takes an action that results in northern Weld county's exclusion from the Denver Metro/North Front Range NAA, then Colorado's existing NNSR permit program would no longer apply there until such time northern Weld County is again part of an ozone nonattainment area.

ozone NAAs and include the requirements that were promulgated in the ''Phase 2 Rule'' implementing the 1997 8-hour ozone NAAQS and which are listed in our proposed rulemaking.[9] Therefore, since none of the requirements for NNSR major source permit programs at 40 CFR 51.165 concern contributions to consumption of PSD increment, this comment falls outside the scope of this proposed rulemaking. Furthermore, we again note for clarity that the EPA is not approving any revision to the Colorado SIP. Instead, EPA is approving Colorado's certification that the existing SIP-approved NNSR permit program continues to meet the minimum requirements for NNSR permit programs in Marginal ozone NAAs under the 2015 8-hour ozone NAAQS. Colorado's SIP certification did not, and need not, address the PSD or minor source permitting requirements under 40 CFR 51.166 or 51.160. Further, there is no PSD increment for ozone in section 51.166(c).

Comment 4

CBD asserts that EPA must disapprove Colorado's certification of their NNSR permit program because the program provides for exclusions of temporary emissions and emissions from internal combustion engines on vehicles from being used in the determination of whether a source is a major stationary source subject to NNSR permitting. CBD claims these exclusions are not allowed by the CAA.

Response: As referenced by the commenter, the definition of potential to emit at 40 CFR 51.165(a)(1)(iii) excludes secondary emissions in determining the potential to emit of a stationary source. Secondary emissions are defined at 40 CFR 51.165(a)(1)(viii) to include emissions which would occur because of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. NNSR permitting concerns continuous operating emissions of a stationary source and not temporary emissions or emissions associated with construction. Therefore, the exclusion of emissions from temporary activities contained at Section II.A.25.f of Regulation 3, Part D in the CCR is allowable per the definition of secondary emissions and exclusion of secondary emissions under the definition of potential to emit at 40 CFR 51.165. The exclusion of emissions from internal combustion engines on any vehicle at Section II.A.25.f of Regulation 3, Part D is appropriate since mobile source emissions from nonroad mobile and on-road mobile sources are not considered as part of the operating emissions of a stationary source. However, under the definition of ''Nonroad engine'' at 40 CFR 1068.30 an internal combustion engine is not a nonroad engine if it remains or will remain at a location for more than 12 consecutive months and would instead become a stationary engine as specified by 40 CFR 1068.31(e)(1). This definition is reflected in Section I.B.31.b.(iii) of Regulation 3, Part A of the CCR which is incorporated into the SIP.[10] Mobile source emissions are regulated by Title II of the CAA which includes emissions standards for moving sources and therefore mobile source emissions are not included in the determination of whether a stationary source is a major source for NNSR purposes. Section II.G of Appendix S to 40 CFR part 51, which set forth EPA's interpretive ruling on preconstruction review, details that ''since EPA's authority to perform or require indirect source review relating to mobile sources regulated under Title II of the Act (motor vehicles and aircraft) has been restricted by statute, consideration of the indirect impacts of motor vehicles and aircraft is not required under this Ruling.'' We therefore disagree with the assertion by the commenter that the exclusion of temporary emissions and emissions from internal combustion engines on vehicles are not allowable in the determination of whether a source is major with respect to NNSR permitting.

Comment 5

CBD asserts EPA must disapprove Colorado's certification of their NNSR permit program because the program provides for exemptions relating to offset requirements not allowed under the CAA or EPA's regulations. Specifically, the commenter claims that the following exemptions from offset requirements that are located in Regulation 3, Part D are not allowed: Portable sources that will relocate outside a NAA in less than one year, pilot plants that operate an aggregate of less than six months, construction phases of a new or modified building/facility/structure/installation, temporary processes or activities of less than one year in duration, and sources undergoing fuel switches.[11]

Response: Appendix S to 40 CFR part 51 is a codification of EPA's Emissions Offset Interpretive Ruling on the preconstruction review requirements for stationary sources under 40 CFR part 51, subpart I. Section IV.B of Appendix S contains exemptions consistent with those that the commenter objects to. These exemptions include temporary emission sources such as portable facilities that will be relocated outside of the NAA after a short period of time, pilot plants, and emissions resulting from the construction phase of a new source. We highlight that this Appendix S provision concerning offset exemptions for temporary emissions from construction phases does not prohibit reviewing authorities from concluding that emissions associated with construction phases exceeding a period of one year are temporary emissions. The language of section IV.B of Appendix S is general enough to allow the reviewing authority to exempt emissions resulting from a construction phase exceeding one year from offset requirements. Section IV.B of Appendix S also includes an exemption for sources which must switch fuels due to lack of adequate fuel supplies or where a source is required to be modified as a result of EPA regulations. This exemption applies only if an applicant has demonstrated that it has made its best efforts to obtain sufficient emission offsets and that efforts were unsuccessful, the applicant has secured all available emission offsets, and the applicant will continue to seek the necessary emission offsets and apply them when they become available. Appendix S currently serves as a NNSR permitting program that may be applied by states that do not have an approved NNSR program in their SIP or lack a particular element of such a program. The omission of the Appendix S offset exemptions at 40 CFR 51.165 does not preclude the inclusion of the same exemptions in the Colorado SIP. The Emissions Offset Interpretive Ruling reflects a longstanding EPA interpretation of the CAA. EPA does not consider it appropriate to allow states without an approved NNSR program to apply the exemptions in Appendix S, while denying states who have taken on the task of developing an NNSR program for EPA approval the same opportunity to implement exemptions that EPA has previously-determined to be permissible under the Act. The exemption from offset requirements at Section IV.B of Appendix S to 40 CFR

[9] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline, 70 FR 71612 (November 29, 2005).

[10] 5 CCR 1001–5:3A.I.B.31.b.(iii).

[11] 5 CCR 1001–5:3D.V.A.8.a(i)(A)–(E)

part 51 specifically for emissions resulting from the construction phase of a new source was most recently recognized as an appropriate exemption in a permit issued by EPA for the South Fork Windfarm on the Outer Continental Shelf (OCS).[12] Therefore, we disagree with the claim made by the commenter that the exemptions at section V.A.8 of Regulation 3, Part D are not allowed under the CAA or EPA's regulations since, as detailed previously, these exemptions are in section IV.B of Appendix S to 40 CFR part 51.

III. Final Action

The EPA is finalizing approval of the NNSR permit program certification submitted by the State of Colorado because the certified NNSR Permit Program was prepared in accordance with requirements of sections 172(c)(5) and 173 of the CAA and fulfills the specific minimum SIP requirements of 40 CFR 51.165.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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, 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, 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 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 July 12, 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, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 8, 2022.

KC Becker,

Regional Administrator, Region 8.

40 CFR part 52 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 G—Colorado

■ 2. In § 52.320, the table in paragraph (e) is amended by revising the center heading ''Maintenance Plans'' and adding the entry ''Ozone (8-hour, 2015) DMNFR NNSR Certification'' at the end of the ''Denver Metropolitan Area'' subheading to read as follows:

§ 52.320 Identification of plan.

* * * * *

(e) * * *

[12] See EPA Response to Comments for South Fork Windfarm OCS Air Permit at p. 14. Available online at *https://www.epa.gov/system/files/documents/2022-01/sfw-response-comments-final-permit-ocs-r1-04.pdf.*

Title	State effective date	EPA effective date	Final rule citation/date	Comments
* * * * * * *				
Maintenance and Attainment Plan Elements				
* * * * * * *				
Denver Metropolitan Area				
* * * * * * *				
Ozone (8-hour, 2015) DMNFR NNSR Certification.	7/6/2020	6/13/2022	May 13, 2022, [insert **Federal Register** citation].	
* * * * * * *				

[FR Doc. 2022–10211 Filed 5–12–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200124–0029; RTID 0648–XB978]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2022 Red Snapper Private Angling Component Accountability Measure in Federal Waters Off Louisiana and Florida

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

ACTION: Temporary rule, accountability measure.

SUMMARY: Through this temporary rule, NMFS implements accountability measures (AMs) for the red snapper recreational sector private angling component in the Gulf of Mexico (Gulf) off Louisiana and Florida for the 2022 fishing year. Based on information provided by the Louisiana Department of Wildlife and Fisheries (LDWF) and Florida Fish and Wildlife Conservation Commission (FWC), NMFS has determined that the 2021 regional management area private angling component annual catch limits (ACL) for Gulf red snapper were exceeded for both Louisiana and Florida. Therefore, NMFS reduces the 2022 private angling component ACLs of Gulf red snapper for both the Louisiana and Florida regional management areas. This reduction will remain in effect through the remainder of the current fishing year on December 31, 2022, and is necessary to protect the Gulf red snapper resource.

DATES: This temporary rule is effective from 12:01 a.m., local time, on May 13, 2022, until 12:01 a.m., local time, on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622. All red snapper weights discussed in this temporary rule are in round weight.

In 2015, Amendment 40 to the FMP established two components within the recreational sector fishing for red snapper: The private angling component, and the Federal charter vessel and headboat (for-hire) component (80 FR 22422, April 22, 2015). In 2020, NMFS implemented Amendments 50 A–F to the FMP, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of red snapper in Federal waters of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocate a portion of the private angling ACL to each state, and each state is required to constrain landings to its allocation as part of state management.

As described at 50 CFR 622.39(a)(2)(i), the Gulf red snapper recreational sector quota (ACL) is 7.399 million lb (3.356 million kg) and the recreational private angling component quota (ACL) is 4.269 million lb (1.936 million kg). The Louisiana regional management area private angling component ACL is 816,233 lb (370,237 kg) (50 CFR 622.23(a)(1)(ii)(C)) and the Florida regional management area private angling component ACL is 1,913,451 lb (867,927 kg) (50 CFR 622.23(a)(1)(ii)(B)). Regulations at 50 CFR 622.23(b) require that if a state's red snapper private angling component landings exceed the applicable state's component ACL, then in the following fishing year, that state's private angling ACL will be reduced by the amount of that ACL overage in the prior fishing year.

Based on data provided by the LDFW, NMFS has determined that landings of red snapper off Louisiana for the private angling component, which includes landings for state charter vessels, in 2021 were 823,151 lb (373,375 kg); which is 6,918 lb (3,138 kg) greater than 2021 Louisiana allocation of the private angling component ACL. Based on data provided by the FWC, NMFS has determined that landings of red snapper off Florida for the private angling component, which includes landings for state charter vessels, in 2021 were 2,169,739 lb (984,177 kg); which is 256,288 lb (116,250 kg) greater than 2021 Florida allocation of the private angling component ACL. Accordingly, for the 2022 fishing year, this temporary rule reduces the Louisiana regional management area private angling component ACL for Gulf red snapper by the ACL overage amount of 6,918 lb (3,138 kg), which results in a revised 2022 private angling ACL for Louisiana of 809,315 lb (367,099 kg). This temporary rule also reduces the Florida regional management area private angling component ACL for Gulf red snapper by the ACL overage amount of 256,288 lb (116,250 kg), which results in

a revised 2022 private angling ACL for Florida of 1,657,163 lb (751,676 kg).

Additionally, as a result of the adjusted Louisiana and Florida ACLs, the total private angling component quota and the total recreational quota, will also be reduced in the Gulf for 2022. The private angling component quota will reduce from 4,269,000 lb (1,936,000 kg) to 4,005,794 lb (1,816,998 kg) and the total recreational quota will reduce from 7,399,000 lb (3,356,000 kg) to 7,135,794 lb (3,236,742 kg). The recreational private angling component ACLs for other Gulf state management areas (Alabama, Mississippi, and Texas) for 2022 are unaffected by this notice. The reduction in the 2022 red snapper private angling component ACLs for the Louisiana and Florida regional management areas are effective at 12:01 a.m., local time, on May 13, 2022, and will remain in effect through the end of the fishing year on December 31, 2022.

The LDWF and FWC are responsible for ensuring that 2022 private angling component landings in each applicable state's regional management area do not exceed the adjusted 2022 Louisiana and Florida ACLs. NMFS notes that after the LDWF and FWC identified that ACL overages had occurred in 2021, they adjusted their respective 2022 red snapper private angling fishing seasons to account for the reduction in the ACLs as required by the regulations at 50 CFR 622.23(b) and implemented through this temporary rule.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required under 50 CFR 622.23(b) which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action is based on the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to implement this action to reduce the private angling component ACLs for the Louisiana and Florida regional management areas constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are contrary to the public interest. Such procedures are unnecessary because the rule implementing the post-season ACL adjustment authority has already been subject to notice and comment, and all that remains is to notify the public of the ACL overage adjustment. Such procedures are contrary to the public interest because a failure to implement the ACL overage adjustments immediately may result in confusion among the public about what ACL is in effect for Louisiana and Florida for the 2022 fishing year.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of the action under 5 U.S.C. 553(d)(3).

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

Dated: May 10, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–10390 Filed 5–12–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 93
Friday, May 13, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0525; Airspace Docket No. 22–ASO–7]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Raleigh, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Raleigh-Durham International Airport, Raleigh, NC, due to the decommissioning of the LEEVY (LE) non-directional beacon (NDB) and cancellation of associated approaches. In addition, Class E airspace designated as an extension to a Class C surface area would be amended by updating the airport's geographic coordinates and updating the name of the RALEIGH/DURHAM VORTAC. Also, Horace Williams Airport has been abandoned, and is no longer in need of controlled airspace. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before June 27, 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 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2022–0525; Airspace Docket No. 22–ASO–7 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend airspace in Raleigh, NC, to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on 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 (Docket No. FAA–2021–0525 and Airspace Docket No. 22–ASO–7) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons 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–2021–0525; Airspace Docket No. 22–ASO–7.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the 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 NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface at Raleigh-Durham International Airport, Raleigh, NC, due to the decommissioning of the LEEVY non-directional beacon (NDB) and cancellation of associated approaches. This action would eliminate the northeast extension. Also, Class E airspace designated as an extension to a Class C surface area would be amended by updating the airport's geographic coordinates and updating the name of the Raleigh/Durham VORTAC, (formerly Raleigh VORTAC). This action would also remove the airspace surrounding Horace Williams Airport, as the airport has closed.

Class E airspace designations are published in Paragraphs 6003 and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this 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 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.

Lists 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 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 Federal Aviation Administration Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6003 Class E Airspace Designated as an Extension to Class C Area.

* * * * *

ASO NC E3 Raleigh, NC [Amended]

Raleigh-Durham International Airport, NC
(Lat. 35°52′40″ N, long. 78°47′15″ W)
Raleigh/Durham VORTAC
(Lat. 35°52′21″ N, long. 78°47′00″ W)

That airspace extending upward from the surface within 3 miles each side of the Raleigh/Durham VORTAC 036°, 128° and 231° radials extending from a 5-mile radius of the Raleigh-Durham International Airport to 7 miles northeast, southeast and southwest of the VORTAC.

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

* * * * *

ASO NC E5 Raleigh, NC [Amended]

Raleigh-Durham International Airport, NC
(Lat. 35°52′40″ N, long. 78°47′15″ W)
Duke Medical Center, Point In Space Coordinates
(Lat. 35°59′48″ N, long. 78°55′49″ W)

That airspace extending upward from 700 feet or more above the surface within a 10-mile radius of Raleigh-Durham International Airport; and that airspace within a 6-mile radius of the point in space (lat. 35°59′48″ N, long. 78°55′49″ W) serving Duke Medical Center.

Issued in College Park, Georgia, on May 9, 2022.

Andreese C. Davis,

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

[FR Doc. 2022–10309 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0482; Airspace Docket No. 21–AEA–18]

RIN 2120–AA66

Proposed Amendment and Establishment of United States Area Navigation (RNAV) Routes; Northeast United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend five low altitude United States Area Navigation (RNAV) routes (T-routes), and establish two T-routes in support of the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) Program. The purpose is to enhance the efficiency of the National Airspace System (NAS) by transitioning from a ground-based to a satellite-based navigation system.

DATES: Comments must be received on or before June 27, 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–2022–0482; Airspace Docket No. 21–AEA–18 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.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, 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 and improve the efficient flow of air traffic within the NAS by lessening 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–2022–0482; Airspace Docket No. 21–AEA–18) 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–2022–0482; Airspace Docket No. 21–AEA–18.'' 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 NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.* You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend low altitude RNAV T-routes, designated T–212, T–221, T–291, T–295, T–299, and establish T–443, and T–445 in the northeast United States to support the VOR MON Program.

T–212: T–212 currently extends between the RASHE, PA, FIX, and the Putnam, CT, (PUT) VOR/Distance Measuring Equipment (VOR/DME). The only proposed changes to T–212 are inserting the WLKES, PA, waypoint (WP) in place of the Wilkes Barre, PA, (LVZ) VOR and Tactical Air Navigational System (VORTAC); and inserting the PUTNM, CT, WP, in place of the Putnam, CT, VOR/DME. Navigation along T–212 is not affected by these changes.

T–221: T–221 currently extends between the MAZIE, PA, FIX, and the Binghamton, NY, (CFB) VOR/DME. This action would replace the Allentown, PA, (FJC) VORTAC with the EESTN, PA, WP.

T–291: T–291 currently extends between the LOUIE, MD, FIX, and the Albany, NY, (ALB) VORTAC. This proposal would move the start point south of the LOUIE FIX to the Harcum, VA, (HCM) VORTAC. The COLIN, VA, and the SHLBK, VA, WPs would be added between, Harcum and Louie. The BAABS, MD, WP would be moved 3 nautical miles (NM) northwest of its current position to ensure clearance from restricted area R–4001. The new GRACO, MD, FIX would be added between the LOUIE and BAABS WPs per request from air traffic control. The VINNY, PA, FIX would be added between the BAABS WP, and the Harrisburg, PA, VORTAC. The HYATT, PA, WP would replace the Milton, PA, (MIP) VORTAC. The LEDIE, NY, WP would be added between the LAAK, PA, FIX, and the Delancy, NY, (DNY) VOR/DME and the Delancy VOR/DME would be replaced by the DANZI, NY, WP. After the Albany, NY, (ALB) VORTAC, T–291 would be extended southeastward through the following added points: Barnes, MA, (BAF) VORTAC; PUTNM, CT, WP; PROVI, RI, WP; AVONN, RI, FIX; BUZRD, MA, WP; Martha's Vineyard, MA (MVY) VOR/DME; and Nantucket, MA, (ACK) VOR/DME. As amended, T–291 would extend between the Harcum, VA, VORTAC and the Nantucket, MA, VOR/DME.

T–291 would overlie VOR Federal airway V–33 from Harcum, VA, to the COLIN, VA WP. It would run adjacent to airway V–213 from COLIN, VA to the SHLBK, MD WP. It would then overlie airway V–93 to the GRACO, MD, FIX. After Albany, T–291 would turn southeast bound and overlie airway V–146 to Nantucket, MA.

T–295: T–295 currently extends between the LOUIE, MD, WP, and the Presque Isle, ME, (PQI) VOR/DME. This proposal would amend the route to begin south of LOUIE, MD, at the POORK, VA WP. The following WPs would be added between POORK, VA, and LOUIE, MD: HOUKY, VA (replaces the Hopewell, VA, (HPW) VORTAC); TAPPA, VA: COLIN, VA; and SHLBK, MD. The following modifications would be made to T–295 between the LOUIE FIX and the Wilkes-Barre, PA, (LVZ) VORTAC. The GRACO, MD, FIX would be added between the LOUIE FIX, and the BAABS, MD, WP. The BAABS WP would be moved 3 NM northwest of its current position. The Lancaster, PA, (LRP) VORTAC would be replaced by the HEXSN, PA, WP. The Wilkes-Barre, PA, (LVZ) VORTAC would be replaced by the WILKES, PA, WP. The Chester,

MA, (CTR) VOR/DME would be added to the route between the SASHA, MA, FIX, and the KEYNN, NH, WP.

As amended, T–295 would extend between POORK, VA, and Presque Isle, ME. The amended route would overlie a portion of airway V–213 from Hopewell, VA to COLIN, VA. It would overlie portions of airway V–93 from SHLBK, MD, to the GRACO, MD, FIX.

T–299: T–299 currently extends between the UCREK, VA, WP, and the SCAPE, PA. FIX. This action proposes to amend the route by moving the start point southwest from the UCREK WP to the OBEPE, VA, FIX. In addition, T–299 would be extended northward from the SCAPE, PA, FIX, to the Albany, NY, (ALB) VORTAC. The following points would be added after the SCAPE FIX: Harrisburg, PA, (HAR) VORTAC; BOBSS, PA, FIX; East Texas, PA, (ETX) VOR/DME; EESTN, PA WP; POKTS, NY, WP; WEARD, NY, FIX; and Albany, NY, (ALB) VORTAC. As amended, T–299 would extend between OBEPE, VA, and Albany, NY. It would overlie a portion of airway V–377 from the SCAPE FIX to the Harrisburg VORTAC. It would also overlie portions of airway V–162 from the Harrisburg VORTAC to the EESTN, PA, WP (which will replace the Allentown, PA, (FJC) VORTAC). T–299 would overlie portions of airway V–489 from the POKTS WP, to the Albany VORTAC.

T–443: T–443 is a proposed new route that would extend between the OBWON, MD, WP, and the Solberg, NJ, (SBJ) VOR/DME. The route would overlie a portion of airway V–378 between the CLIPR, MD, FIX, and the MDENA, PA, WP. The MDENA WP would replace the Modena, PA, (MXE) VORTAC. T–443 would also overlie airway V–3 from the MDENA WP to the Solberg VOR/DME.

T–445: T–445 is a proposed new route that would extend between the Westminster, MD, (EMI) VORTAC, and the AIRCO, NY, FIX. T–445 would overlie a portion of airway V–265 between the Westminster VORTAC and the Harrisburg, PA, (HAR) VORTAC. It would also overlie a portion of airway V–31 from the Harrisburg VORTAC to the AIRCO, NY, FIX. In this route description, the LYKOM, PA, WP replaces the Williamsport, PA, (FQM) VOR/DME, and the STUBN, NY, WP replaces the Elmira, NY, (ULM) VOR/DME.

The full descriptions of the above routes are listed in ''The Proposed Amendment'' section, below.

United States RNAV T-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 routes listed in this document would be subsequently published in the Order.

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 part 14 CFR 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–212 RASHE, PA to PUTNM, CT [Amended]

RASHE, PA	FIX	(Lat. 40°40′36.04″ N, long. 077°38′38.94″ W)
Selinsgrove, PA (SEG)	VOR/DME	(Lat. 40°47′27.09″ N, long. 076°53′02.55″ W)
DIANO, PA	FIX	(Lat. 41°00′01.99″ N, long. 076°13′33.78″ W)
WLKES, PA	WP	(Lat. 41°16′22.57″ N, long. 075°41′21.60″ W)
LAAYK, PA	FIX	(Lat. 41°28′32.64″ N, long. 075°28′57.31″ W)
WEETS, NY	FIX	(Lat. 41°51′26.98″ N, long. 074°11′51.51″ W)
NELIE, CT	FIX	(Lat. 41°56′27.64″ N, long. 072°41′18.88″ W)
PUTNM, CT	WP	(Lat. 41°57′19.65″ N, long. 071°50′38.76″ W)

* * * * * * *

T–221 MAZIE, PA to Binghamton, NY (CFB) [Amended]

MAZIE, PA	FIX	(Lat. 40°19′19.55″ N, long. 075°06′35.28″ W)
EESTN, PA	WP	(Lat. 40°43′36.50″ N, long. 075°27′16.55″ W)
LAAYK, PA	FIX	(Lat. 41°28′32.64″ N, long. 075°28′57.31″ W)
Binghamton, NY (CFB)	VOR/DME	(Lat. 42°09′26.96″ N, long. 076°08′11.30″ W)

* * * * * * *

T–291 Harcum, VA (HCM) to Nantucket, MA (ACK) [Amended]

Harcum, VA (HCM)	VORTAC	(Lat. 37°26′55.18″ N, long. 076°42′40.87″ W)
COLIN, VA	WP	(Lat. 38°05′59.23″ N, long. 076°39′50.85″ W)
SHLBK, MD	WP	(Lat. 38°20′16.21″ N, long. 076°26′10.51″ W)
LOUIE, MD	FIX	(Lat. 38°36′44.33″ N, long. 076°18′04.37′ W)
GRACO, MD	FIX	(Lat. 38°56′29.81″ N, long. 076°11′59.22″ W)

BAABS, MD	WP	(Lat. 39°22′01.36″ N, long. 076°27′31.21″ W)
VINNY, PA	FIX	(Lat. 39°45′16.64″ N, long. 076°36′30.16″ W)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08.06″ N, long. 077°04′10.41″ W)
Selinsgrove, PA (SEG)	VORTAC	(Lat. 40°47′27.09′ N, long. 076°53′02.55″ W)
HYATT, PA	WP	(Lat. 41°01′24.47″ N, long. 076°39′54.34″ W)
MEGSS, PA	FIX	(Lat. 41°11′13.26″ N, long. 076°12′41.02″ W)
LAAYK, PA	FIX	(Lat. 41°28′32.64″ N, long. 075°28′57.31″ W)
LEDIE, NY	WP	(Lat. 41°53′23.72″ N, long. 075°10′27.51″ W)
DANZI, NY	WP	(Lat. 42°10′41.86″ N, long. 074°57′24.19″ W)
Albany, NY (ALB)	VORTAC	(Lat. 42°44′50.21″ N, long. 073°48′11.46″ W)
Barnes, MA (BAF)	VORTAC	(Lat. 42°09′43.05″ N, long. 072°42′58.32″ W)
PUTNM, CT	WP	(Lat. 41°57′19.65″ N, long. 071°50′38.76″ W)
PROVI, RI	WP	(Lat. 41°43′25.46″ N, long. 071°25′54.17″ W)
AVONN, RI	FIX	(Lat. 41°38′09.30″ N, long. 071°12′26.15″ W)
BUZRD, MA	WP	(Lat. 41°32′45.88″ N, long. 070°57′50.69″ W)
Martha's Vineyard, MA (MVY)	VOR/DME	(Lat. 41°23′46.37″ N, long. 070°36′45.78″ W)
Nantucket, MA (ACK)	VOR/DME	(Lat. 41°16′54.79″ N, long. 070°01′36.16″ W)

* * * * * * *

T–295 POORK, VA to Presque Isle, ME (PQI) [AMEND]

POORK, VA	WP	(Lat. 36°34′11.34″ N, long. 077°35′21.39″ W)
HOUKY, VA	WP	(Lat. 37°19′55.98″ N, long. 077°07′57.63″ W)
TAPPA, VA	WP	(Lat. 37°58′12.66″ N, long. 076°50′40.62″ W)
COLIN, VA	WP	(Lat. 38°05′59.23″ N, long. 076°39′50.85″ W)
SHLBK, MD	WP	(Lat. 38°20′16.21″ N, long. 076°26′10.51″ W)
LOUIE, MD	FIX	(Lat. 38°36′44.33″ N, long. 076°18′04.37″ W)
GRACO, MD	FIX	(Lat. 38°56′29.81″ N, long. 076°11′59.22″ W)
BAABS, MD	WP	(Lat. 39°22′01.36″ N, long. 076°27′31.21″ W)
HEXSN, PA	WP	(Lat. 40°07′12.46″ N, long. 076°17′28.38″ W)
WLKES, PA	WP	(Lat. 41°16′22.57″ N, long. 075°41′21.60″ W)
LAAYK, PA	FIX	(Lat. 41°28′32.64″ N, long. 075°28′57.31″ W)
SAGES, NY	FIX	(Lat. 42°02′46.33″ N, long. 074°19′10.33″ W)
SASHA, MA	FIX	(Lat. 42°07′58.07″ N, long. 073°08′55.39″ W)
Chester, MA (CTR)	VOR/DME	(Lat. 42°17′28.75″ N, long. 072°56′57.82″ W)
KEYNN, NH	WP	(Lat. 42°47′30.99″ N, long. 072°17′30.35″ W)
Concord, NH (CON)	VOR/DME	(Lat. 43°13′11.23″ N, long. 071°34′31.63″ W)
Kennebunk, ME (ENE)	VOR/DME	(Lat. 43°25′32.42″ N, long. 070°36′48.69″ W)
BRNNS, ME	FIX	(Lat. 43°54′08.64″ N, long. 069°56′42.81″ W)
Bangor, ME (BGR)	VORTAC	(Lat. 44°50′30.46″ N, long. 068°52′26.27″ W)
LAUDS, ME	WP	(Lat. 45°25′10.13″ N, long. 068°12′26.96″ W)
HULTN, ME	WP	(Lat. 46°02′22.29″ N, long. 067°50′02.06″ W)
Presque Isle, ME (PQI)	VOR/DME	(Lat. 46°46′27.07″ N, long. 068°05′40.37″ W)

* * * * * * *

T–299 OBEPE, VA to Albany, NY (ALB) [Amended]

OBEPE, VA	FIX	(Lat. 37°54′23.03″ N, long. 079°13′21.04″ W)
UCREK, VA	WP	(Lat. 38°01′33.17″ N, long. 079°02′56.23″ W)
KAIJE, VA	WP	(Lat. 38°44′34.79″ N, long. 078°42′48.47″ W)
BAMMY, WV	WP	(Lat. 39°24′33.13″ N, long. 078°25′45.64″ W)
REEES, PA	WP	(Lat. 39°47′51.75″ N, long. 077°45′56.31″ W)
SCAPE, PA	FIX	(Lat. 39°56′41.76″ N, long. 077°32′12.33″ W)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08.06″ N, long. 077°04′10.41″ W)
BOBSS, PA	FIX	(Lat. 40°17′41.78″ N, long. 076°45′00.73″ W)
East Texas, PA (ETX)	VOR/DME	(Lat. 40°34′51.74″ N, long. 075°41′02.51″ W)
EESTN, PA	WP	(Lat. 40°43′36.50″ N, long. 075°27′16.55″ W)
POKTS, NY	WP	(Lat. 41°24′35.17″ N, long. 074°35′30.36″ W)
WEARD, NY	FIX	(Lat. 41°45′43.63″ N, long. 074°31′30.07″ W)
Albany, NY (ALB)	VORTAC	(Lat. 42°44′50.20″ N, long. 073°48′11.47″ W)

* * * * * * *

T–443 OBWON, MD to Solberg, NJ (SBJ) [New]

OBWON, MD	WP	(Lat. 39°11′54.69″ N, long. 076°32′04.84″ W)
BAABS, MD	WP	(Lat. 39°22′01.36″ N, long. 076°27′31.21″ W)
CLIPR, MD	FIX	(Lat. 39°26′53.17″ N, long. 076°25′19.09″ W)
BELAY, MD	FIX	(Lat. 39°35′15.67″ N, long. 076°18′02.00″ W)
MDENA, PA	WP	(Lat. 39°55′05.39″ N, long. 075°40′14.40″ W)
Solberg, NJ (SBJ)	VOR/DME	(Lat. 40°34′58.96″ N, long. 074°44′30.45″ W)

* * * * * * *

T–445 Westminster, MD (EMI) to AIRCO, NY [New]

Westminster, MD (EMI)	VORTAC	(Lat. 39°29′42.03″ N, long. 076°58′42.86″ W)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08.06″ N, long. 077°04′10.41″ W)
Selinsgrove, PA (SEG)	VOR/DME	(Lat. 40°47′27.09″ N, long. 076°53′02.55″ W)
LYKOM, PA	WP	(Lat. 41°20′18.75″ N, long. 076°46′30.30″ W)
STUBN, NY	WP	(Lat. 42°05′38.58″ N, long. 077°01′28.68″ W)
BEEPS, NY	FIX	(Lat. 42°49′13.26″ N, long. 076°59′04.84″ W)
Rochester, NY (ROC)	VOR/DME	(Lat. 43°07′04.65″ N, long. 077°40′22.06″ W)
AIRCO, NY	FIX	(Lat. 43°12′36.66″ N, long. 078°28′57.00″ W)

* * * * *

Issued in Washington, DC, on May 9, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–10314 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0523; Airspace Docket No. 22–AEA–7]

Proposed Revocation of Class E Airspace; Milford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class E airspace in Milford, PA, as Myer Airport has been abandoned, and controlled airspace is no longer required. This action would enhance the safety and management of controlled airspace within the national airspace system.

DATES: Comments must be received on or before June 27, 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 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–0523; Airspace Docket No. 22–AEA–7, 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would remove Class E airspace extending upward from 700 feet above the surface at Myer Airport, Milford, PA, due to the closing of the airport.

Comments Invited

Interested persons are invited to comment on this rule 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–2021–0523 and Airspace Docket No. 22–AEA–7) and be submitted in triplicate to the DOT Docket Operations (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons 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–2021–0523; Airspace Docket No. 22–AEA–7.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. 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 NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA proposes an amendment to 14 CFR 71 to remove Class E airspace extending upward from 700 feet above the surface at Myer Airport, Milford, PA, as the airport has closed. Therefore, the airspace is no longer necessary.

Class E airspace designations are published in Paragraph 6005, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11F.

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 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 would 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.

Lists 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 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 Federal Aviation Administration Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

AEA PA E5 Milford, PA [Removed]

Issued in College Park, Georgia, on May 9, 2022.

Andreese C. Davis,

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

[FR Doc. 2022–10310 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0352]

RIN 1625–AA00

Safety Zone; Red Bull Flugtag, Milwaukee, WI

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of Lake Michigan in the vicinity of Veterans Park in Milwaukee, WI. This action is necessary to provide for the safety of life on these navigable waters during the Red Bull Flugtag event on July 16, 2022. This proposed rulemaking would restrict usage by persons and vessels within the safety zone. At no time during the effective period may non-event persons or vessels transit the waters of Milwaukee Harbor within 800 feet of the southern shoreline of Veterans Park. These restrictions would apply to all persons and vessels during the effective period unless authorized by the Captain of the Port Lake Michigan or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 13, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0325 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.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Petty Officer Jeromy Sherrill, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7148, email *Jeromy.N.Sherrill@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On March 12, 2022, the organizer of the Red Bull Flugtag Milwaukee notified the Coast Guard that it will be organizing an event in the Milwaukee Harbor on July 16, 2022 from 11 a.m. through 4 p.m. The marine event will take place in the waters of Milwaukee Harbor adjacent to the south shore of Veterans Park in Milwaukee, WI. The Captain of the Port Sector Lake Michigan (COTP) has determined that potential hazards associated with the Red Bull Flugtag Milwaukee event would be a safety concern for anyone within the safety zone that is not participating in the event.

The purpose of this rulemaking is to ensure the safety of persons, vessels and the navigable waters of Milwaukee Harbor within 800 feet of the southern shoreline of Veterans Park during the event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 9 a.m. through 6 p.m. on July 16, 2022. The safety zone would cover all navigable waters of Milwaukee Harbor within 800 feet of the southern shoreline of Veterans Park. The duration of the zone is intended to ensure the safety of life and vessels on these navigable waters before, during, and after the event. No vessels or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the characteristics of the

safety zone. The safety zone created by this proposed rule will relatively small and is designed to minimize its impact on navigable waters. This proposed rule will prohibit entry into certain navigable waters of Milwaukee Harbor, WI, and it is not anticipated to exceed 9 hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP Lake Michigan.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 7 hours that would prohibit entry within a relatively small portion of Milwaukee Harbor. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

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,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be 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 or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T09–0352 to read as follows:

§ 165.T09–0352 Safety Zone; Red Bull Flugtag, Milwaukee, WI.

(a) *Location.* All navigable waters of Milwaukee Harbor within 800 feet of the southern shore of Veterans Park in Milwaukee, WI.

(b) *Enforcement period.* The safety zone described in paragraph (a) of this section would be effective on July 16, 2022 from 9 a.m. through 6 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The ''designated representative'' of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zone in paragraph (a) of this section during the marine event must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: May 2, 2022.

D.P. Montoro,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2022–10173 Filed 5–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0307]

RIN 1625–AA00

Safety Zone; Lake Erie, Cleveland, OH

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of Lake Erie. This action is necessary to provide for the safety of life on these navigable waters near Cleveland, OH, during the Tri CLE Rock and Roll Run, held on August 20, 2022. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Buffalo or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 13, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0307 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.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Jared Stevens, Waterways Management Division, MSU Cleveland, U.S. Coast Guard; telephone 216–937–0124, email *Jared.M.Stevens@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On January 5, 2022, the Phastar Corporation notified the Coast Guard that it will be holding a triathlon on August 20, 2022. The triathlon is to take place in the North Coast Harbor into the East Basin Channel Cleveland, OH. The Captain of the Port Buffalo (COTP) has determined that a safety zone that will cover all navigable waters and tributaries of Lake Erie within the North Coast Harbor into the East Basin Channel in Cleveland, OH, is needed to protect participants during the swimming portion of the triathlon.

The purpose of this rulemaking is to ensure the safety of participants and the navigable waters within the course of the swimming portion of the triathlon before, during, and after the scheduled marine event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 7 a.m. to 10 a.m. on August 20, 2022. The safety zone would cover all navigable waters and tributaries of Lake Erie within the North Coast Harbor and immediately adjacent waters in Cleveland, OH. The boundaries of the safety zone are centered on 41°30′17.99″ N Longitude 81°41′28.19″ W Latitude. The duration of the zone is intended to ensure the safety of participants in these navigable waters before, during, and after the swim portion of the Tri CLE Rock Roll Run triathalon. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the

Office of Management and Budget (OMB).

This regulatory action determination is based on size, location, and duration of the proposed rule. This safety zone would restrict navigation through the swimming area for three hours on one day.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone lasting 3 hours that would prohibit entry in, out or through North Coast Harbor on August 20, 2022. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0307 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we

post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T09–0307 to read as follows:

§ 165.T09–0307 Safety Zone; North Coast Harbor, Lake Erie, Cleveland, OH.

(a) *Location.* All navigable waters of North Coast Harbor into the East Basin Channel.

(b) *Enforcement period.* This section will be enforced from 7 a.m. through 10 a.m. on August 20, 2022.

(c) *Definitions.* ''Official Patrol Vessel'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Buffalo (COTP) in the enforcement of the regulations in this section. ''Participant'' means all persons and vessels attending the event.

(d) *Regulations.* (1) The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.''

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state or local law enforcement and sponsor provided vessels designated or assigned by the Captain of the Port Sector Buffalo, to patrol the event.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(4) No spectator shall anchor, block, loiter, or impede the through transit of official patrol vessels in the area specified in paragraph (a) of this section during the effective dates and times specified in paragraph (b) of this section, unless cleared for entry by or through an official patrol vessel.

(5) The Patrol Commander may forbid and control the movement of all vessels in the regulated area specified in paragraph (a) of this section. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated areas specified in this section, but may not anchor in, block, or loiter in a navigable channel.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

Dated: May 2, 2022.

L.M. Littlejohn,

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

[FR Doc. 2022–10172 Filed 5–12–22; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 20, 22, 24, 25, 27, 30, 73, 74, 76, 78, 80, 87, 90, 95, 96, and 101

[ET Docket No. 22–137; FCC 22–29 FRS 85531]

Promoting Efficient Use of Spectrum Through Improved Receiver Interference Immunity Performance

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document invites comments from all stakeholders in connection with the development of an up-to-date record on the role of receivers in spectrum management and how the Federal Communications Commission (Commission or FCC) might best promote improvements in receiver interference immunity performance that would serve the public interest. The Commission seeks to build upon the progress, including technological advances, in recent years that has enabled better receiver interference immunity performance, and the Commission seeks comment on where those efforts and advances have been most successful. The Commission also seeks to learn lessons from recent Commission proceedings in which receiver performance concerns have been prominent, to better inform the Commission as it considers how to ensure valuable and innovative services are able to thrive across the frequency range.

DATES: Comments are due on or before June 27, 2022, and reply comments are due on or before July 27, 2022.

FOR FURTHER INFORMATION CONTACT: Paul Murray of the Office of Engineering and Technology, at *paul.murray@fcc.gov* or (202) 418–0688, or Michael Ha of the Office of Engineering and Technology, at *michael.ha@fcc.gov* or (202) 418–2099.

SUPPLEMENTARY INFORMATION: This is a summary of a document in, ET Docket No. 22–137, FCC 22–29, released April 21, 2022 (Notice of Inquiry). The full text of the document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 45 L Street NE, Washington, DC 20554. The full text may also be downloaded at: *https://www.fcc.gov/document/fcc-launches-proceeding-promoting-receiver-performance-0.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Synopsis

In this document, the Commission takes a fresh look at the role of receiver performance in its spectrum management responsibilities, with the goal of facilitating new opportunities for use of its nation's spectrum resources. Forward-facing spectrum management necessitates that the Commission continuously promote more efficient spectrum use to enable the introduction of valuable new wireless services that benefit the American people. As spectrum use across the radio frequencies (RF) becomes more intensive, and services are packed more closely together, Commission spectrum management policies must consider potential efficiencies across all aspects

of wireless systems, not just transmitters but receivers as well. While the Commission has typically focused its rules on the transmitter side of radio systems, as several recent Commission proceedings have underscored, receivers and receiver interference immunity performance play an increasingly critical role in enabling more efficient spectrum use.

The Commission seeks through this document to develop an up-to-date record on the role of receivers in spectrum management and how it might best promote improvements in receiver interference immunity performance that would serve the public interest. The Commission seeks to build upon the progress, including technological advances, in recent years that has enabled better receiver interference immunity performance, and the Commission seeks comment on where those efforts and advances have been most successful. The Commission also seeks to learn lessons from recent Commission proceedings in which receiver performance concerns have been prominent, to better inform the Commission as it considers how to ensure valuable and innovative services are able to thrive across the frequency range. To further assist the Commission's efforts, it also seeks to consider anew the efforts, reports, studies, and recommendations, including several of the Commission's Technological Advisory Council (TAC) White Papers, that have been proffered in recent years regarding the kinds of actions that the Commission should consider.

In sum, the Commission begins the process of developing potential pathways for improvements in receiver performance, where and as appropriate, that will aid in making spectrum management more effective and provide more benefits to the American public. As the Commission discusses below, it recognizes that a variety of approaches may be appropriate, whether through industry-led voluntary measures, Commission policy and guidance, or rule requirements where other approaches would be insufficient. In this important first step the Commission seeks to compile a comprehensive record on the various issues that the Commission should consider, inviting broad comment from all stakeholders as the Commission considers these issues. The Commission looks forward to reviewing the record that develops from this Inquiry to inform us regarding possible next steps that the Commission may take in the future to promote efficient spectrum management in the public interest.

Background

In 2003, the Commission adopted a Notice of Inquiry (NOI) to begin ''consideration of incorporating receiver interference immunity performance specifications into its spectrum policy on a broader basis'' (68 FR 23677 (May 5, 2003)) (*NOI on Receiver Performance Specifications*). The Commission noted that incorporating receiver performance specifications could promote more efficient spectrum use and create opportunities for new and additional use of radio communications services by the American public. The Commission indicated that consideration of receiver interference performance specifications could be in the form of incentives, guidelines, or regulatory requirements (or a combination of these) in particular frequency bands, services or across bands and services.

The 2003 NOI sought information, comment, and research concerning the immunity performance and interference tolerance of existing receivers, the possibilities for improving the level of receiver immunity in the various radio services, and potential impacts of receiver standards on innovation and the marketplace. In particular, the Commission sought comment on the following issues—receiver performance parameters (*e.g.,* selectivity, sensitivity, dynamic range, automatic RF gain control, shielding, modulation method, and signal processing); the current RF environment and receiver interference immunity performance; various approaches that the Commission should consider for incorporating receiver interference immunity performance guidelines into spectrum policy (including voluntary industry standards, guidelines promulgated by the Commission, and mandatory standards); receiver performance in various radio services; the potential impact of receiver performance specification on innovation and the marketplace; and the treatment of existing receivers and the transition pathways to improved receivers.

Several commenters responding to the 2003 NOI supported the Commission's further exploring interference immunity performance standards and agreed that improved receiver performance can help improve spectrum efficiency and ensure greater access to spectrum for all users; they differed, however, regarding the appropriate approach(es) and how to implement them with respect to particular bands. In 2007, the Commission terminated the proceeding ''without prejudice to its substantive merits.'' The Commission stated that, with the passage of time, the record had become outdated and that, to the extent that receiver interference immunity performance specifications are desirable, they could be addressed in proceedings that are frequency band or service specific.

Commission Rules on Receiver Performance Requirements

As a general matter, the Commission's regulation of transmitters has at least implicitly provided for an RF environment that affects receiver performance insofar as the technical characteristics of receivers are expected to process those transmissions to successfully establish communications. The overall objective of that regulation has been to provide, through limits on power levels, in-band and out-of-band emission limits, operational requirements regarding antennas, etc., an RF environment that facilitates those communications as much as possible. In some limited circumstances, the Commission has more directly addressed regulated receiver performance, both through performance standards and performance incentives, only in limited circumstances, such as in the examples that follow.

800 MHz Band Public Safety Re-banding. In the 800 MHz public safety re-banding proceeding, minimum receiver performance was a major consideration when establishing whether a licensee operating in the band could claim entitlement to protection against ''unacceptable interference.'' Specifically, the Commission established a bright-line test for determining if a licensee is fully eligible to claim protection against ''unacceptable interference'' based on, among other factors, the characteristics of the receiver being employed by the licensee seeking protection.

900 MHz Band. The Commission adopted for the 900 MHz band interference criteria similar to those established for the 800 MHz band. Like in the 800 MHz band, the Commission established a definition of ''unacceptable interference'' to 900 MHz narrowband licensees from 900 MHz broadband licensees and established technical parameters including a receiver intermodulation rejection ratio, adjacent channel rejection ratio, and reference sensitivity.

Digital Television. Improved receiver performance was a major consideration as the Commission prepared for the digital television (DTV) transition. Prior to that transition, the Commission adopted a series of decisions intended to help address issues regarding the conversion of analog TV to digital TV, a transition that was finalized in 2009. In planning for the DTV transition, the

Commission had anticipated the need for certain minimal receiver specifications. Several interested parties had recognized that voluntary transition might not be sufficient, and the Commission agreed, mandating receiver specifications for TV broadcast receivers in 2002 that would go into effect after a specified phase-in period to ensure a smooth transition.

Part 96 Citizens Broadband Radio Service. The Commission adopted rules in the 3.55–3.7 GHz Band governing reception limits for Citizens Broadband Radio Service users and incumbents that established ''acceptable levels'' of in-band and adjacent band interference for operations. These limits apply to Priority Access Licensees, incumbent Fixed Satellite Service (FSS) earth stations in the 3.6–3.7 GHz band, and adjacent band FSS earth stations used for telemetry, tracking, and control. The Commission also established received signal strength limits for Citizens Broadband Service Devices (CBSDs) and required Spectrum Access System administrators to manage transmissions to ensure that aggregate signal strength remains below a fixed threshold between geographically adjacent service areas held by different licensees.

Part 27 Broadband Radio Service/ Educational Broadband Service. The Commission established rules that specify the minimum signal level below which Broadband Radio Service/ Educational Broadband Service base station receivers in the 2496–2690 MHz band do not receive interference protection from co-channel base station transmitters not exceeding the height benchmark.

Part 27 3.7 GHz Service. When authorizing the 3.7–3.98 GHz Band for flexible use, the Commission adopted rules to protect incumbent FSS earth stations from out of band emissions and blocking interference; these rules that require that transmitters are separated from FSS earth station receivers by 20 megahertz and meet both in-band and out-of-band power-flux density (PFD) limits as measured at each incumbent FSS earth station antenna and established specific protection criteria for earth stations used for telemetry, tracking, and control. The Commission also adopted rules that required passband filters to be installed on incumbent FSS earth station antennas and established a transition process to, in part, ensure that such filters are acquired and installed at each antenna.

Part 80 Maritime Service. The Commission adopted several technical requirements, such as sensitivity and/or stability requirements, for certain receivers in the Maritime Services. It also has incorporated by reference standards for Global Maritime Distress and Safety System operations which include receiver operational and performance requirements.

Part 87 Aviation Service. To maintain the accuracy of critical location information for applications such as aircraft precision landings, part 87 Aviation Service rules specify performance requirements for differential global positioning system (GPS) receivers (in the presence of undesired VHF–FM broadcast signals) relied upon for aviation safety purposes.

Part 95 Personal Radio Services. To ensure that life-saving Personal Locating Beacons and Maritime Survivor Locating Beacons operate properly and do not further endanger those in distress and/or rescue personnel, these devices must meet technical standards incorporated by reference in the rules which include receiver operational and performance standards.

Recent Proceedings

In several recent Commission proceedings, the receiver interference immunity performance associated with incumbent services operating in spectral proximity to new users or services has been a major consideration. In these cases, the ability of incumbent service receivers to reject signals outside their intended band has been directly relevant to the timing and scope of the introduction of new services.

For example, in both the *Ligado* and the *3.7 GHz Band* proceedings, the Commission adopted operating conditions and rules to enable the introduction of new operations into frequency bands with various incumbent users operating under different service allocations in the same band, adjacent band, or other spectrally proximate frequency bands. Although the factual circumstances of these two proceedings differ, both illustrate the challenges that systems face to co-exist and successfully operate when the spectral environment changes especially when incumbent systems may have been designed based on different assumptions about the RF environment in adjacent bands or other nearby frequency bands. These proceedings demonstrate that having accurate and timely information about receiver characteristics can be helpful in the Commission's analysis of potential harmful interference concerns and also highlight several other spectrum management issues that can arise with respect to receiver interference immunity performance, including receiver interference susceptibility, receiver selectivity, the impact of technological advancements (including filtering), and legacy devices.

Technological Advisory Council (TAC) White Papers and Workshops

In recent years, the Commission's Technological Advisory Council (TAC) also has been engaged in examining various technical issues concerning receiver performance in several of the White Papers that the TAC has issued. In addition, the TAC has made several recommendations for the Commission's consideration on potential ways to promote the development and deployment of receivers that are more resilient to interference and could enable more efficient use of the Nation's spectrum resources.

White Paper on Spectrum Efficiency Metrics. In 2011, the Commission's TAC issued a White Paper on ''spectrum efficiency metrics,'' which it viewed as an important factor in the Commission's spectrum management decisions. The TAC took an ''integrated systems approach'' in its evaluation of spectrum efficiency metrics, and noted that every component of a radio based communications system involved with either the transmission and/or reception of a signal has to be considered as part of efficiency. The TAC recognized a close relationship between spectrum efficiency and receiver standards/ guidelines or performance.

White Papers on Interference Limits Policy and Harm Claim Thresholds. In 2013, the TAC issued a *White Paper on Interference Limits Policy* in which it explored potential policy—an ''interference limits policy,'' including harm claim thresholds—that it believed could promote more transparent consideration of receivers in spectrum management and promote better receiver performance. The TAC believed that the Commission could increase service density, reduce regulatory risk, and encourage investment with adoption of rules that make clear in which situations receivers and transmitters each will have the responsibility for mitigating any harmful interference, and doing so up-front rather than after lengthy post-dispute proceedings. This approach would state explicitly when receivers may claim harmful interference as a necessary complement to existing transmitter regulation that could facilitate more intensive frequency use by providing more clarity about the baseline regulatory and radio interference context going forward. In 2014, the TAC followed with issuing its *White Paper on Harm Claim Thresholds,* which provided additional discussion on an interference limits

policy focusing on harm claim threshold approaches.

White Paper on Risk-informed Interference Assessment. In 2015, the TAC issued its *White Paper on Risk-informed Interference Assessment.* The TAC recommended that the Commission adopt risk-informed interference assessment and statistical service rules more widely to help improve its spectrum management decision-making. As risk-informed interference assessment would consider likelihood/consequence combinations for potential interference hazard scenarios involving transmitters and receivers; this tool could serve to complement a more static ''worst case'' analysis that considers the single scenario with the most severe consequence regardless of its likelihood.

White Paper on Basic Principles for Assessing Compatibility of New Spectrum Allocations. In 2015, the TAC released another *White Paper on Basic Principles* for assessing compatibility of new spectrum allocations. It believed that a set of basic principles could be helpful for *all* involved parties to consider and could serve to establish clearer expectations of incumbent services as well as new services entering the spectrum. Several of the basic principles directly related to expectations regarding both transmitters and receivers. As contemplated, these principles sought to promote ''good neighbor policies'' among spectrum users that more effectively enable users to ''get along.''

Commission workshops. In 2012, as part of the Commission's efforts to develop more effective spectrum management approaches that promote greater spectrum efficiency, the Commission's Office of Engineering and Technology, in conjunction with the Wireless Telecommunications Bureau and the Office of Strategic Planning, hosted a workshop on ''Spectrum Efficiency and Receiver Performance.'' In the workshop, the Offices and Bureaus pointed out that receiver performance has historically arisen in the context of conflicts between legacy stakeholders and new entrants, where deployments of new technologies and services threatens to adversely impact an incumbent or place restrictions on the new entrant. In 2014, the Commission's Office of Engineering and Technology (OET), in conjunction with the International Bureau (IB), Public Safety and Homeland Security Bureau (PSHSB), and Wireless Telecommunications Bureau (WTB), hosted another workshop, this one on ''GPS Protection and Receiver Performance.

Other Relevant Studies, Analyses, and Memoranda

NTIA Report on Receiver Standards. In 2003, the same year that the Commission issued its *NOI on Receiver Performance Specifications,* the National Telecommunications and Information Administration (NTIA) issued a report on ''Receiver Spectrum Standards'' as part of its effort to explore promoting more interference-robust receivers. NTIA suggested several reasons why interference and efficiency problems were becoming more important. These included the dramatic increase in spectrum use, the introduction of new services and systems without standards needed for electromagnetic compatibility, design tradeoffs that favored inexpensive radio equipment rather than good performance, reduction in available guard bands, equipment manufacturers' lack of knowledge of characteristics of equipment operating in the same or adjacent bands, and increased receiver front-end bandwidth of receivers.

CSMAC Report on Fostering Spectrum Sharing and Improving Spectrum Efficiency. In 2010, the Commerce Spectrum Management Advisory Committee (CSMAC) issued a report that among other things underscored the importance of receivers as tools in achieving greater spectrum efficiency. CSMAC recommended developing incentives for promoting better receivers and transmitters, promoting awareness of interference characteristics of receivers and transmitters, improving filter performance, promoting certainty and appropriate consideration of legacy devices, and taking technological advances into account regarding legacy equipment.

Kwerel and Williams Paper on ''Forward Looking Interference Regulation.'' In 2011, Evan Kwerel and John Williams published a paper proposing that the Commission should provide better incentives to build more interference-robust systems in future allocations by moving away from a general interference protection model in spectrum management that often provides incumbent users protection against any interference resulting from subsequent rule changes. The paper asserted that the adjacent band interference protection for incumbents should not be static and recommended that incumbents be incentivized to ''self-protect'' their wireless operations (including their receivers) against interference from adjacent bands (*e.g.,* assuming that the adjacent band would be used for flexible use). The paper also noted certain market failures (*e.g.,* lack of clarity regarding rights, holdout problems, transaction costs) that prevented efficient resolution of interference problems between incumbent users and new licensees through negotiation.

Silicon Flatirons Reports—on Efficient Interference Management and on Receivers. In 2012 and 2013, the Silicon Flatirons Center issued two reports on spectrum management and receiver performance drawn from its roundtable conferences comprised of government, industry, and policy experts. The 2012 report on ''Efficient Interference Management: Regulation, Receivers, and Right Enforcement'' noted that receiver performance dramatically affects the coexistence of adjacent services, and further noted that while transmitters are required to control out-of-band and spurious emissions to minimize interference, receivers are not generally required to minimize interference from such emissions. The report identified several recurring problems that should be addressed (*e.g.,* incumbents not accounting for a changing RF environment, ''poor knowledge transfer'' among all of the affected parties regarding receiver interference problems that could enable potential resolution), and stated that it would be helpful if regulators could better anticipate the needs at band edges and provide proper notice to affected parties on the need for better receivers and that phase-in of any receiver regulation would be important. The second Silicon Flatirons report, ''Receivers, Interference, and Regulatory Options,'' also identified several problems that have made it difficult to improve receiver performance, including: Externalities (since the party who would bear the cost of improving receivers is not the party who benefits); ''asymmetric information'' (between incumbent users and adjacent band users seeking to mitigate interference but lacking information needed to effectively reduce interference); general lack of information for some of the parties affected; the need to understand costs and benefits (which could help enable creation of an incentive structure to improve receiver performance); and the need for more clarity about the RF environment. That report recommended improving transparency among operators and consumers creating more incentives to build more robust receivers (*e.g.,* through issuance of a policy statement). Several on the panel also supported use of multi-stakeholder groups to develop appropriate technical solutions. Finally, the report

recommended appropriate notice to stakeholders of any proposed changes and development of a transition plan.

PCAST Report on Spectrum Sharing. In 2012, the President's Council of Advisors on Science and Technology (PCAST) issued a report that dedicated significant discussion to the important role of receivers and receiver performance for spectrum management and promoting more efficient use of spectrum. In particular, given that receiver characteristics can be a significant factor in limiting operations in adjacent spectrum bands, the report underscored the importance of knowing receiver characteristics for spectrum management among operations in adjacent bands. PCAST also made several observations and recommendations regarding receivers. It believed that different types of receivers may require different approaches to receiver management. It also supported consideration of the harm claims threshold approach for receiver interference limits.

GAO Report on Receiver Performance. In 2013, the Government Accountability Office (GAO) issued its report, observed that while the Commission and NTIA have historically focused on transmitters, receivers also can play an important role in better spectrum management. GAO identified challenges related to improving receiver performance, including the lack of coordination across industries when developing voluntary standards, the lack of incentives for manufacturers or spectrum users to incur costs associated with using more robust receivers, and the difficulty of accommodating a changing spectrum environment. GAO also identified various options for consideration, including developing voluntary industry standards, creating a ''safe harbor'' in which compliance with industry standards would be a pre-requisite to claim harmful interference; mandatory standards, interference limits, and gathering additional information on spectrum use and the characteristics of systems (which it thought on the one hand could enable more informed decision-making while on the other raise concerns about disclosure of proprietary or classified information).

Presidential Memorandum on Wireless Innovation. In 2013, President Obama issued a Presidential memorandum on ''Wireless Innovation,'' which included a section on receiver performance that encouraged the Commission, in consultation with NTIA, where appropriate, the industry, and other stakeholders, to develop to the fullest extent of its legal authority a program of performance criteria, ratings, and other measures, including standards, to encourage the design, manufacture, and sale of radio receivers such that emission levels resulting from reasonable use of adjacent spectrum will not endanger the functioning of the receiver or seriously degrade, obstruct, or repeatedly interrupt the operations of the receiver.

International developments. Finally, the Commission note that international regulators and intergovernmental organizations also have discussed the importance of ensuring that receivers are appropriately designed in order to promote more efficient use of spectrum. For example, the International Telecommunication Union (ITU) ''Radio Regulations'' include several provisions that concern ''technical characteristics of stations'' associated with transmitter and receiver equipment and performance with respect to each other and in the context of promoting more efficient and effective use of spectrum, including Radio Regulations (RR) Nos. 3.3, 3.9, 3.11, 3.12, and 3.13. In 2014, the European Union (EU) issued Radio Equipment Directive 2014/53/EU, which recognized the important role of transmitter and receiver radio equipment in spectrum management. Among the Radio Equipment Directive ''Essential Requirements'' is that radio equipment should be constructed so as to ensure ''an adequate level of electromagnetic compatibility'' and in a manner that ''both effectively uses and supports the efficient use of radio spectrum in order to avoid harmful interference.'' Additionally, the United Kingdom Ofcom's 2021 spectrum management strategy statement states that it is essential to encourage spectrum users to be more resilient to interference, and that operators should not generally expect Ofcom to take action on interference if it is a result of the poor performance of receivers or wider systems.

Discussion

The Commission begins by discussing the critical role that receiver performance plays with regard to spectrum management and enabling more efficient use of spectrum. The Commission then inquires about a wide range of approaches that the Commission might consider to promote more efficient use of spectrum that will enable greater access to the Nation's spectrum resources for new services that will benefit Americans.

The Critical Role of Receiver Performance in Spectrum Management

The Commission issues this document with the goal of considering various approaches that will enable us to reorient its spectrum management lens—from focusing primarily on the transmitter side of wireless networks to focusing on both the transmitter *and* receiver sides of wireless systems. Both are vital to the innovative and efficient use of spectrum. While the Commission has long relied on rules establishing particular transmitter requirements to promote spectrum efficiency and more intensive use, receiver performance also can significantly affect the Commission's ability to introduce new services in the same or nearby frequencies. In particular, receivers without sufficient interference immunity performance can diminish opportunities for innovative spectrum uses that drive economic growth, competition, security, and innovation. They can put constraints on what is possible in the evolving wireless world.

Considering additional ways to promote more efficient use of spectrum by focusing on the role of both transmitters *and* receivers is even more important today than it was when the Commission initiated its earlier NOI on receiver performance in 2003. Continuous growth of and high demand for spectrum-based services makes this examination of receiver performance critical to more effective Commission spectrum management going forward. Greenfield spectrum—open and cleared for use—is hard to find in the current spectral environment. To make spectrum available for new and expanded services, existing spectrum users are packed into a more congested environment, as transmitters and receivers increasingly are situated in closer spectral and geographic proximity. In this congested environment, it is challenging to meet the demands for spectrum availability by simply relying on spectrum management tools used in the past. As the RF environment continues to change, receiver performance necessarily assumes greater importance in enabling more efficient spectrum use and effective spectrum management.

In this document, the Commission inquires about the role of receivers as part of its broader exploration of policy tools that can harness new technologies and promote expanded and efficient spectrum use. The Commission seeks to develop a record on receiver performance across the RF spectrum, and on how the Commission might consider options that can promote more

efficient spectrum use, where and as appropriate, that can best serve the public interest. The Commission invites broad comment on the various approaches and questions posed in this document. The Commission encourages commenters to focus on risk-based assessments and science-driven policy. As discussed below, the Commission recognizes that a variety of approaches may be appropriate, including industry-led voluntary measures, clearer Commission policy and guidance, and, where other approaches may be insufficient, requiring specified levels of performance. Different approaches may be appropriate depending on the particular circumstances, including the types of services involved, and the Commission invites comment to help guide the Commission's considerations. The Commission anticipates that commenters will discuss a range of options for possible industry and government actions, including those described below, as well as how best to implement any new policies in a manner that establishes clearer interference-related rights and responsibilities among spectrum users that can promote more efficient spectrum use while also driving innovation and serving the public interest.

Considerations for Promoting Receiver Interference Immunity Performance

As set forth below, the Commission inquires about a number of different considerations as the Commission evaluates approaches for promoting improved receiver interference immunity performance. The Commission invites comment on each of these approaches while also recognizing that some approaches may be more effective than others for addressing receiver performance concerns in particular situations, and that some mix of approaches may best serve the public interest.

Receiver Performance Parameters

Inquiring about receiver performance parameters, or how they, along with transmitter parameters define the RF environment, is essential to understanding what actions, if any, the Commission should consider taking. In the 2003 *NOI on Receiver Performance Specifications,* the Commission similarly sought comment on what receiver performance parameters the Commission should consider. As the *NOI on Receiver Performance Specifications* recognized, a radio receiver's immunity to interference is dependent on a number of factors in its technical design and, in addition, the characteristics of the signals it receives; these factors may be closely related and interdependent, and a receiver's performance in one factor may often affect its performance in others. The NOI then identified several parameters—including selectivity, sensitivity, dynamic range, automatic RF gain control, shielding, modulation method, and signal processing—and requested comment and information on these or any other factors and how they are related that should be considered.

Subsequent efforts identified additional receiver parameters and engaged in further discussion on how such parameters could or should be considered by the Commission as it evaluates steps that it might take to promote receiver performance. These include, for instance, discussion in TAC White Papers, including the *White Paper on Interference Limits Policy,* the *White Paper on Harm Claim Thresholds,* and the *White Paper on Risk-informed Interference Assessment,* as well as the *PCAST Report.* CSMAC also emphasized the importance of developing more information on receiver filter performance, including working with the filter technology community on improving filter performance.

Discussion. In this document, the Commission seeks information on receiver performance parameters that the Commission should consider, including those identified in the Commission's earlier NOI or others that commenters consider relevant, as the Commission continues to examine whether the Commission should consider ways to promote receiver performance where appropriate. In particular, the Commission seeks to update and refresh the information presented in any earlier Commission proceeding or studies identified above, as well as any other relevant information (studies, analyses, reports, etc.) or past experience that could be useful as the Commission considers receiver parameters and receiver performance matters.

As the Commission previously noted, interference immunity is dependent on several factors in the receiver's technical design as well as the characteristics of the signal it receives. In considering approaches to advance receiver performance in ways that take receiver performance parameters into greater consideration, what specific parameters (*e.g.,* selectivity, sensitivity, dynamic range, automatic RF gain control, shielding, modulation method, signal processing) should be considered? The Commission asks that commenters identify the various parameters (including but not limited to those listed here) as well as their typical ranges, that the Commission should consider.

The Commission invites comment on whether there are specific receiver performance parameters that are more critical for allowing introduction of new services in the adjacent or neighboring bands without causing unacceptable interference. Are there any special hardware designs, software methodologies, or new technologies available that would significantly enhance receiver immunity performance? Are there techniques that can be used to improve these receiver performance parameters? How are various parameters interrelated? Are there factors that could or should be considered as a group and not independently due to their cross interactions or relationships with other factors? For example, to what extent does a receiver's selectivity and sensitivity affect its dynamic range? What are the various trade-offs that must be considered when optimizing these parameters when designing a receiver? Can receiver interference immunity parameters be ranked or rated in accordance with their level of importance to performance? If the Commission were to take action, what performance levels should be associated with each parameter? Should requirements differ by service? If so, how should they differ for various services? Should performance levels be required to change over time (*i.e.,* require increased interference tolerance on a specified timescale or based on some triggering event)? Commenters advocating such an approach should provide details as to which parameters should change and over what timeframe or what the triggering events should be. What procedures or criteria should be used to determine how to trade off the level of receiver performance with the practical issues of cost and implementation?

The Commission seeks comment on any recent technical advancements in receiver design that the Commission should consider. What is the state of the art currently and what advances are anticipated? Are there advancements that have made receivers more resilient or susceptible to interference? If so, the Commission requests comments on changes in design that improved or degraded interference immunity. What specific receiver parameters were affected? Are there organizations or industries that are particularly helpful in developing such technical advancements? What current or planned research projects, either industry or academia based, are focused on receiver

improvements? How can these organizations and projects help inform the Commission as it seeks to identify receiver parameters which, if changed, would lead to the greatest improvement in receiver performance? Is there any ongoing research related to how receiver design could affect or influence regulatory and policy issues and various approaches that the Commission could consider during rulemaking proceedings? Would it be appropriate or feasible for industry stakeholders to maintain a library of specifications, best practices, and trends of receiver interference immunity performance levels?

The Commission requests comment on how receiver performance factors are related to frequency and operating power, and are these factors are influenced by the nature of the RF environment (*e.g.,* how does anticipate in-band and out-of-band power affect receiver performance and influence design choices)? To what extent, and in what way, are certain factors that affect interference immunity relatively more important than others across different types of receivers used in different radio services or across devices that receive signals transmitted using different methods of modulation?

In identifying the various receiver parameters on which the Commission or industry should focus, the Commission notes that there must be standard techniques to evaluate receivers to ensure that they meet any voluntary or required regulatory (including mandatory) benchmarks. The Commission further notes that unlike transmitter characteristics, many receiver parameters are inherently difficult to measure. The Commission seeks information on how receiver performance parameters can be measured, validated, and rated. Is there a subset of receiver performance parameters that can be easily measured and that also provide a reasonable characterization of receiver performance? Are there any industry standards for these types of measurements, created by standardization bodies such as the American National Standards Institute (ANSI), Institute of Electrical and Electronic Engineers (IEEE), 3rd Generation Partnership Project (3GPP), or European Telecommunications Standards Institute (ETSI) that could be helpful as the Commission considers various approaches for promoting receiver performance?

The RF Environment

Understanding the RF environment in which radio services operate, both today and as anticipated in the future, provides important context for the Commission's considerations regarding how best to understand options that could promote better receiver interference immunity performance as part of improved spectrum management. The Commission seeks comment on the RF environment and how it should be factored into consideration.

In the 2003 NOI, the Commission noted that ''existing receivers are, for the most part, built to provide interference immunity as determined necessary by their designer/manufacturer to provide satisfactory service'' which has ''resulted a wide range of immunity performance across products used within the same services and across services.'' Accordingly, the Commission sought comment and information on the interference immunity characteristics of receivers used in various radio services and how receivers performed in those services; as part of its inquiry, it requested information about how many units were at that time in service and about the expected service life of the receivers in various services. It also inquired about different receiver specifications that should be considered depending on the environment in which a receiver operates, or whether instead there should be a ''generic'' environment in which all receivers should be expected to perform adequately.

Several studies and recommendations have emphasized the importance of the Commission and spectrum users to have knowledge of the characteristics of both transmitters and receivers in order to promote more efficient spectrum management. The TAC *White Paper on Basic Principles for Assessing Compatibility of New Spectrum Allocations,* for instance, included a principle that radio services would be ''expected to disclose the relevant standards, guidelines, and operating characteristics of their systems if they expect protection from harmful interference. Another report identified the need for more clarity about the RF environment, which could help inform operators about the type of systems they need to deploy; it also pointed out that not knowing system characteristics created a problem of ''asymmetric information'' insofar as the interference protection enjoyed by a receiving system in one band affects the ability of an adjacent service provider to operate, but that service provider usually does not have all the information needed to make choices that will reduce interference). That report also called for improving transparency for operators, including the sharing of more information on the characteristics of their neighbors' adjacent operations, establishing a device performance registry, and otherwise incentivizing operators to divulge helpful information.

The CSMAC and PCAST reports also discussed the importance of having more information on receiver characteristics. CSMAC believed that new services acquiring or accessing spectrum should be made aware of the interference characteristics of receiving and transmitting equipment operating on frequencies that will be shared or used in adjacent bands. PCAST noted that, given that receiver characteristics can be a significant factor in limiting operations in adjacent spectrum bands, the report underscored the importance of knowing receiver characteristics for spectrum management among operations in adjacent bands. Further, GAO recognized that one option for helping improve spectrum management and decision-making would be for the Commission to gather more information on spectrum use and the characteristics of the systems, including receivers, although GAO thought that this would raise concerns about disclosure of proprietary or classified information.

Finally, recent Commission proceedings have underscored the importance of having better information on receiver characteristics as the Commission exercises its spectrum management responsibilities. This information could enable the Commission to provide greater access to spectrum for new services, promote more efficient use of spectrum, and find ways to better understand the nature and extent of potential interference concerns that may arise with respect to the introduction of new services. It also could enable consideration of pathways to address legacy receivers that may raise particular concerns (*e.g.,* identifying, modifying, repairing, replacing through transitions).

The Commission requests comment on the current RF environment in which various services operate. What is the impact of that environment on the ability for adjacent and nearby operations? Have interference concerns been addressed effectively or ineffectively with regard to adjacent band services (*e.g.,* use of guard bands, technical rules, etc.), or are there other relevant considerations regarding the current RF environment that can inform its consideration in the proceeding?

As the Commission noted in the 2003 NOI, the receiver interference environment and demands placed on receiver performance have often been dependent on the specific type of

service provided on neighboring frequency bands. In that NOI, it sought comment on various operational environments and characteristics of the different types of services at that time (nearly 20 years ago)—including satellite, public safety, mobile, fixed, and broadcast services—as they affected minimum receiver performance needs. It also noted that the types of operations and services occupying neighboring frequency bands often are a significant factor in the environment in which a receiver operates, and the Commission sought information on receiver performance issues of specific types of service and operations relating to both the in-band and out-of-band environments.

The Commission again seeks comment on the current RF environment with respect to particular services—including various mobile services (terrestrial, aeronautical, satellite, maritime), fixed services (point-to-point microwave, point-to-multipoint, satellite), public safety services, broadcast services (fixed and mobile), and other services such as radionavigation, radiolocation, and sensing services used for scientific applications. The Commission is particularly interested in obtaining information on whether the RF environment and receiver interference immunity performance may have changed because of technological advancements, evolved spectrum management challenges, or changing spectrum use requirements in seeking to promote more efficient use of spectrum and greater access to spectrum for the introduction of new services. In asking about particular services, the Commission also invites comment on the extent to which considerations about receiver immunity performance parameters should be grouped based on these different service groupings, or whether instead some other analytical approach should be considered. Should there be different approaches to the Commission's consideration of receiver performance based on the particular services associated with the receiver, how the receiver might be integrated into other systems, and/or which services operate in adjacent or nearby bands?

In seeking comment below, the Commission notes that significant effort over the last few years has been devoted to providing more broadband services to the American public. In making allocation decisions and crafting service rules to accommodate this evolving landscape, spectrum use has intensified and the Commission has increasingly explored ways to provide for these valuable services by creating adjacencies that, in the past, would never have been contemplated. As an example, in the *3.7 GHz Report and Order* (85 FR 22804 (April 23, 2020)), the Commission repurposed fixed satellite downlink spectrum for terrestrial mobile broadband services resulting in separation of relatively high power terrestrial services from sensitive satellite earth stations by only a 20-megahertz guard band. This decision necessitated a thorough examination of the new RF environment and adoption of appropriate rules to ensure the satellite services could coexist with the new terrestrial operations.

In satellite services, receivers must be very sensitive to successfully receive the low level signals emanating from very distant satellites. As such, these receivers can be adversely affected by communications systems operating in adjacent or nearby bands. They may also experience interference from low level ambient noise sources that are below the minimum sensitivity level of typical receivers used in other radio services where the desired signal is significantly stronger. Whether satellite receivers could experience harmful interference effects from systems operating outside of the satellite bands depends on a variety of factors related to the types of operations in neighboring bands (*e.g.,* fixed versus mobile) and the technical operating parameters of those services (*e.g.,* power levels, out-of-band emissions (OOBE) limits, etc.), as well as the actual receiver interference immunity performance. The Commission invites comment on RF environment considerations with respect to satellite bands and adjacent or nearby band operations. What are the most important parameters to consider for services in adjacent bands to ensure compatibility with satellite services? The Commission seeks how best to characterize the adjacent band RF environment in reasonable performance metrics for satellite receivers. Is it anticipated that satellite receivers could improve their interference immunity? Over what time frame? How should the Commission characterize the RF environment for satellite services and the various trade-offs that are associated with providing full flexibility for services to operate in adjacent or nearby bands often with relatively higher power? What differences should be accounted for when considering fixed vs mobile and/or geosynchronous versus non-geosynchronous satellite operations? With today's demands for spectrum access to support new and innovative technologies, it is becoming increasingly necessary for the Commission to group unlike services adjacent to each other. To what extent, with today's technologies, is it necessary for the Commission to group like services adjacent to each other? As the Commission seeks to make more spectrum available for introduction of new services, including terrestrial services, what concerns and approaches should the Commission consider with respect to promoting improved receiver interference immunity to better accommodate the existing and anticipated future RF environment created by adjacent or nearby band operations?

Public safety operations often have stringent operational requirements to assure users such as police, fire and emergency medical service providers whose missions often involve safety of life, that their RF-based systems will function reliably in all circumstances. Given these requirements, what should the Commission take into account when making allocation or service rule decisions for bands adjacent to and nearby frequency bands used for public safety? How should these requirements be considered given the receiver immunity characteristics of today's public safety radios? How is such receiver immunity anticipated to change in the future and how would that affect the Commission's flexibility to make spectrum allocation and service rule decisions in adjacent and nearby bands as the RF environment changes? The Commission invites comment on how public safety services operate in today's RF environment, including how receivers operate effectively without experiencing harmful interference from adjacent or nearby band services. Are there special considerations regarding the RF environment in which public safety services operate that the Commission should take into account as it considers approaches to promote receiver performance for these services?

The Commission seeks similar information as it pertains to various mobile services, fixed services, broadcast services, and other services. Each service category presents different use cases with different dependencies on the RF environment. Mobile services include commercial mobile cellular networks that are characterized by a high degree of station and user density as well as movement of end-user devices in the vicinity of sectorized base stations with both fixed and steerable high gain antennas, public land mobile radio systems with comparatively lower density base stations and user devices but higher elevation base station antennas, and myriad other services

with distinct configurations and parameters. Fixed services are often characterized by highly directional (*e.g.,* point-to-point microwave) transmit and receive antennas, engineered to meet very high link reliability requirements. Broadcast services are often characterized by very tall antennas radiating high-powered signals to user terminals, either mobile or in fixed locations over large distances. Transmitters and receivers that serve location (position), navigation, timing, and space-based sensing services also may have particular RF performance characteristics. While receivers used in all of these services perform similar functions (*e.g.,* filtering, amplification, frequency conversion, etc.), the varied RF environment and applications for each service affect receiver design. How does the RF environment from adjacent and nearby bands affect the ability of users in each of these services to operate? What are the characteristics of current receivers that enable this coexistence and what is anticipated for future improvements? How does the current RF environment affect these services and how would more intensive spectrum use in the future change this RF environment? What steps can the Commission take to allocate services or assign users within and amongst these services with less spectral separation? What can users in these services do to adapt to the changing RF environment? Are there aspects of any of these services that may necessitate particular approaches to receiver performance, and if so what steps can be taken to ensure that receivers in any such service are sufficiently immune to interference from adjacent and nearby operations as the RF environment continues to change? Finally, the Commission asks if it should consider international implications for services that may have large international components, such as international flights or cargo shipping? Are there specific issues the Commission needs to consider regarding receivers that need to operate in a multitude of countries and territories? Commenters should address any international regulations (*e.g.,* for aviation safety) that should be taken into account.

Finally, the Commission invites comment on any other services that commenters believe have particular concerns not addressed above, and on which particular considerations should be given by the Commission with respect to RF environment.

Information on Transmitters and Receivers

The Commission inquires below about what information is currently available regarding existing incumbent wireless systems—with respect to transmitter characteristics, receiver characteristics, and an ''integrated systems analysis'' approach and receiver interference immunity performance concerns. In addition, the Commission requests comment below on the changing RF environment, including what kinds of changes are anticipated that the Commission might better prepare for, and how the Commission might establish its approaches that can effectively help ensure that receiver interference immunity performance concerns are addressed as the Commission takes future actions affecting the current RF environment to enable greater access to spectrum for new services and more efficient spectrum use.

Specific Information on Transmitter Characteristics

The Commission notes that, under the its long-standing approach to providing for the introduction of new services, the Commission and relevant stakeholders generally already have much significant information already available to them about transmitter characteristics based on the Commission's existing regulatory framework in which transmitters in particular services are required to meet various technical parameters (*e.g.,* power limits, antenna height, OOBE, etc.). This information is available for the transmitter operations whether authorized pursuant to rules associated with the licenses or authorized on an unlicensed basis (under part 15 rules). These rules often have been the primary means by which the Commission protects adjacent and nearby band operations, including incumbent receiver operations, from harmful interference.

As the Commission discusses in this document, efficient spectrum management seeks to optimize the ability of different types of services to operate in different allocations under specified rules in a manner that does not cause harmful interference to others' operations. As the Commission considers approaches to promoting receiver interference immunity performance, both transmitter and receiver characteristics are important for its consideration. This information is useful on a range of spectrum management issues, including adjacent band interference concerns, interference limits policies such as harm claim thresholds, quantitative risk-based assessment of interference, legacy devices, and cost-benefits, among others.

Discussion. The Commission invites comment on transmitter characteristics, as well whether more information would be useful as it pertains to the inquiry into receiver immunity performance.

The Commission seeks comment on the availability of information on transmitter characteristics in various frequency bands and the different services allocated to those bands. The Commission notes, of course, that its rules already provide limits for transmitters (*e.g.,* maximum power, OOBE limits, etc.), but the Commission seeks information on how typical operating values, both median and maximum levels, might differ from those regulatory limits. In cases where transmitters may typically operate below the regulatory limits, what factors influence those operating parameters? The Commission seeks this information for conducted and radiated power as well as for OOBE. How does the choice of antenna affect operational levels?

The Commission also inquires about additional transmitter characteristics that might be helpful to the Commission as it considers spectrum management options to improve receiver performance. How can the Commission implement an integrated systems approach that could promote spectrum policy that balances the burdens on transmitters and receivers and promotes improved receiver interference immunity performance where appropriate? In this context, the Commission notes that transmitters and receivers in different radio services (*e.g.,* fixed, mobile, satellite, broadcast, radio astronomy, etc.) have differing requirements. Should different metrics be used when evaluating systems in different services? What factors should the Commission take into account? In some instances, the Commission has used tools such as requiring PFD or field strength limits at various geographic boundaries or specific locations. Should the Commission use these techniques more often to provide additional protection to receivers? Likewise, are there requirements that can be placed on receivers if PFD, field strength limits, or other limits are placed on transmitters that would improve their immunity to harmful interference? What is the right balance for requiring either or both transmitters and receivers to comply with certain standards?

Specific Information on Receiver Characteristics

The Commission requests up-to-date information on what is currently known about receiver characteristics with respect to different services and operations across the radio spectrum bands. As noted in the TAC *White Paper on Interference Limits Policy* and TAC *White Paper on Risk-informed Interference Assessment,* relevant knowledge of both transmitter and receiver characteristics would be crucial for implementation of those approaches. Similarly, the *White Paper on Basic Principles for Assessing Compatibility of New Spectrum Allocations* recommended that services under Commission jurisdiction that seek protection from harmful interference should be expected to disclose the relevant standards, guidelines, and operating characteristics of their systems. While the Commission notes that several commenting parties supported gathering additional information on receiver characteristics, others opposed this based on proprietary and other concerns.

In addition, some reports have emphasized the importance of clarity about the RF environment and how the lack of information (often in the form of asymmetric information) available to relevant stakeholders, particularly with regard to receiving systems, can impede the ability of parties seeking to introduce new services to make appropriate choices to reduce potential interference, and have recommended improving transparency for operators by requiring the sharing of more information on technical characteristics that affect adjacent band operations. GAO also identified a lack of sharing among different industries when developing receiver specifications, and noted that one option for the Commission would be to gather additional information on the characteristics of the different systems, including receiver characteristics. CSMAC also believed that new entrants accessing spectrum should be made aware of the interference characteristics of receiving and transmitting equipment, and noted that filter performance of both receivers and transmitters were important considerations. Both GAO and CSMAC suggested consideration of establishing a repository or clearinghouse of information. Several reports, including GAO's, also have noted that, were the Commission to consider requiring that more information on receiver characteristics be made available, such a requirement raises concerns about confidential, proprietary, or classified information.

Discussion. The Commission invites comment on whether the Commission should consider requiring that more information about receiver characteristics be made available. Are there certain circumstances in which having additional information available to the Commission and relevant stakeholders would be helpful to introducing new services in adjacent or nearby bands? Could this information help serve the Commission's goal of providing for more efficient use of spectrum so that there is greater access to spectrum for new services? The Commission asks that commenters help the Commission as it considers whether to require additional information on receiver characteristics. If commenters support the availability of more information, the Commission invites commenters to indicate the types of information on receiver interference immunity performance would be most helpful in serving its goals of promoting more efficient use of spectrum and how best to manage the information.

The Commission requests that commenters discuss particular contexts in which having more information on receiver characteristics would be helpful, provided of course that any proprietary or classified concerns can be effectively addressed. As discussed elsewhere in this document, having sufficient relevant information regarding both transmitters and receivers is seen as a critical ingredient to promoting more efficient use of spectrum and providing a more effective pathway for addressing issues related to legacy receivers. With regard to voluntary approaches in which potential adjacent band use is under consideration, information on receiver characteristics could be helpful to all relevant stakeholders in order to address interference concerns.

The Commission seeks comment on whether there are services or bands in which commenters believe that additional information on receiver characteristics is not necessary, such as bands where necessary incentives are already in place for promoting receiver performance? On the other hand, what services or bands have insufficient available information on receiver characteristics, especially where the incentives are not sufficient with regard to promoting receiver performance? The Commission asks that commenter provide their thoughts about what factors the Commission might consider if it were to consider requiring the availability of more information on receiver characteristics.

Also, as noted, if the Commission were to consider requiring that more information be provided regarding receiver characteristics, how should the Commission address concerns around proprietary information, or other concerns? As for propriety concerns, would, for instance, the Commission's existing procedures for addressing parties' proprietary concerns in proceedings be an appropriate model? The Commission invites commenters to assist the Commission as it considers any potential requirements regarding information on receiver characteristics and the need to protect information that should not be publicly disclosed.

Integrated Systems Analysis

Understanding whole systems—both transmitters and receivers and their interaction under current rules and requirements can be an important consideration as the Commission seeks comment on the current RF environment. Two TAC White Papers proposed that the Commission focus more on an ''integrated systems'' approach as part of its spectrum management activities. An integrated systems approach takes into account every component of a radio based communication system involved with either the transmission and/or reception of a signal. The *White Paper on Spectrum Efficiency Metrics* discusses the potential role of an ''integrated systems'' approach in more effectively evaluating spectrum efficiency metrics. The *White Paper on Risk-informed Interference Assessment* recommends that the Commission should seek to include in its assessment of harmful interference a quantitative risk analysis, one which considers the various likelihood/consequence combinations for multiple different potential interference hazard scenarios among transmitters and receivers, which would complement the Commission's evaluation of other assessments as it determines how best to serve the public interest. Both of these approaches require that relevant information on potentially affected radio systems be available—including characteristics of both transmitters and receivers.

As the Commission has noted above, several reports have called for more transparency with respect to relevant information on both transmitters and receivers. Some also have called for developing a repository of information on transmitters and receivers.

Discussion. The Commission invites comment on whether the Commission should consider developing more of an integrated systems approach to spectrum management. What kinds of

information regarding transmitters and receivers would be relevant and helpful? Is there some way that more information on transmitters and receivers should be made more transparent and more readily available for the Commission or relevant stakeholders? To what extent would some form of repository be appropriate and helpful? If so, how would commenters suggest that any proprietary concerns be addressed.

Managing the Changing RF Environment

As the Commission has discussed, the RF environment continues to change in face of the need for greater access to spectrum for new uses. Given this, it is critical to address considerations affecting potential adjacent and nearby band interference concerns in an appropriate and timely fashion. It is important that as the Commission anticipates these changes the relevant stakeholders (*e.g.,* incumbents adjacent or nearby to bands that may be reallocated) are notified so that appropriate steps can be taken to address those stakeholders potentially affected. If improved receiver interference immunity performance would be appropriate, several also have recommended that the Commission provide for an appropriate transition or phase-in approach. GAO noted the lack of predictability about the changing future spectrum environment made it more difficult to accommodate repurposed uses of spectrum, and that it could take significant time and effort to upgrade and replace receivers where necessary.

Discussion. The Commission seeks comment on how the Commission can promote smoother and more effective transitions among potentially affected users as the RF environment continues to change to accommodate greater access to spectrum that serve the public interest. What steps should be taken to provide for greater predictability or transparency for potentially affected stakeholders, including those whose receivers may potentially be affected? How much advance notice from the Commission might be appropriate to provide to potentially affected stakeholders as the RF environment continues to change? In what ways should such advance notice be provided? What steps should the Commission consider to identify and inform potentially affected incumbent operators? To the extent that commenters believe that any particular past experiences regarding particular steps that either were taken, or could or should have been helpful if taken, the Commission asks that commenters offer their thoughts and recommendations for the Commission's consideration as it seeks to develop policies and take actions that promote better transitions in the future.

Also, considering that the RF environment can be anticipated to continue to change, the Commission seeks comment to whether and how the Commission could best clarify expectations for the performance of all radio equipment—both transmitters and receivers—in a changing RF environment. The Commission also invites comment on the importance of promoting more spectrally efficient devices that are designed to anticipate or assume that potential new uses of spectrum might occur in adjacent or nearby spectrum.

The Commission notes that it also raises some of these issues in a separate section below on potential Commission policy and guidance. In that section, the Commission requests comment on whether the Commission should consider providing additional policy or guidance specifically as to expectations that would apply to transmitters and receivers in adjacent band operations, including regarding expectations relating to receiver interference immunity performance.

Approaches for Promoting Improved Receiver Interference Immunity Performance

As the Commission seeks comment on various approaches to consider as it moves forward, it is important to provide an overall framework for considering how the Commission might incorporate receiver performance considerations into its spectrum management decision-making. The Commission inquires about whether and how to factor receiver interference immunity performance into spectrum policy in the form of incentives, guidelines, or regulatory requirements. These could include industry-led voluntary approaches, such as industry-developed guidelines and standards. They also could include additional Commission guidance, whether in terms of clarifying Commission policy, issuing a policy statement, or considering ways to advance approaches such as an interference limits policy, and/or a harm claim threshold approach where that might be helpful. The Commission also notes that in particular circumstances it might want to consider adopting specific rule requirements if other approaches would not be sufficient.

The Commission invites interested parties to provide their up-to-date views, observations, and recommendations on these different types of approaches that it discuss below. The Commission envisions that these approaches could include industry-led voluntary guidelines and efforts, additional Commission policy or guidelines, and specific mandatory requirements, and can be part of the solution in promoting improved receiver performance where that may be appropriate. The Commission seeks general comment here as to how these different approaches can work together to help optimize the promotion of receiver performance and other system design measures that would reduce susceptibility to interference and best serve the public interest. The Commission invites comments on how it might find an appropriate balance or mix of these different approaches.

Industry-Led Voluntary Approaches

In this section, the Commission requests that commenters provide up-to-date information on various industry-led voluntary approaches, including standards and guidelines, that currently promote receiver performance. The Commission requests comment on where voluntary approaches are effective, where they could be more effective, and what the Commission could consider in order to enhance the effectiveness of voluntary approaches.

The Commission notes that in the 2003 *NOI on Receiver Performance Specifications* the Commission expressed a general preference for relying primarily on voluntary approaches and guidelines that are supported and managed by industry, in conjunction with user groups as appropriate, believing this approach is most flexible and responsive to changes in technology, consumer desires, and economic conditions. The Commission believes that spectrum users such as commercial spectrum licensees often have the requisite incentives to reach voluntary agreements that provide for additional spectrum use. At the same time, however, it recognized that a purely voluntary approach may produce an incumbency problem if owners of non-conforming receivers limit efficient use of spectrum. The Commission inquired specifically about various voluntary approaches at that time, and many commenters in that proceeding generally supported a voluntary approach to improving receivers (such as through development of industry standards and guidelines). Since that time, many have continued to assert that voluntary approaches are the most efficient and effective means of promoting receiver performance and promote more efficient use of spectrum.

The Commission continues to believe that the development and implementation of various voluntary approaches, taken together throughout the wireless sector, in many situations can provide the best and most effective means of promoting interference immunity in the most efficient and effective way. The Commission seeks detailed comment on the various ways in which voluntary standards and guidelines have, and will continue to, serve its goal of promoting improvements in receiver performance that will enable greater access to spectrum. To what extent are voluntary approaches sufficient to ensure that minimum receiver interference immunity performance can be achieved in some or all bands?

As the Commission considers voluntary standards and guidelines, the Commission also notes that several studies and commenters have pointed out challenges that may be associated with the development of voluntary approaches in certain situations, either because the necessary incentives may not be present or the necessary information may not be available. While describing several voluntary efforts have helped improve receiver interference immunity performance, GAO also noted that in many situations there were challenges that affect the development of voluntary standards, including the lack of coordination across industries when developing voluntary standards (*e.g.,* while standards may be developed by a single industry, these standards may not be coordinated with representatives of others that could be affected, such as adjacent band users). GAO also noted that there could be a lack of incentives for manufacturers and spectrum users to incur costs associated with using more robust receivers (noting that there may be few incentives for users in one band to incur costs to improving receivers for operations if the adjacent band users gain the benefits); it concluded that, even though there can be sufficient incentives for addressing receiver performance within the same service, such incentives often do not exist for different services or adjacent band services.

Several reports and commenters have suggested that voluntary approaches could benefit from the use of multi-stakeholder groups in helping develop appropriate voluntary standards. Several also noted, however, that oftentimes not all of the relevant stakeholders (*e.g.,* those potentially affected by the development of voluntary standards, including those with interests associated with adjacent band use), participated in the development of voluntary standards.

GAO also noted that a compendium of current industry standards or guidance may not always be available, and could help facilitate knowledge on any standards or guidelines. Finally, GAO pointed out that, while voluntary standards and guidelines could help promote receiver performance, the extent to which they are in fact used is generally unknown.

Discussion. In this document, the Commission invites comment from interested parties to provide up-to-date information on the various voluntary approaches, including industry-led approaches, that currently serve to promote better receiver performance and generally more interference-resistant system designs. The Commission inquires about their views on the role of voluntary standards and guidelines to promote improved receiver performance by providing greater resilience to harmful interference, promote more efficient use of spectrum, and enable innovative new services to be introduced. The Commission also inquires about the steps it might take to promote development and use of voluntary standards and guidelines.

The Commission invites comment on whether voluntary standards and guidelines that have previously existed or currently exist serve as an effective means of promoting receiver performance. What are these standards and guidelines, and how effective have they been in promoting receiver performance? Which industries helped to establish them, and which stakeholders were involved in their development? Are these standards or guidelines publicly available? The Commission invites broad comment on where these approaches work well and help promote receiver performance in today's RF environment and could help promote improvements in a changing RF environment. The Commission asks commenters to comment on the extent to which the necessary incentives are in place to develop effective voluntary approaches.

The Commission requests comment on whether there could be improvements in the ways that voluntary approaches can be developed and used. To what extent have such efforts included relevant stakeholders? If additional stakeholders could help improve such voluntary efforts, how might they be involved in future efforts.

The Commission also requests comment on situations or cases in which current voluntary approaches may not be sufficient with respect to promote improved receivers in certain situations and contexts (*e.g.,* addressing adjacent band compatibility issues). The Commission asks that commenters identify and discuss situations in which voluntary approaches may not promote improvements in receiver performance where that would help promote more efficient use of spectrum. Are there ways to ensure that there are appropriate incentives for promoting effective voluntary approaches?

The Commission invites comment as to the appropriate role for multi-stakeholder groups in this process. Are there particular situations in which commenters believe a multi-stakeholder group involvement would be appropriate? If so, which stakeholders should be involved, and how?

As discussed elsewhere in this document, the Commission is seeking comment about both transmitter and receiver characteristics as it considers approaches to improving receiver performance. The Commission seeks comment on whether more transparent or available information on transmitters and receivers could help promote more effective voluntary approaches.

Finally, the Commission requests comment on whether and how it could help promote effective voluntary approaches.

Commission Policy and Guidance

In this section, the Commission inquire about the kinds of policy and guidance that could be helpful as the it considers whether and how to incorporate receiver performance more directly into spectrum management decisions. The Commission recognizes that such policy and guidance could take many forms, and some mix of approaches may be appropriate; the Commission invites commenters to help as it considers these various approaches.

Many contend that the Commission's general spectrum management policy on the role of receiver interference immunity performance should be clarified. Some have suggested that the Commission's approach to date on receiver performance is not been sufficiently conducive to promoting more efficient spectrum use or promoting greater access to the spectrum resources for new services and uses. For instance, in the *White Paper on Interference Limits Policy* the TAC Working Group suggested that expectations of receiver performance have almost always been implicit and often based solely on the ability of the receiver to perform its desired function in the existing spectral environment, which has led to conflicts due to a change in the RF environment and/or a

differing understanding of requisite receiver performance. Authors in one paper recommended that, in order to provide better incentives to build more interference-robust systems in future allocations and put more spectrum to its highest and best use, the Commission should move away from any general interference protection model in spectrum management that, when considering permitting new services in adjacent bands, often provides incumbent users (those licensed first) protection against any interference resulting from subsequent rule changes. They stated that adjacent band interference protection for incumbents should not be static, and that incumbents should be incentivized to improve their systems' interference resilience in the most cost-effective way, including the use of receivers that are more interference-immune to interference exposure from adjacent bands.

One report observed that certain assumptions that many spectrum users make are not conducive to promoting more efficient use of spectrum—including that operators of wireless systems tend to rely on their neighbors being quiet, often do not account for changes in the RF environment, and often do not realize that receivers are a part of the problem (and instead assume that the neighboring transmitters are the problem). That report also concluded that there is ''poor knowledge transfer'' among all affected parties regarding the interference problems related to receiver performance and potential resolution, and suggested that regulators could provide more helpful notice to operators regarding the need for better receivers. Another report recommended improved transparency for operators (*e.g.,* sharing more information on the characteristics of their neighbors' adjacent operations, establishing a device performance registry, incentivizing operators to divulge the required information); they also stated that more incentives should be provided for promoting more robust receivers, possibly including issuance of a Commission Policy Statement (*e.g.,* to the effect that receivers would no longer be protected if they do not include appropriate receiver selectivity).

GAO also noted in its report that current practices and policies related to receiver performance may in effect constrain repurposing of spectrum, and that the lack of predictability about future spectrum management also could be a hindrance to a more effective spectrum policy. CSMAC stated that spectrum managers should consider incentives, rules, and policies to improve the capability of receiving devices to reject adjacent channel interference. The Commission also notes that the *Presidential Memorandum on Wireless Innovation* encouraged the development of measures concerning receivers that would promote design and deployment of receivers that are protected from harmful interference from adjacent band operations in cases where there is ''reasonable use'' of adjacent band spectrum. Several have emphasized that as the Commission considers developing new policies or guidance, it also considers whether some transition or phase-in period would be appropriate.

Below the Commission considers several possible approaches and invite comment. These include (1) providing clearer Commission policy guidance on the role of receivers and expectations about their performance; (2) gathering relevant information on receiver characteristics; (3) issuing a policy statement; and (4) promoting an interference limit policy such as harm claim threshold approaches where that might be appropriate. The Commission also inquires about whether it should consider any of these approaches, a transition or phase-in of some kind might be appropriate.

General Policy Guidance

The Commission first seeks comment on whether it should consider establishing clearer guidance on Commission policies relating to receivers and receiver performance in spectrum management going forward. The Commission inquires whether such policy guidance could serve to establish clearer expectations for all spectrum users as to receiver performance, including in the future as the Commission seeks to enable greater access to spectrum for new users and promote more efficient use of spectrum by receivers. The Commission also inquires whether and how a clearer policy could help incentivize a more forward-looking approach to the role of improved receiver performance in a changing RF environment.

The Commission offers possible approaches below and seeks comment. The Commission also invites commenters to identify other approaches regarding Commission policy that it should consider.

Establishing clearer expectations about the extent to which incumbent receivers will receive interference protection as new services are introduced. As noted above, some have suggested that in order to promote greater access to spectrum and promote more efficient use of spectrum, the Commission should establish clearer policies on the extent to which incumbent receivers will be protected in the future regardless of spectrum efficiency concerns. In particular, some state that the Commission should be more transparent that incumbent receiver operators should not simply assume that the introduction of transmitters in adjacent or nearby bands is the entire focus for addressing interference compatibility issues or that receiver performance will not be considered in the Commission's spectrum management decisions. The Commission invites comment on whether it should establish a clearer or explicit policy regarding the extent to which incumbent receivers will receive interference protection as the RF environment continues to change and new services are introduced into adjacent or nearby bands. The Commission also requests that, to the extent commenters believe such policy clarification would be beneficial, they suggest the types of clarifications that the Commission should consider. To what extent would such a policy-based expectation require clarification of incumbent users' spectrum rights and responsibilities?

The Commission also invites comment on how such a policy clarification might be implemented with regard to incumbent users. When might such a policy make sense? How might such a policy be implemented with respect to adjacent band operations, including when both services have primary allocations? As to implementation of such an approach, what kinds of factors and timeframes should be considered? For instance, should the amount of time an adjacent band incumbent has been operating be a factor in considering what action the Commission should take? Should the expected life (*e.g.,* average useful life) of receivers in the affected band be considered to reduce the potential for stranded investments?

Clarifying the importance of assigned frequency bands and allocations with respect to receiver performance. Several have suggested or recommended that one component of better spectrum management would include Commission clarification of the respective responsibilities associated with both transmitters *and* receivers in spectrum allocations and assignments, and that this could include being more explicit regarding whether receiver interference immunity performance should be tied to the allocation or assignment under which the receivers are authorized. In the 2003 *NOI on Receiver Performance Specifications,* for instance, the Commission specifically

inquired about how receiver performance should be related to the management of spectrum and uses in adjacent bands, including whether the definition of assigned frequency bands and areas already provided ''substantial definition to the interference environment in which licensees must design their systems.''

The Commission also notes that the TAC's *White Paper on Basic Principles for Assessing Compatibility of New Spectrum Allocations* proposed that the Commission consider establishing ''Basic Principles'' regarding both transmitters and receivers with respect to spectrum allocations, and specifically proposed as one principle that ''[r]eceivers are responsible for mitigating interference outside their assigned channels'' (while it also proposed that ''[t]ransmitters are responsible for minimizing the amount of their transmitted energy that appears outside their assigned frequencies and licensed areas''). Further, the Commission notes that ITU Radio Regulations, for instance, recognize the importance of expectations regarding receiver performance, and provide that receivers should provide adequate performance such that they do not suffer from interference from transmitters operating at a reasonable distance. Also, as the Commission has discussed above, recent proceedings have highlighted the relationship of receiver performance vis-à-vis assigned frequency bands and allocations, as well as expectations on receiver performance regarding interference from adjacent or nearby operators.

Accordingly, the Commission inquires whether the Commission's spectrum management policy should clarify that, as a general matter of the spectrum regulatory policy, receiver manufacturers and operators are expected to take into account their allocation and assignment, or take into consideration designing and using receivers that include interference immunity parameters that would ensure coexistence with transmitters operating with reasonable spectral separation from the band in which the receivers are authorized to operate. To the extent that commenters believe that policy guidance is appropriate, the Commission asks that they propose specifics about the guidance they think appropriate, explain why, and, depending upon the guidance they suggest, indicate the extent to which a transition period may be appropriate.

Development of performance criteria or ratings. The Commission also invites comment on whether it should consider developing particular receiver performance criteria, or some form of ratings, that would serve to encourage the design, manufacturer, and deployment of receivers that promote receiver interference immunity and adequately protect the receivers from interference from current and future uses of adjacent band spectrum. If the Commission were to consider developing performance criteria or ratings, how would these be developed? With regard to performance criteria, what specific metric(s) should the Commission consider? For instance, should the criteria be tied to a certain level of performance at the edge of the allocation? The Commission asks that commenters suggest specific criteria and explain their rationale for such criteria. Similarly, the Commission invites comment on whether some form of ratings should be considered. If so, what would comprise the ratings, how many levels of ratings would be appropriate, and how would the ratings be determined? Can ratings effectively be designed that would aide operators and consumers in using more interference immune receivers? Could particular receiver performance criteria or ratings be developed that could be incorporated into voluntary standards or Commission requirements? How might performance criteria or ratings best be implemented?

Informing relevant stakeholders of any Commission forthcoming policy guidance. If the Commission were to provide additional policy guidance, the Commission recognizes that it would be important that potentially affected stakeholders are apprised of the guidance. The Commission asks for comment on how the means by which it and others could most effectively identify and communicate such policy guidance.

Transitions. If the Commission were to consider providing additional policy guidance, the Commission invites comment on the considerations that would be associated with policy implementation. Depending on the policy guidance, are there particular transition concerns that the Commission should take as to receivers that may need to be repaired, modified, or replaced? Would such considerations depend on the particulars involved as to specific situations and bands? The Commission asks that commenters help it take into account the various factors that should be considered.

Other policy guidance. The Commission invites commenters to offer other ideas or measures for Commission consideration regarding further guidance. Commenters should explain their suggestions and provide detailed discussion of why such policy guidance would be appropriate and how the Commission might consider implementing such guidance.

Policy Statement

In this section the Commission invites comment on whether the Commission should consider issuing a policy statement to establish a clear and transparent Commission policy that can help bring receiver interference immunity performance into fuller consideration in spectrum management decisions, as some have suggested. The Commission first inquires generally whether a policy statement would be constructive. The Commission then inquires about possible models for a policy statement.

Issuing a policy statement. Through the years, the Commission has issued various policy statements to guide public considerations and to advance spectrum management pursuits. For instance, in 1999 the Commission issued a Policy Statement on ''Principles for Reallocation of Spectrum to Encourage Development of Telecommunications Technologies for the New Millennium,'' in which the Commission noted the unparalleled growth of wireless services in the 1990s and ''set forth guiding principles for the Commission's spectrum management activities''—including ways to promote greater efficiency in spectrum markets, make more spectrum available, and identify new bands for spectrum reallocation—as the Commission engaged in spectrum management in 2000 and beyond. In 2000, the Commission issued its Policy Statement on ''Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets,'' in which it set forth the Commission's vision and plans for facilitating secondary markets for radio spectrum that will allow and encourage licensees to make all or portions of their assigned frequencies or service areas available to other entities and uses. Both Policy Statements helped lay the foundation for the Commission's forthcoming rulemakings implementing some of the enunciated policies in the early 2000s.

In recommending that the Commission create more incentives for building more robust receivers, Silicon Flatirons suggested that issuance of a policy statement could be useful. Also, as discussed above, many commenters and reports have called for greater Commission clarity on how receiver performance considerations should be factored into the Commission's spectrum management in ways that would provide clearer expectations and

greater predictability for all spectrum users in the future.

The Commission seeks comment on whether it should consider issuing a policy statement to more directly and transparently incorporate relevant and appropriate focus on receivers as part of a balanced approach—*i.e.,* considering the important role of both transmitters and receivers—to promoting more efficient spectrum use in the Commission's spectrum management decision-making. Would adoption of a policy statement be helpful in promoting the Commission's efforts to incorporate receiver interference immunity performance considerations and promote more efficient spectrum use in the current and evolving RF environment? What purposes could be served by issuance of a policy statement? Would a policy statement, for instance, help establish clearer expectations and greater predictability for spectrum users going forward?

If the Commission were to consider issuing a policy statement, what specific framework, features, factors, or statements should be included? The Commission asks that commenters in favor of the issuance of a policy statement set forth their recommendations, including discussion of the various goals of the policy statement, any suggested language, and the reasons for such language.

Possible models for a policy statement. The Commission invites comment on possible models for crafting a policy statement. Commenters should identify any such models, and any specific framework or language in those models that they believe should be considered.

In particular, the Commission inquires whether the TAC's *White Paper on Basic Principles for Assessing Compatibility of New Spectrum Allocations* or some modification or variant of that framework, could supply a possible and constructive framework for consideration in developing a future Commission policy statement. As the TAC explained:

> Basic principles of spectrum utilization are important for all involved parties to consider, not just the regulatory authorities. Realization of certain facts of communications technology will temper the expectations of the incumbent services using spectrum resources as well as the new services that are trying to gain entry into the spectrum.

As contemplated, with the nine ''basic principles'' the TAC sought to promote ''good neighbor policies'' among spectrum users (generally found at spectral boundaries) that better enable adjacent and nearby spectrum users to ''get along'' with each other. Several of these principles directly related to expectations about both transmitters and receivers. Given the many differences between the requirements of various types of systems, the TAC did not expect the application of these principles to result in a concrete set of regulations that fit all radio services in the same way, but nonetheless believed that the principles can be applied to all systems and result in an optimal solution for each service. As discussed in the basic principles below, several of the principles focused on establishing expectations and responsibilities concerning receiver performance within the larger context of spectrum management, including establishing that harmful interference is affected by the characteristics of both a transmitting service and a nearby receiving service, that receivers are responsible for mitigating interference outside their assigned channels, and that services under the FCC's jurisdiction are expected to disclose the relevant standards, guidelines and characteristics of their systems if they expect protection from harmful interference.

The basic principles identified by the TAC Working Group included three functional groups—''Interference Realities'' (realities of interference everyone must accept), ''Responsibilities of Services'' (responsibilities that services have to mitigate their interaction with other services), and ''Regulatory Requirements and Actions'' (requirements for, and actions that should be taken by, regulatory authorities with respect to spectrum allocations):

Interference Realities—

- *Principle 1:* Harmful interference is affected by the characteristics of both a transmitting service and a nearby receiving service in frequency, space or time.
- *Principle 2:* All services should plan for non-harmful interference from signals that are nearby in frequency, space or time, both now and for any changes that occur in the future.
- *Principle 3:* Even under ideal conditions, the electromagnetic environment is unpredictable. Operators should expect and plan for occasional service degradation or interruption. The Commission should not base its rules on exceptional events.

Responsibilities of Services.

- *Principle 4:* Receivers are responsible for mitigating interference outside their assigned channels;
- *Principle 5:* Systems are expected to use techniques at all layers of the stack to mitigate degradation from interference; and
- *Principle 6:* Transmitters are responsible for minimizing the amount of their transmitted energy that appears outside their assigned frequencies and licensed areas.

Regulatory Requirements and Actions.

- *Principle 7:* Services under FCC jurisdiction are expected to disclose the relevant standards, guidelines and operating characteristics of their systems to the Commission if they expect protection from harmful interference;
- *Principle 8:* The Commission may apply Interference Limits to quantify rights of protection from harmful interference.
- *Principle 9:* A quantitative analysis of interactions between services shall be required before the Commission can make decisions regarding levels of protection.

The Commission notes that several commenters expressed interest in having it explore these principles insofar as they pertained to expectations and responsibilities associated with receivers and receiver interference immunity performance, while others expressed particular concern about particular principles and their application to certain types of receivers. The Commission invites comment on the principles in the White Paper as they concern a Commission policy statement. Commenters should discuss their views and concerns on particular principles, and whether revisions or clarifications on any of the principles or on their applicability should be considered.

The Commission also asks whether there are other models that the Commission could draw from as it considers a policy statement. For instance, would ITU Radio Regulations (RR) or relevant ITU–R publications (*e.g.,* ITU–R recommendations) that pertain to receiver performance (along with transmitter performance) provide a useful framework or particular language for consideration? As discussed above, several provisions in the Radio Regulations concern ''technical characteristics of stations'' associated with both the transmitter and receiver equipment and performance with respect to each other and in promoting more efficient and effective use of spectrum. As regards receivers in particular, the ITU provided regulations on several aspects on the role of receiver design and performance that would that serve to promote more efficient use of spectrum—including receiver design (RR No. 3.3—taking into account technical measures to reduce susceptibility to interference), bandwidth considerations (RR No. 3.9—

keeping bandwidths at lowest values that the service permits), spectrum efficiency (RR No. 3.11—receivers should promote efficient use of spectrum), technical characteristics (RR No. 3.12—receiver selectivity that ensures efficient utilization of spectrum), and performance characteristics (RR No. 3.13—sufficient levels of receiver interference immunity performance so that receivers do not suffer from interference from transmitters operating at ''a reasonable distance''). Would any of these ITU references provide helpful guidance for consideration to be included in a Commission policy statement? Similarly, would the European Union Radio Equipment Directive provide useful guidance? That Directive also recognized the important role of both transmitter and receiver equipment in spectrum management. The Directive further indicated that ''Essential Requirements'' includes a requirement that radio equipment (both transmitters and receivers) should be constructed so as to ensure ''an adequate level of electromagnetic compatibility'' and in a manner that ''both effectively uses and supports the efficient use of radio spectrum in order to avoid harmful interference.

Finally, the Commission invites comment on any other models or other sources (*e.g.,* proposals, reports, studies, etc.) that could provide useful discussion for Commission consideration about a policy statement and specific features or language that should be included.

Interference Limits Policy, Including Harm Claim Thresholds

In the *White Paper on Interference Limits Policy* issued in 2013, the TAC discussed an interference limits policy as well as one particular form of such a policy, harm claim thresholds. In 2014, the TAC followed up this discussion with its *White Paper on Harm Claim Thresholds.* The TAC Working Groups authoring these two White Papers believed that an interference limits policy would promote more transparent consideration of receivers in spectrum management and promote better receiver performance policy in a more flexible manner if the Commission adopted receiver performance mandates. As discussed below, many commenters were in favor of the Commission further exploring interference limits policy, and harm claim thresholds in particular.

The Commission summarizes at a high level these approaches below—but it direct commenters to review and address the details set forth in the two White Papers themselves. The Commission invites comment on whether and how an interference limits policy, and a harm claim thresholds approach in particular, should be considered by the Commission.

In these papers, the TAC working groups noted that, in order to meet the growing demand for wireless service, the number of wireless systems that operate in close proximity in frequency, space, and time need to increase, and that while there are many benefits derived from packing wireless systems among these dimensions (*i.e.,* higher system density), there is also an increased risk of service disruption due to inter-service interference. The TAC stated that implementing an interference limit policy would bring receivers into the spectrum management picture, and do so with minimal regulatory intervention. As explained in the *White Paper on Interference Limits Policy:*

> Increased density requires more care in optimizing the whole wireless system structure, particularly regarding the interactions between transmitters and receivers on either side of band boundaries. . . . [R]eceivers that cannot reject interfering signals transmitted outside their assigned frequencies can preclude or constrain new allocations in adjacent bands. A holistic system view that facilitates trade-offs between receiver and transmitter performance requirements is needed.
>
> Receivers can be brought into the policy picture with minimal regulatory intervention by introducing an ''interference limits'' policy; that is, the establishment of ceilings, called *harm claim thresholds,* on in-band and out-of-band interfering signals that must be exceeded before a radio system can claim that it is experiencing harmful interference. Manufacturers and operators are left to determine whether and how to build receivers that can tolerate such interference, or even determine that they will choose to ignore these limits. Harm claim thresholds thus allow the FCC to provide guidance on the optimization of receiver performance without unduly restricting technical and commercial choice.

The TAC contemplated rules that explicitly state when receivers may and may not claim harmful interference. Such rules would be a necessary complement to existing transmitter regulation that could facilitate the transition to more intensive frequency use by providing more clarity to service providers about the baseline regulatory and radio interference context going forward. The TAC stated that harm claim thresholds could be particularly useful in bands with many diverse and frequently emerging new technologies. As envisioned, the approach would delegate decisions about system design, including receiver performance, to manufacturers and operators, giving operators the flexibility to decide best how to deal with the RF environment (*i.e.,* signal levels in adjacent or nearby bands which may be viewed as interference) they need to tolerate, whether by improving receiver selectivity, deploying more base stations, using internal guard bands, or accepting occasional service degradation given their choice of receiver design. Further, under such an approach, the private sector would play a key role in developing receiver specifications and standards that ensure adequate performance given the harm claim thresholds of a particular allocation. The TAC also recognized, however, that a harm claim threshold approach may require special consideration in cases where receivers are not controlled by a license holder or for life-safety systems like aviation and public safety.

As the *White Paper on Harm Claim Thresholds* explained, the goal of a harm claim threshold is to reduce the uncertainty among radio system operators regarding the level of interference that one operator is entitled to impose on another operator, and that a related goal has been to find ways the Commission could encourage more efficient radio service coexistence, including ways to encourage receiver performance improvement without mandating receiver performance specifications. As articulated in the *White Paper on Interference Limits,* a guiding principle of this approach is that the number of interference disputes that require Commission resolution could be reduced if the responsibility to mitigate interference is more clearly assigned (*i.e.,* if lines are more clearly drawn between the rights of transmitters and receivers).

The TAC recommended that the Commission develop, where necessary, the expertise and that multi-stakeholder groups form to investigate interference limits policy at suitable high-value inter-service boundaries and suggested potential ways about implementing an interference limits policy. The TAC suggested introducing a harm claim thresholds approach on a gradual basis and suggested a three-step process for how the Commission might roll out rules and regulations on an interference limits policy, including harm claim thresholds. First, the Commission could identify frequency allocation boundaries where harm claim thresholds would bring immediate value, such as adjacent allocations where intensified use is anticipated. Second, the Commission would initiate a consultation process involving stakeholders in multiple services that span band boundaries.

Such multi-stakeholder groups could work collectively to develop options at these spectrum boundaries (*e.g.,* methods for determining harm claim thresholds, enforcement and conflict adjudication mechanisms) as well as develop guidelines (and perhaps standards) for receiver performance parameters such as receiver sensitivity, selectivity, intermodulation rejection, and dynamic range, that, together with the transmitter power, signal modulation and deployment assumptions applicable to a particular service, would ensure that conformant receivers would operate satisfactorily within an RF environment where signal levels are no greater than the harm claim threshold. Third, the Commission would monitor the progress of the multi-stakeholder process, representing the interests of future licensees and other absent stakeholders while also ensuring that the record developed provides a thorough basis for a rulemaking should that be appropriate.

Many commenters on the *White Paper on Interference Limits Policy* believed that the concepts deserved further consideration. Others, while acknowledging the need to consider an interference limits approach, opposed applying such an approach to particular services (*e.g.,* aviation safety, safety-of-life services, amateur radio, or commercial mobile services) stating that a one-size-fits-all approach would not be appropriate. Some commenters, noting the difficult methodological and administrative implementation issues associated with this approach, stated that the Commission should explore and promote industry receiver performance measurements and some thought it important to develop appropriate enforcement mechanisms for any limits adopted. Many supported use of multi-stakeholder groups for formulating possible interference limits provided that appropriate representatives would participate. Some commenters supported the Commission using a pilot project to explore the approach in an appropriate band.

In addition to the TAC, other entities recommended that the Commission further explore an interference limits policy, including harm claim threshold approaches. These included reports noting panelists' consensus that a protection limits approach generally was preferable to adoption of receiver standards, and a later report largely supportive of developing an interference limits policy approach, including harm claim thresholds approach along with using multi-stakeholder groups to help develop appropriate technical solutions. One paper has proposed a specific harm claims threshold approach in which the threshold would be based on the interference environment associated with flexible use in the adjacent bands. PCAST also supported the harm claims threshold approach for receiver interference limits, which it contrasted with use of ''heavy regulation of spectrum and devices'' to solve receiver-driven interference issues. It believed that such an approach would provide a framework for defining harmful interference, could provide clarity on the requirements that a new entrant must meet to co-exist with legacy systems in adjacent bands, and would give device manufacturers freedom to address those requirements as they see fit. GAO also noted one of the Commission's clear options for promoting receiver performance was further consideration of an interference limits approach.

Discussion. In this document, the Commission seeks to develop an up-to-date record on whether the Commission should further explore implementing an interference limits policy, and in particular, a harm claim thresholds approach. The Commission ask that commenters review the two TAC whitepapers, and offer their thoughts on the details discussed there, the issues and concerns raised, and how the Commission might proceed in consideration of interference limits policy and harm claim thresholds. In particular, the Commission seeks comment on how such an approach would fit into today's spectrum environment characterized by much more intensive use compared to when these recommendations were developed. How could this approach alleviate spectrum issues the Commission is currently addressing as well as anticipated trouble spots as the Commission continues to examine opportunities for reallocating spectrum for higher valued uses? Should the Commission consider adopting any rules to implement such a policy?

The Commission notes that the TAC recommended in the *White Paper on Interference Limits Policy* that the Commission issue a Notice of Inquiry seeking public comment on interference limits policy. First, the Commission seeks comment on the use of an interference limits policy at service boundaries in general, including the tradeoffs between interference limits policy and three alternatives to an interference limits policy that were noted in the *White Paper on Interference Limits Policy.* To focus this inquiry quantitatively, the Commission seeks comment on the use of an interference limits policy at service boundaries where there are legacy receivers for one of the radio services for which there are no published or industry-standard minimum out-of-band blocking threshold(s). Commenters should identify inter-service boundaries where there are some legacy receivers that are unable, for example, to tolerate fundamental signal levels outside their receive band that are more than 2%–10% displaced from the legacy receiver band edge and less than −15 dBm at the receiver input port (after antenna losses, prior to RF filter attenuation). Commenters that support different metrics for examining inter-service boundaries are encouraged to provide such metrics along with detailed explanations to support their choices as well as the boundaries where they should apply. The Commission is interested in knowing where legacy receivers are deployed that are designed and compliant with widely accepted industry receiver standards that include minimum out-of-band blocking (*i.e.,* overload) tolerance specifications (*e.g.,* radio receivers such as 3GPP base stations, user devices, aviation certified GPS receivers, etc.). Similarly, the Commission seeks information on where receivers are deployed that are not built to such standards, yet seek protection from signals outside their band. And the Commission requests that commenters identify the types of legacy receivers that are in the category identified by the TAC where interference limit policies may not be necessary at all. The Commission's goal is to build a quantitative record based on commenters' experience and spectrum viewpoints to inform the Commission where they believe high-value interservice boundaries exist and where interference problems can be foreseen that could benefit from proactively implementing a harm claim threshold approach to specify licensees' responsibilities for interference risk mitigation.

Second, the Commission seeks comment on institutional approaches for implementing harm claim thresholds, including the use of multi-stakeholder processes, rulemaking, and in particular, inter-industry standards setting processes. The Commission seeks comment on specific tasks or reports that a multi-stakeholder group should address that would aid it if it were to further examine implementing a harm claim threshold approach. For example, would a multi-stakeholder group be able to evaluate any high value interservice boundaries identified by commenters and provide consensus insight into which spectrum allocations

should be addressed first or which would provide the largest benefits? Additionally, could a multi-stakeholder group compile data and produce a report or database regarding relevant technical specifications of deployed receivers including, but not limited to relative and absolute dynamic range, out-of-band blocking tolerance, and selectivity, where public owners of such receivers, other potentially affected spectrum users, and the Commission, do not have transparent insight? Such information could inform policy decisions and actions to balance transmitter emission power with receiver reception limits. What other tasks could a multi-stakeholder group tackle to help this process?

Similarly, how can industry standards processes be leveraged to provide for improved receiver performance to support a harm claim threshold approach? In this regard, the Commission is not seeking to build a record to mandate the ''design'' of receivers that could chill technology evolution, but instead, the Commission is seeking ideas on how the importance of good receiver design can more effectively be represented in the lifecycle of receiver development and product evolution processes. For example, for receivers that require protection from fundamental signals in adjacent or nearby spectrum bands, the minimum undesired out-of-band power at which those receivers can operate without a degradation metric exceeding a low minimum, could be specified in an industry standard. The Commission notes that this is already done in some standards groups. Alternatively, specific receiver requirements can be specified as a receiver mandate in the Commission's rules or absent such specificity, left to industry to meet a harm claim threshold signal strength or power flux over-the-air specification (*i.e.,* signal-in-space) which could be codified in its rules. The Commission seeks comment on these alternatives and their tradeoffs.

Third, the Commission seeks comment on suitable parameters for harm claim thresholds, engineering methods to determine their values, and ongoing reporting, analysis, and enforcement challenges. For example, should the Commission consider whether to adopt a standard ''reference value of far out-of-band blocking power'' to evaluate inter-radio-service interference scenarios. If so, what value would be appropriate? Would a standard reference value such as −15 dBm at the input to a receiver's front-end filter, be useful in the early identification of suitable harm claim thresholds; *i.e.,* identifying harm claim thresholds that may be ''at,'' ''above,'' or ''below'' a standard reference value? If this value is inappropriate, what value would be appropriate? Should different values be specified for different radio services? If so, the Commission requests that commenters justify their position and provide detailed comment regarding recommended values and which radio services are applicable. Are there instances in which the harm claim threshold should be set based on assuming that the allocation in the adjacent band would be flexible use? How can the Commission incentivize industry segments where there are no consensus receiver standards, yet there is a desire for ''protection'' from inter-band interference? Since the responsibility for spectrum coexistence lies with both transmitters and receivers, can these (or other) harm claim threshold parameters be used to achieve the Commission's policy goals?

The Commission also seeks comment on whether a harm claim threshold approach should incorporate two parameters that 3GPP has used to study the balance of transmitter impairments with receiver impairments: Adjacent Channel Leakage Ratio (ACLR) and Adjacent Channel Selectivity (ACS). These parameters are used to analyze and determine the balance between transmitter and receiver impairments within spectrum bands shared between multiple mobile broadband service providers using a basic formulation called Adjacent Channel Interference Ratio (ACIR). While the Commission is unaware of anyone applying this concept ''between inter-service spectrum bands'' (*i.e.,* between different radio services) to assess whether out-of-band transmitter impairments or out-of-band blocking receiver filter impairments dominate the interference equation between spectrum bands, it seeks comment on whether these concepts can be used in this context. For commenters that support such an approach, the Commission requests specific information regarding how these concepts could be applied and what values should be considered for evaluation purposes for various radio services.

Are there specific engineering methods or analysis tools that lend themselves to analyses necessary to support a harm claim threshold approach? In particular, a harm claim threshold approach may require specifying an ''over the air'' power flux or field strength threshold, over which ''claims of harm'' could be made, and under which claims of harm could not be made. Spatial and temporal variables associated with transmitters and receivers, especially mobile radio, present a statistical challenge to assess probabilistic bounds versus deterministic bounds (*e.g.,* a receiver dynamic range certification requirement). Moreover, radio propagation is highly variable and radio waves are ''polarized'' and ''directional'' creating more statistical uncertainty. Further, technology advancements such as 5G Advanced Antenna Systems (AAS) enable more effective ''directionality'' to optimize wireless network coverage and performance, but technologies such as AAS also pose a dimension of uncertainty (*e.g.,* RF emissions 'below the horizon' versus 'above the horizon'). How can these probabilistic variables be accounted for in analyses to produce trusted results agreed upon by interested parties? Can a standard methodology and modeling tools be used to implement these processes?

The Commission also seeks comment on whether a standard reporting or measurement scale can be developed to categorize levels of interference or impairment. For example, most people are familiar with the Fujita (tornadoes), Saffir-Simpson (hurricanes), and Richter (earthquakes) scales, that stratify the consequences of undesired environmental effects in a manner that is understandable by the public. Can something similar be developed for spectrum and RF interference? Currently, some parties point to a relative change in the noise floor as a single indicator of harmful interference. However, given the orders of magnitude of variation between transmitter and receiver impairment conditions for different services and situations, a single-value relative change metric may not be meaningful. Moreover, under a harm claim threshold approach, there should be flexibility to determine a range of relevant values and associated responsibilities or ability to claim inference protection. Should the Commission establish a few basic and standard reference categories of interference, to enable quantitative/statistical risk assessment? As with the examples above, the absolute values of the scale can be different between different radio services. There is no ''one size fits all.'' However, the notion here is that ''sizes'' (or ranges of power) are potentially describable and more meaningful to the public. What categories and levels do commenters believe would be both easy to describe and lend relevance to this approach?

The Commission seeks comment on how a harm claim threshold could be enforced given the spatial and temporal

variations of various radio systems. The Commission seeks comment on how persistent and intermittent interference would or could be detected, reported, and used to identify a ''claim'' of interference? How would such a process distinguish external sources of interference from self-interference sources such as ''cross coupling'' between the transmit and receive paths within a radio transceiver, which could be misinterpreted as interference from an external source? How would sources of intermodulation interference be detectable and analyzed to distinguish (a) intermodulation interference generated from within a receiver, from (b) intermodulation products from the receiver's antenna system, from (c) intermodulation interference from the local environment (*e.g.,* rusty bolts, corroded metal infrastructure nearby), from [d] intermodulation interference generated from high power nearby RF emissions (*e.g.,* fundamental signals F_1 and F_2 can create interference at $F_3 = 2 * F_2 - F_1$) when impressed on a nonlinear element can cause co-channel interference within a receiver? The Commission seeks comment on these and other relevant interference reporting processes and best-practices that can be employed for specific radio services, regardless of whether receiver performance minimum expectations are established by industry standards or harm claim threshold methods. What other factors need to be addressed to effectively enforce a harm claim threshold? Commenters should be specific regarding what they and industry stakeholders can proactively and specifically do, and what role the Commission should undertake to enforce a harm claim threshold approach, especially in maintaining a ''light touch'' regulatory approach.

Finally, the Commission inquires about whether a harm claim thresholds approach should be expected to evolve as receiver performance improves over time. Should receivers that may meet a standard when they are deployed be upgraded or replaced in the future to merit interference protection under the Commission's rules if new receiver standards are developed that provide increased interference immunity? The Commission notes that different systems have different expected lifecycles. The Commission requests comment on whether it should consider a specified time frame from the date a receiver was deployed after which it should be expected to meet newer standards. Similarly, the Commission invites comment on whether limits should be reevaluated periodically and adjusted based on newer technology standards and capabilities, or whether receiver protection should be tied to certain required maintenance or replacement schedules.

Receiver Performance Mandates

As noted above, the Commission has not generally imposed requirements on receiver performance and relies instead on establishing technical and operational rules associated with transmitters. As to receiver performance, the Commission has relied largely on market forces rather than mandatory requirements to provide incentives for manufacturers to produce equipment with good receivers, though better performing receivers may come with increased cost. As discussed above, there have been a number of occasions in which the Commission has adopted rules that either promote receiver performance or require that receivers meet certain minimal technical performance capabilities, including situations involving repurposed spectrum where receiver performance specifications were required for future operations (DTV tuner requirements), developing acceptable levels of in-band and adjacent band interference for services (800 and 900 MHz bands), and safety-of-life services (maritime and location services). Some commenters or studies have indicated that in certain types of situations rules promoting receiver performance may be appropriate, such as in the case where the licensee does not have sufficient control over receiver performance.

Discussion. The Commission requests comment on whether and under what circumstances it might be appropriate for it to consider adopting rules promoting receiver performance or specifying minimal receiver requirements. The Commission also invites comment on possible regulatory approaches that promote receiver performance without specifying technical requirements.

The Commission seeks comment on whether it should consider expanding its receiver rules to encompass more radio services or to apply rules generally across all radio services. To what extent to do the Commission's limited existing requirements on receivers provide guidance as it considers this issue? How successful were those efforts at balancing the need for a rule requirement without imposing undue costs that might be associated with such a regulatory approach? Should a particular approach already adopted by the Commission for one particular situation be appropriate for considering in an analogous situation? Are there particular services or situations today that suggest that the Commission should consider adopting a rule on receiver performance to serve the public interest? Why would such an approach be appropriate?

If a commenter suggests that the Commission should consider adopting a rule requirement in particular situation(s), it seeks comment on why and how the rules could be applied. How specific would the requirements need to be? For example, the Commission could take a light touch regulatory approach and simply require equipment to meet certain industry standards or it could require receivers to meet certain benchmarks or a combination of the two based on radio service or type of equipment. Because some Commission licensees, such as mobile phone providers approve and certify specific phone models for use on their networks, should the Commission consider whether to adopt a requirement that those licensees ensure that their customers' equipment meets some minimal standards (*e.g.,* 3GPP standards)? Would a rule specifying such a requirement suffice? Or would specific minimum benchmarks be needed?

The Commission seeks comment on whether there are certain cases where a regulatory approach should be considered because the receivers associated with a particular service are not sufficiently under the control of the licensee or may not be designed to meet particular industry specifications. The Commission notes, for instance, that in many cases consumers have a wide variety of equipment choices (*e.g.,* in-home access point equipment, devices for use with a licensed or unlicensed services such as radar or satellite receivers), and the purchase decision is entirely in the consumer's hands without any licensee providing the role of gatekeeper on receiver performance. Would regulatory requirements to ensure minimal performance be appropriate in certain situations such as those? What are the costs and benefits of such an approach? Commenters should provide detailed justification for what type of requirements should apply to which services or user classes, if the Commission were to consider amending its rules to implement receiver requirements.

To what extent might it be appropriate for the Commission to consider requiring certain disclosure to consumers, and owners/operators of equipment and systems with embedded receivers or transceivers, so that they make a more informed choice about the equipment they purchase. The

Commission invites comment on whether it should require radio equipment information disclosure, for example through a labeling requirement, or key metrics regarding the receiver. Would such a requirement be useful to consumers and owners/operators of integrated systems that employ receivers? If so, what type of information would be most helpful to inform consumers and operators to make an educated decision (*e.g.,* selectivity, dynamic range, etc.)? Would such a requirement be beneficial across the board for all equipment or only for equipment designed for certain services or user bases? What would be the best way to disclose this information (*e.g.,* on packaging, in the manual, etc.)? What burden and costs would a disclosure requirement place on manufacturers? Would this increase product costs? If so, by how much? Commenters should provide details regarding who would benefit most from such disclosures and for what type of equipment for which rule parts or portions thereof. The Commission also seeks comment on how, if it deems such rules are warranted, they should be enforced? Should it be part of the equipment certification process where the Commission already imposes certain labelling requirements? Finally, the Commission asks if such a disclosure requirement would incentivize manufacturers to build better receivers? Are there any other factors or policy issues that the Commission should consider as it pertains to the potential for requiring receiver labeling information?

If the Commission were to pursue consideration of possible mandatory requirements, it requests comment on possible technical specifications or other requirements that would need to be considered. For example, could the rules tie a filtering requirement to the expected emissions in adjacent or nearby bands to ensure resiliency from out-of-band emissions or blocking interference? What about requirements regarding to spurious emissions or intermodulation interference? How could such requirements be implemented? What factors should go into determining such filter and other requirements? Is there a frequency separation that should be considered, either absolute or as a function of bandwidth that should be considered to adequately protect receivers against blocking interference? Should there be a required margin built in, to future proof receivers against future Commission actions that might affect the nearby RF environment? If so, how much of a margin is realistic? What issues need to be considered that affect the attenuation roll-off performance of filters? How should such requirements be contemplated for differing operational requirements (*e.g.,* requirement differences in fixed, mobile, satellite, broadcasting, radiolocation services, etc.)?

In the event a regulatory requirement is considered, the Commission seeks comment on what consideration should be given for services where the expected equipment lifetime differs. For example, certain industrial equipment is expected to work for 10 or 20 years or more while consumer mobile devices are typically replaced every few years. What other technical requirements would need to be specified? How should different receivers be categorized? Can a rating scale be developed to easily assess how much additional interference protection one receiver may have over another? Should any categorization be tied to characteristics of the desired transmitters? Or the undesired transmitters in adjacent and nearby bands?

In addition, the Commission seeks comment on how rules specifying particular receiver protection criteria may affect receiver architecture, particularly concerning implementation complexity, size, performance, form factors, number of external components, power consumption, impacts on other systems, and cost.

The Commission seeks comment on what type of tests may be needed if it were to consider specific requirements. Should such testing be part of the equipment approval process? Which receiver parameters should be examined? How should tests for these parameters be designed and conducted? Commenters should provide information regarding specific test details. Is there other information the Commission should consider, if it were to implement rule requirements for all or certain receivers?

Finally, the Commission requests comment on any other regulatory approaches the Commission should consider that would promote improved receiver interference immunity performance where that would be appropriate. The Commission asks that commenters provide sufficient explanation of their ideas and rationale for why they would be appropriate for consideration of such a regulatory approach as the best means of promoting its goal of promoting more efficient use of spectrum through improved receiver performance.

Innovation and the Marketplace

As part of the Commission's overall spectrum management goals, the Commission seeks to promote innovative new technologies and uses of spectrum. The Commission requests that commenters address the various considerations and approaches that have been discussed in this document, and inform the Commission about how best to promote innovation.

The Commission recognizes that receiver interference immunity performance specifications have the potential to impact receiver markets in various ways depending on how they are implemented. As discussed above, the Commission is examining three general types of approaches to promoting improved receiver performance—promoting industry-led voluntary approaches, providing additional Commission guidance, and possibly adopting mandatory requirements, or some combination of each. The Commission inquire as to how innovation and the marketplace would be affected by the approaches it is considering, and how best to consider the weighing of each approach as well as a balanced combination.

The Commission notes, for instance, that receivers with improved interference immunity performance features may create product differentiation that is generally desirable for consumers/users. As for voluntary approaches, voluntary industry guidelines and standards that promote development of receivers that are better or more desirable would create product differentiation. At the same time, however, the cost of producing such receiver devices might be higher than the cost of producing less resilient receivers, resulting in higher prices. In such a case, consumers/users would ultimately determine whether the receivers with greater interference immunity are ultimately deployed (compared to less resilient receivers), and would generally be based on whether the users would be willing to pay any higher prices that might be charged. The Commission seeks comment on how it might assess voluntary approaches in the context of innovation and the marketplace, and which approaches would be most or least effective when it comes to facilitating innovation while promoting improved receiver performance.

The Commission next seeks comment on how the various approaches discussed regarding potential Commission guidance would affect innovation and the marketplace. The Commission asks that commenters

address particular types of potential its policy guidance discussed herein—including general policy guidance, a policy statement, or an interference limits policy such as harm claim thresholds—and how those particular approaches affect innovation and the marketplace. Which approaches would be most or least effective as to facilitating innovation while promoting improved receiver performance? For instance, would clarification of Commission policy as to the integral role that receiver interference immunity performance plays in spectrum management, and clearer guidance about receiver responsibilities associated with developing and deploying receivers that protect against adjacent and nearby spectrum uses, help promote innovations in improved receiver design, and how should the Commission consider crafting such guidance in order to promote innovation in the marketplace? The Commission also notes that proponents of the development of an interference limits policy or harm claim threshold approaches note many benefits of such an approach, including that it could serve as a better alternative to adopting particular mandatory requirements in the rules. The Commission invites comment on how an interference limits policy or harm claim thresholds approaches affect innovation and the marketplace.

The Commission also invites comment on the adoption of regulatory requirements or rules (including standards) that require minimal levels of receiver interference immunity performance as the means for achieving its public interest goals. The Commission notes that mandatory standards would be expected to ensure development and deployment of receivers with a minimal level of interference immunity performance that would help achieve particular Commission goals regarding particular spectrum bands, including addressing issues relating to enabling greater access to adjacent band spectrum for other spectrum users. At the same time, the Commission notes that there may be instances in which regulatory adoption of specification standards could stifle innovation by restricting the introduction of products with otherwise desirable new features that are inconsistent with the standards, or might not be the most efficient at achieving the Commission's goals for ensuring a minimal level of receiver performance. The Commission asks for comment on how particular mandatory approaches may affect innovation and the marketplace. If a class of receivers are expected to be protected without a minimum knowable level of self-protection (selectivity) designed-in the receiver, how can protection be ensured?

With regard to each of the approaches discussed above, the Commission requests comment on the impacts of receiver interference immunity performance as to the following questions. What effects would interference immunity performance specifications have on innovation in equipment design, performance (especially as to performance not addressed by specifications) and features? What effects would particular approaches have on receiver markets in terms of cost of production, price and availability of equipment, and user demand? What aspects of specifications would have the greatest impacts on innovation and markets and what steps could be taken to minimize or mitigate their impacts? Since receiver filters to block OOB signals are generally a small fraction of the cost and complexity of a receiver, and generally, such components do not constrain the high-level innovative functions of a receiver, commenters should be specific and describe the impact on innovation, if any, of establishing basic minimum power reception limits from signals outside of a receiver's allocated spectrum band. Finally, to what extent should assessments of the impact on innovation and markets be a factor in the Commission's consideration of the various approaches for promoting improved receiver interference immunity performance discussed in this document?

In addition, the Commission inquires as to how it might evaluate an appropriate mix or balance among the various approaches that are discussed in this document as regards innovation and the marketplace. Commenters should offer their views on how the Commission might find that appropriate mix or balance. The Commission also invites comment on how these approaches might affect innovation in spectrum utilization. For example, how might these measures affect the development and costs and benefits of innovation associated with new wireless use cases? Compared to the Commission's approach to receiver performance to date, how might any of the approaches discussed above potentially serve to promote innovation in spectrum use, including not only in receiver but in transmitter design and performance as well?

Finally, the Commission invites comment on any other considerations that it should take into account on how best to promote innovation as it evaluates possible approaches to promoting improved receiver performance as part of its spectrum management in the future.

Legacy Receivers and Transition Pathways

There are many billions of receivers currently in use in various different radio services for a multitude of purposes. Depending on the types of approaches that industry and the Commission might take into promoting improvements in receiver performance, many of these existing ''legacy'' receivers may be impacted. Many receivers presumably already operate efficiently and include robust interference immunity, whether it is because they comply with voluntary industry guidelines, manufacturer designs are efficient, regulatory requirements are in place, or for other reasons. Many other receivers may currently not include the latest technologies or designs that could make the receivers more immune to interference, but also may be in the process of being replaced fairly quickly over the next few years, as is the case for consumer mobile devices over generally a five to ten year period. Then there are receivers in many different services, that may not be as immune to interference as they could be, particularly insofar as the receivers (or some subset of them) used in a particular service may be susceptible to interference from other operations in adjacent or nearby bands, or could experience interference with the introduction of new services in adjacent or nearby bands, in part because these receivers (or some subset of them) have not been designed to be more immune to interference.

As the Commission observed in its 2003 NOI on receiver performance, in situations where the Commission adopted spectrum policies that assumed receivers performed in accordance with a given set of interference immunity specifications, it is likely that many of the existing receivers could continue to provide satisfactory service. Further, interference conditions that would necessitate the use of receivers meeting the applicable guidelines/standards would not be present everywhere, and they may operate in locations where potentially interfering signals were not present or were present at levels within the capabilities of existing receivers. Such receivers could provide satisfactory service in many situations where industry or the Commission adopted spectrum policies that promote

receiver performance. Accordingly, the NOI noted that one approach would be to simply allow users to change to new receivers as they encountered interference. The Commission also identified another situation, such as where the service would be of more critical importance, and suggested that it might be necessary to require replacement of receivers, including the case in which a transition is being mandated for the replacement of receivers. The Commission asked about how to treat existing receivers that do not comply with any new receiver immunity specifications that may be developed, and how the size of the installed receiver base should affect development of receiver guidelines/standards, what criteria should be used by the Commission if it were to take action to require replacement of receivers (either rapidly on a transitional basis) in particular services, and what would be an appropriate phase-in period.

Regarding the potential replacement of legacy receivers, the GAO report noted both the lack of predictability about the future spectrum environment, and that it can take significant time and effort to upgrade and replace receivers once deployed. Silicon Flatirons suggested that it would be helpful if regulators could better anticipate the needs at band edges and provide proper notice (*e.g.,* 10 years) regarding the need for better receivers, and further noted that in order to help manage costs development of a phase-in of receiver regulation would be important. CSMAC discussed the need for future spectrum planning to give due consideration to legacy equipment and not to unnecessarily strand such equipment due to new services or devices that cause interference. It believed that when developing future spectrum sharing policies and considering technological advancements that enable improvements in legacy equipment, spectrum managers should also consider the replacement rate of existing transmitting and receiving equipment. This would avoid the potential for unnecessary stranded investment in this equipment, and balance the cost of this investment with the public benefits of more spectrum access to both Federal Government and other users.

The Commission further notes that the matter of how best to address legacy receivers and transition to less susceptible receivers in order to allow new operations in adjacent or nearby bands continues to be an important consideration as it seeks to enable new uses of spectrum and promote more efficient use of spectrum. The Commission anticipates that issues concerning legacy receivers that are not as interference-resilient as they could or should be may continue to arise, and consideration to potential pathways for addressing legacy receivers and any transitions to better performing receivers is important.

Discussion. What is the state of receiver performance across the commercial sector, including public safety, aviation and maritime safety, and Federal spectrum users? The Commission requests comment and suggestions on the range of issues and considerations that it should take into account as it considers the treatment of existing receivers that may not comply with any new approaches or policies adopted in the future (*e.g.,* improved receiver minimum interference immunity performance where that might be appropriate). The Commission notes that the issues include those relating to how it or others might determine the size of the installed base and identify existing or legacy receivers that potentially may be subject to approaches that lead to improved interference immunity performance. As discussed above, the Commission recognizes that in many instances, receivers are replaced fairly often, and that improved receiver performance in those cases could be achieved in a relatively rapid fashion, while there may be other situations in which other approaches (as discussed herein) may be appropriate. The Commission invites comment on each of these types of situations, including specific comment on whether and how to factor in the anticipated useful life of existing receivers.

The Commission also requests comment on considerations that it should take into account related to transitions (*e.g.,* repair or replacement) from use of legacy receivers to receivers that are more interference-immune in situations where that is deemed appropriate. Are there, for instance, particular approaches in previous or current Commission proceedings that provide some guidance that the Commission should consider? What are the complexities of introducing receiver requirements or harm claim thresholds in bands with existing spectrum allocations and service rules? What are realistic timelines for products in existing bands to adapt to a harm claim threshold or other regulatory actions to improve receiver performance? The Commission invites broad comment on relevant issues pertaining to legacy receivers and potential transition approaches, including timelines for transitioning that may be appropriate, the impact on global competitiveness, and consideration to regulatory actions that other nations have taken. Are there approaches that the Commission should consider that would enable smooth transitions? Should the Commission consider approaches that could facilitate any transition deemed appropriate that would minimize the costs that would be incurred? In sum, the Commission asks that commenters help it identify and consider the range of issues and concerns that should be taken into account with regard to addressing legacy receivers and transitioning to systems with improved receiver interference immunity performance that would serve the public interest.

Costs and Benefits

There are both costs and benefits that are associated with the implementation of the various approaches discussed in this document for the Commission's consideration as it seeks to promote improved receiver interference immunity performance in appropriate ways. The Commission recognizes that there could be a range of tradeoffs to consider. The Commission invites comment on ways to minimize the costs, optimize the benefits, and otherwise balance the costs and benefits, as steps are taken in the future to improve receiver interference immunity performance as part of its overall spectrum management goals in those situations in which doing so would serve the public interest.

The Commission notes that the TAC, in its *White Paper on Risk-informed Interference Assessment,* recommended that it include in its decision-making evaluation a quantitative risk-informed interference assessment (*e.g.,* comparing various likelihood/consequence combinations for multiple different potential interference hazard scenarios among the potentially affected operators) as it considers the interests of incumbents, new entrants, and the public. Others have noted that better understanding of the costs and benefits associated with improved receiver interference immunity performance could be help ''inform how to develop an incentive structure that would actually improve receiver selectivity.'' CSMAC indicated that in considering costs, spectrum managers should take into account changes and improvements in legacy equipment that will occur in the marketplace, and try to minimize the cost of stranded investments. Several other reports have focused on considerations related to the costs associated with any new guidance or policy promoting improved receiver performance, and discussions of the

need for an appropriate phase-in depending on the situation.

Discussion. The Commission invites comment on how it should consider the associated costs and benefits of the various approaches that are discussed in this document for promoting improved receiver interference immunity performance—including voluntary approaches, Commission guidance (*e.g.,* policy clarification, policy statement, interference limits policies), or regulatory approaches such as adoption of mandatory requirements for specified services.

The Commission also invites comment on how it might consider a phased-in approach when promoting improved receiver interference immunity performance in particular bands. As the Commission considers costs and benefits, what are the kinds of costs and the kinds of benefits that should be considered? The Commission asks that commenters discuss not only financial impacts but also considerations relating to competition as well as public safety and national security concerns. For example, would improvements in receiver interference immunity performance (*e.g.,* selectivity to reject unwanted emissions) enhance the ability of receivers to reject jamming and spoofing attempts? How might the Commission best consider the trade-offs concerning potentially affected stakeholders?

Legal Authority

As the Commission considers possible approaches to explore further, it seeks comment on its legal authority concerning the kinds of approaches it may be considering. In the 2003 *NOI on Receiver Performance Specifications,* the Commission stated its belief that it had the ''necessary statutory authority to promulgate receiver immunity guidelines and standards under sections 4(i), 301, 302(a), 303(e), (f), and (r) of the Communications Act, as amended.'' Several commenting parties generally agree, while others suggested that the Commission's authority could be limited.

Discussion. The Commission continues to believe that it has the necessary statutory authority to promulgate receiver immunity guidelines and standards under sections 4(i), 301, 302(a), 303(e), (f), and (r) of the Communications Act, as amended. The Commission requests comment on the assessment of its authority. The Commission also invites comment on other sources of authority as it considers the various approaches concerning receiver performance as discussed in this document. The Commission seeks comment in this document on whether the extent and limits of its statutory authority and enforcement mechanisms should affect its consideration of the possible approaches.

The Communications Act provides it with broad spectrum management authority, including authority under Title III of the Act to manage the use of radio spectrum and to prescribe the nature of wireless services to be rendered. In particular, section 303(e) allows the Commission to ''regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus,'' section 303(f) directs the Commission to ''[m]ake such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of the chapter,'' and section 303(r) provides the Commission with general rulemaking authority. In the past, the Commission has drawn on its authority under section 303 to adopt requirements designed to protect receiving devices from interference from incoming signals by defining the conditions that constitute interference, including the operating parameters of the equipment causing and receiving the interference. For example, as discussed above, in both the 800 MHz public safety service and 900 MHz Business and Industrial/Land Transportation (B/ILT) service the Commission adopted regulations that required licensees claiming protection from unacceptable interference to use receivers capable of distinguishing wanted signals from unwanted signals. More recently, the Commission adopted rules for commercial use of the 3.5 GHz Band that included protection limits afforded to receivers, although in that proceeding the Commission found it was unnecessary to mandate receiver performance specifications.

In addition to the Commission's clear authority to regulate receivers by defining the conditions that constitute interference, the Title III mandate to prevent interference ''between stations'' may also authorize it to regulate the operations of a receiving station with respect to its compliance with technical parameters designed to ensure that it is capable of screening out certain levels of RF energy that would otherwise interfere with its reception of desired signals. The Commission invites commenters to provide an assessment of the extent of its Title III authority over receivers. Can section 303(f) be interpreted to authorize the regulation of *either* the transmission or reception of the undesired signal in order to prevent interference? Does section 303(f), together with sections 4(i), 301, 302(a), 303(e), and (r), provide a sufficient basis for the Commission to establish interference protection rights for licensees or other authorized users of licensed devices, contingent on their devices meeting certain threshold performance requirements? Do these or other statutory provisions also provide authority for the Commission to adopt requirements that specify interference-rejection capabilities for wireless receivers or to impose direct controls on receiver devices that lack sufficient capacity to reject incoming interfering signals? Are such regulations reasonably ancillary to the Commission's broad authority to ensure efficient use of radio spectrum? Prohibiting the manufacture or use of devices that are particularly susceptible to interference would prevent interference under the terms of section 303(f), insofar as that provision empowers the Commission to adopt regulations to prevent interference ''between stations.'' If Congress had intended to limit the Commission's authority to the regulation of the *transmission* of the undesired signal, it could have made that intent clear by stating in section 303(f) that the Commission has authority to adopt regulations to prevent stations from ''causing interference to other stations.'' By using the phrase ''between stations,'' however, Congress arguably provided the Commission with the flexibility to address interference problems at both the transmitting and receiving ends. Do commenters agree? The Commission seeks comment on the scope of the statutory definition of ''stations'' in the context, including how to interpret the definition of ''radio communication'' or ''radio transmission of energy,'' the former of which includes ''all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.''

What is the Commission's authority to impose direct regulation on device manufacturers—*i.e.,* to prohibit the manufacture or marketing of devices that fail to conform to minimum performance standards for resisting interference? Section 302(a)(2) of the Communications Act gives the Commission authority to ''establish[ ] minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy'' and provides that ''[s]uch regulations shall be applicable to the manufacture, import, sale, use, offer for

sale, or shipment of such devices and home electronic equipment and systems, and to the use of such systems.'' While the Commission has clear authority to adopt performance standards for receivers used as home electronic equipment under section 302(a)(2), the Commission seeks comment on the scope of the Commission's authority pursuant to the provision. To what extent does the Commission's authority extend to receivers used in commercial applications, such as on airplanes, commercial delivery trucks, or tractors on industrial-scale farms? Can consumer-facing devices used outside of the home, such as GPS devices used as navigation aids, be regulated under the authority?

The Commission invites comment on any other sources of authority it could rely on for the actions it considers here. Commenters should explain in detail why they do or do not believe the Commission have authority to act if it chooses to do so. Commenters should also address whether the kinds of efforts or approaches that the Commission may ultimately take (*e.g.,* gathering more information on receiver characteristics, developing and implementing harm claim threshold approaches, requiring transitions) would affect the analysis of the Commission's authority or of its ability to enforce its rules effectively.

Other Possible Approaches and Issues

The Commission invites comment on other possible approaches for its consideration. For instance, would convening Commission-led workshops comprised of a variety of experts from industry and government be helpful? Would any pilot project be appropriate, and if so, with what particular frequency band(s) should be considered. Are there further studies that could help inform the Commission on important considerations with regard to improving receiver interference immunity performance? Are there other studies, efforts, analyses that the Commission should consider in the proceeding? If so, the Commission asks that commenters identify them and explain why they should be considered.

Digital Equity and Inclusion. Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the various approaches and issues discussed herein. Specifically, the Commission seeks comment on how the various approaches that it may consider may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Procedural Matters

Ex Parte Rules. The proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule § 1.1206(b), 47 CFR 1.1206(b). Participants in the proceeding should familiarize themselves with the Commission's *ex parte* rules.

Comment Filing Procedures. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of the document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *Electronic Filers:* Comments may be filed electronically by accessing ECFS at *https://www.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, when FCC Headquarters reopen to the public.

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

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 4(i), 301, 302(a), 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302(a), 303(e), 303(f), and 303(r), the Notice of Inquiry *is adopted.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–09938 Filed 5–12–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0103; FXES111303WOLF0–223–FF02ENEH00]

RIN 1018–BE52

Endangered and Threatened Wildlife and Plants; Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of a final supplemental environmental impact statement and a draft record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final supplemental environmental impact statement (FSEIS) on the proposed revisions to the regulations for the nonessential experimental population designation of the Mexican wolf and our draft record of decision, under the National Environmental Policy Act of 1969, as amended. Our intended action is to revise the regulations established in our 2015 final rule under section 10(j) of the Endangered Species Act of 1973, as amended, for the nonessential experimental population of the Mexican wolf. In the FSEIS, we analyzed the environmental consequences of three alternatives, including the proposed action and no action alternative, for our proposed rule. The action would be implemented through a final rule.

DATES: The Service will issue the record of decision (ROD) no earlier than 30 days after the publication date of this document announcing the availability of the FSEIS.

ADDRESSES: *Document availability:* The FSEIS and draft ROD are available electronically on *https://www.regulations.gov* in Docket No. FWS–R2–ES–2021–0103. The FSEIS will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4:30 p.m.) at the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM 87113.

FOR FURTHER INFORMATION CONTACT: Brady McGee, Mexican Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE, Albuquerque, NM 87113; by telephone at 505–761–4748; or by facsimile 505–761–2542. 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 visit the Mexican Wolf Recovery Program's website at *https://www.fws.gov/program/mexican-wolf* for information about our proposed revision to the experimental population designation for the Mexican wolf.

SUPPLEMENTARY INFORMATION:

Reviewing Documents

With this **Federal Register** document, we announce the availability of the final supplemental environmental impact statement (FSEIS) and our draft record of decision (ROD) for the proposed revision to the regulations for the nonessential experimental population of the Mexican wolf (*Canis lupus baileyi*). We developed the FSEIS and our draft ROD in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). We have described all alternatives in detail, and we have evaluated them in our FSEIS. Our draft ROD is based on our review of the alternatives and their environmental consequences as described in our FSEIS. You may obtain a copy of the FSEIS and draft ROD as described above in **ADDRESSES**.

Background

On April 15, 2020 (85 FR 20967), we published a notice of intent to prepare a supplemental environmental impact statement in conjunction with a proposed rule to revise the existing nonessential experimental designation of the Mexican wolf in the Mexican Wolf Experimental Population Area (MWEPA) in Arizona and New Mexico under section 10(j) of the Endangered Species Act of 1973, as amended (''10(j) rule''). The revised rule and supplemental environmental impact statement have been developed in response to a court-ordered remand by the District Court of Arizona of our 2015 10(j) rule to revise the nonessential experimental population designation and management of Mexican wolves in the MWEPA. In the scoping notice, we explained that we would address the issues on remand in a revised rule by establishing population and genetic objectives for the MWEPA that support the long-term conservation and recovery of the Mexican wolf and by ensuring our take provisions support the genetic health of the population, in addition to making a new essentiality determination (85 FR 20967, April 15, 2020, p. 20969).

On October 29, 2021 (86 FR 59953), we published the proposed rule and draft supplemental environmental impact statement (DSEIS) for a 90-day public comment period ending January 27, 2022, and we announced three public information sessions and two public hearings. The DSEIS analyzed three alternatives, including the proposed action, a second alternative, and the no action alternative. These alternatives evaluated a revised population objective, a new genetic objective, and the temporary restriction of three take provisions on land use, biological resources, economic activity associated with livestock production and big game hunting, human health and public safety, and environmental justice.

Next Steps

We developed our FSEIS after assessing and considering all comments on the DSEIS and proposed rule both individually and collectively. Our responses to the substantive comments that we received on the DSEIS are provided as an appendix to the FSEIS. After full consideration of all information and comments received on the proposed rule and DSEIS, we will base the final rule on the best available information.

Authors

The primary authors of this document are the staff members of the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Signing Authority

The Director, U.S. Fish and Wildlife Service, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the U.S. Fish and Wildlife Service. Martha Williams, Director, approved this document on May 10, 2022, for publication.

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Risk Management, and Analytics of the Joint Administrative Operations, U.S. Fish and Wildlife Service.

[FR Doc. 2022–10382 Filed 5–12–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 93
Friday, May 13, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 13, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Registration Requirements.

OMB Control Number: 0583–0128.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry are safe, wholesome, unadulterated, and properly labeled and packaged. According to the regulations, (9 CFR 320.5 and 381.179), parties required to register with FSIS must do so by submitting form FSIS Form 5020–1, ''Registration of Meat and Poultry Handlers.''

Need and Use of the Information: FSIS uses the information from form FSIS 5020–1 to maintain a database of the businesses. FSIS will collect the name, address of all locations at which they conduct the business that requires them to register, and all trade or business names under which they conduct the businesses. They must also inform FSIS when information on the form needs to be updated. If the information were not collected, it would reduce the effectiveness of the meat and poultry inspection program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,200.

Frequency of Responses: Reporting: Other (Once).

Total Burden Hours: 300.

Dated: May 10, 2022.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–10364 Filed 5–12–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–22–CO–OP 0001]

Inviting Applications for the Delta Health Care Services Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of funding availability.

SUMMARY: This Notice of Funding Availability (Notice) announces that the Rural Business-Cooperative Service (Agency) is accepting fiscal year (FY) 2022 applications for the Delta Health Care Services (DHCS) grant program. The purpose of this program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and economic development entities in the Delta Region. $3 million is currently available for FY 2022. All funds must support projects located in persistent poverty counties in the Delta Region and as described in the Overview section of this Notice.

DATES: Completed applications for grants must be submitted electronically by no later than 11:59 p.m. Eastern Time July 12, 2022 through *http://www.grants.gov* to be eligible for grant funding. Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the electronic application deadline. Late applications are not eligible for funding under this Notice and will not be evaluated.

ADDRESSES: You are encouraged to contact your USDA Rural Development State Office well in advance of the application deadline to discuss your Project and ask any questions about the application process. Contact information for State Offices can be found at *http://www.rd.usda.gov/contact-us/state-offices.*

Program guidance as well as application templates may be obtained at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants* or by contacting your State Office. To submit an electronic application, follow the instructions for the DHCS funding announcement located at *http://www.grants.gov.* Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the electronic application deadline. You are

strongly encouraged to file your application early and allow sufficient time to manage any technical issues that may arise.

FOR FURTHER INFORMATION CONTACT: Honie Turner, Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–3226, 202–720–1400 or email *CPgrants@usda.gov*.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency Name: USDA, Rural Business-Cooperative Service.

Funding Opportunity Title: Delta Health Care Services Grant Program.

Announcement Type: Initial Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.874.

Dates: Application Deadline. Your electronic application must be received by *http://www.grants.gov* no later than 11:59 p.m. Eastern Time July 12, 2022, or it will not be considered for funding.

Administrative

The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities recover economically from the impacts of the COVID–19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to Rural Development (RD) programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

Hemp Related Projects

Please note that no assistance or funding can be provided to a hemp producer unless they have a valid license issued by a State, Tribe or USDA, as applicable, or in accordance with 7 CFR part 990. Verification of valid hemp licenses will occur at the time of award.

Persistent Poverty Counties

Section 736 of the Consolidated Appropriations Act, 2022, allocates funding for projects in Persistent Poverty Counties. Persistent Poverty Counties as defined in Section 736 is ''any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States.'' Another provision in Section 736 expands the eligible population in Persistent Poverty Counties to include any county seat of such a Persistent Poverty County that has a population that does not exceed the authorized population limit by more than 10 percent. Therefore, applications for projects in Persistent Poverty County seats with populations up to 55,000 (per the 2010 Census) are eligible. Funding in the amount of $3 million is available to support Persistent Poverty Counties.

A. Program Description

The DHCS program is authorized by Section 379G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008u). The primary objective of the program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and other individuals and entities in the Delta Region. Grants are awarded on a competitive basis. The maximum award amount per grant is $1,000,000.

Definitions

Academic Health and Research Institute—A combination of a medical school, one or more other health profession schools or educational training programs (such as allied health, dentistry, graduate studies, nursing, pharmacy, public health), and one or more owned or affiliated teaching or health systems; or a health care nonprofit organization or health system, including nonprofit medical and surgical hospitals, that conduct health related research.

Conflict of Interest—A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the Project; or that restrict open and free competition for unrestrained trade. Specifically, Project Funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of a conflict of interest occurs when the consortium member's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Consortium—A group of three or more entities that are regional Institutions of Higher Education, Academic Health and Research Institutes, and/or Economic Development Entities located in the Delta Region that have at least one year of prior experience in addressing the health care issues in the region. At least one of the consortium members must be legally organized as an incorporated organization or other legal entity and have legal authority to contract with the Federal Government.

Delta Region—The 252 counties and parishes within the states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee that are served by the Delta Regional Authority. (The Delta Region may be adjusted by future Federal statute.) To view the areas identified within the Delta Region visit *http://dra.gov/about-dra/dra-states.*

Economic Development Entity—Any public or non-profit organization whose primary mission is to stimulate local and regional economies within the Delta Region by increasing employment opportunities and duration of employment, expanding or retaining existing employers, increasing labor rates or wage levels, reducing outmigration, and/or creating gains in other economic development-related variables such as land values. These activities shall primarily benefit low- and moderate-income individuals in the Delta Region.

Health System—The complete network of agencies, facilities, and all providers of health care to meet the health needs of a specific geographical area or target populations.

Institution of Higher Education—A postsecondary (post-high school) educational institution that awards a bachelor's degree or provides not less than a two year program that is acceptable for full credit toward such a degree, or a postsecondary vocational institution that provides a program of training to prepare students for gainful employment in a recognized occupation.

Nonprofit Organization—An organization or institution, including an accredited institution of higher education, where no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Project—All activities funded by the DHCS grant.

Project Funds—Grant funds requested plus any other contributions to the proposed Project.

Rural and rural area—Any area of a State: (1) Not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States; and (2) The contiguous and adjacent urbanized area; (3) Urbanized areas that are rural in character as defined by 7 U.S.C. 1991(a)(13); and (4) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

State—Includes each of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

B. Federal Award Information

Type of Award: Competitive Grant.
Total Funding: $3,000,000.
Maximum Award: $1,000,000.
Minimum Award: $50,000.
Project Period: Up to 24 months.
Anticipated Award Date: September 30, 2022.

C. Eligibility Information

Applicants must meet all the following eligibility requirements. Your application will not be considered for funding if it does not provide sufficient information to determine eligibility or is missing required elements. Applicants that fail to submit the required elements by the application deadline will be deemed ineligible and will not be evaluated further. Information submitted after the application deadline will not be accepted.

1. Eligible Applicants

Grants funded through DHCS may be made to a Consortium as defined in Paragraph A of this Notice. One member of the Consortium must be designated as the lead entity by the other members of the Consortium and have legal authority to contract with the Federal Government.

The lead entity is the recipient (see 2 CFR 200.86) of the DHCS grant funds and accountable for monitoring and reporting on the Project performance and financial management of the grant. It is expected that the recipient will make subawards in the form of a grant, cooperative agreement, or contract, as appropriate, to the other members of the Consortium. If a grant or cooperative agreement is awarded, the organization receiving the subaward is a subrecipient (see 2 CFR 200.93), and the recipient is responsible for complying with all applicable requirements of 2 CFR part 200, including provisions for making and monitoring an award. If a contract is awarded, the organization receiving the subaward is a contractor, and the recipient is responsible for following its written procurement procedures and complying with the Federal Acquisition Regulation. Both subrecipients and contractors are required to comply with all applicable laws and regulations, including performance and financial reporting, as described in their award document.

(a) An applicant is ineligible if they do not submit ''Evidence of Eligibility'' and ''Consortium Agreements'' as described in Section D.2. of this Notice.

(b) An applicant is ineligible if they have been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt. The applicant must certify as part of the application that they do not have an outstanding judgment against them. The Agency will check the DO NOT PAY system to verify if the applicant has been debarred or suspended or has an outstanding judgment against them.

(c) Any corporation (1) that has been convicted of a felony criminal violation under any Federal law within the past 24 months or (2) that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds appropriated by the Consolidated Appropriations Act, 2022 (Pub. L. 117–103), unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

(d) Applications will be deemed ineligible if the application includes any funding restrictions identified under Section D.6.

(e) Applications will be deemed ineligible if the application is not complete in accordance with the requirements stated in Section C.3.

2. Cost Sharing or Matching

Matching funds are not required. However, if you are adding any other contributions to the proposed Project, you must provide documentation indicating who will be providing the matching funds, the amount of funds, when those funds will be provided, and how the funds will be used in the Project budget. Examples of acceptable documentation include: A signed letter from the source of funds stating the amount of funds, when the funds will be provided, and what the funds can be used for or a signed resolution from your governing board authorizing the use of a specified amount of funds for specific components of the Project. The matching funds you identify must be for eligible purposes and included in your work plan and budget. Additionally, expected program income may not be used as matching funds at the time you submit your application. If you choose, you may use a template to summarize the matching funds. The template is available either from your State Office or the program website at: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

3. Other Eligibility Requirements

(a) *Use of Funds.* Your application must propose to use Project Funds for eligible purposes. Eligible Project purposes include the development of: (1) Health care services; (2) health education programs; (3) health care job training programs; and (4) the development and expansion of public health-related facilities in the Delta Region.

(b) *Project Eligibility.* The proposed Project must take place within the Delta Region as defined in this Notice. However, the applicant need not propose to serve the entire Delta Region. All funds must support projects located in persistent poverty counties as described in the Overview section of this Notice.

(c) *Project Input.* Your proposed Project must be developed based on input from local governments, public health care providers, and other entities in the Delta Region.

(d) *Grant Period Eligibility.* All awards are limited to up to a 24-month grant period based upon the complexity of the Project. Your proposed grant period should begin no earlier than October 1, 2022 and should end no later than 24 months following that date. If you receive an award, your grant period will be revised to begin on the actual date of award—the date the financial assistance

agreement is executed by the Agency—and your grant period end date will be adjusted accordingly. Your Project activities must begin within 90 days of the date of award. If you request funds for a time period beginning before October 1, 2022, and/or ending later than 24 months from that date, your application will be ineligible. The length of your grant period should be based on your Project's complexity, as indicated in your application work plan.

(e) *Multiple Application Eligibility.* The Consortium, including its members, is limited to submitting one application for funding under this Notice. We will not accept applications from Consortiums that include members who are also members of other Consortiums that have submitted applications for funding under this Notice. If we discover that a Consortium member is a member of multiple Consortiums with applications submitted for funding under this Notice, all applications will be considered ineligible for funding.

(f) *Satisfactory Performance Eligibility.* If you have an existing DHCS award, you must be performing satisfactorily to be considered eligible for a new DHCS award. Satisfactory performance includes being up to date on all financial and performance reports as prescribed in the grant award, and current on tasks and timeframes for utilizing grant and matching funds as approved in the work plan and budget. If you have any unspent grant funds on DHCS awards made prior to FY 2019, your application will not be considered for funding. If your FY 2020 or FY 2021 award has unspent funds of 50 percent or more than what your approved work plan and budget projected at the time your FY 2022 application is evaluated, your application may not be considered for funding. The Agency will verify the performance status of FY 2020 and FY 2021 awards and make a determination after the FY 2022 application period closes. The Agency understands that recipients may have had a loss of operations due to COVID–19 and will consider providing flexibility in terms of fund utilization on previous awards with an acceptable justification of delays resulting from the COVID–19 pandemic.

(g) *Completeness Eligibility.* Your application must provide all the information requested in Section D.2. of this Notice. Applications lacking sufficient information to determine eligibility and scoring will be deemed ineligible and will not be considered for scoring.

(h) *Indirect Costs.* Your negotiated indirect cost rate approval does not need to be included in your application, but you will be required to provide it if a grant is awarded. Approval for indirect costs that are requested in an application without an approved indirect cost rate agreement is at the discretion of the Agency.

D. Application and Submission Information

1. Address To Request Application Package

The application template for this funding opportunity is located at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.* Use of the application template is strongly recommended to assist you with the application process. You may also contact your State Office for more information. Contact information for State Offices is located at *http://www.rd.usda.gov/contact-us/state-offices.*

2. Content and Form of Application Submission

You must submit your application electronically through *Grants.gov*. Your application must contain all required information.

To apply, you must follow the instructions for this funding announcement at *http://www.grants.gov.* Please note that we cannot accept applications through mail, courier delivery, in-person delivery, email or fax.

You can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, or the CFDA number for this program.

When you enter the *Grants.gov* website, you will find information about applying electronically through the site, as well as the hours of operation.

To use *Grants.gov*, you must already have a Unique Entity Identifier (UEI) number and you must also be registered and maintain registration in SAM. The UEI is assigned by SAM and replaces the formerly known Dun & Bradstreet D–U–N–S Number. The UEI number must be associated with the correct tax identification number of the applicant. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov*.

You must submit all application documents electronically through *Grants.gov*. Applications must include electronic signatures. Original signatures may be required if funds are awarded.

After applying electronically through *Grants.gov,* you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

The organization submitting the application will be considered the lead entity. The Contact/Program Manager must be associated with the lead entity submitting the application.

Your application must also contain the following required forms and proposal elements:

(a) Form SF–424, ''Application for Federal Assistance.'' The application for Federal assistance must be completed by the lead entity as described in Section C.1. of this Notice. Your application must include your UEI and SAM Commercial and Government Entity (CAGE) code and expiration date (or evidence that you have begun the SAM registration process). Because there are no specific fields for a CAGE code and expiration date, you may identify them anywhere you want to on the form. If you do not include the CAGE code and expiration date and the UEI in your application, it will not be considered for funding. The form must be signed by an authorized representative.

(b) Form SF–424A, ''Budget Information—Non-Construction Programs.'' This form must be completed and submitted as part of the application package.

(c) Form SF–424C, ''Budget Information—Construction Programs.'' This form must be completed, signed, and submitted as part of the application package for construction Projects.

(d) Executive Summary. A summary of the proposal, not to exceed one page, briefly describing the Project, tasks to be completed, and other relevant information that provides a general overview of the Project must be provided.

(e) Evidence of Eligibility. Evidence of the Consortium's eligibility to apply under this Notice must be provided. This section must include a detailed summary demonstrating that the applicant is a Consortium as defined in paragraph A of this Notice and explain how each Consortium member meets the definition of an eligible entity as defined under Definitions in this Notice.

(f) Consortium Agreements. The application must include a formal written agreement with each Consortium member that addresses the negotiated arrangements for administering the Project to meet Project goals, the Consortium member's responsibilities to comply with administrative, financial, and reporting requirements of the grant, including those necessary to ensure compliance with all applicable Federal regulations and policies, and facilitate a smooth

functioning collaborative venture. Under the agreement, each Consortium member must perform a substantive role in the Project and not merely serve as a conduit of funds to another party or parties. This agreement must be signed by an authorized representative of the lead entity and an authorized representative of each partnering consortium entity.

(g) Scoring Criteria. Each of the scoring criteria in this Notice must be addressed in narrative form. Failure to address each scoring criterion will result in the application being determined ineligible.

(h) Performance Measures. The Agency has established annual performance measures to evaluate the DHCS program. Estimates on the following performance measures, as part of your application, must be provided:

(1) Number of businesses assisted;

(2) Number of jobs created;

(3) Number of jobs saved; and

(4) Number of individuals assisted/trained.

It is permissible to have a zero in a performance element. When calculating jobs created, estimates should be based upon actual jobs to be created by your organization as a result of the DHCS funding or actual jobs to be created by businesses as a result of assistance from your organization. When calculating jobs saved, estimates should be based only on actual jobs that would have been lost if your organization did not receive DHCS funding or actual jobs that would have been lost without assistance from your organization.

You can also suggest additional performance elements for example where job creation or jobs saved may not be a relevant indicator. These additional elements should be specific, measurable performance elements that could be included in an award document.

(i) Financial Information and Sustainability. Current financial statements and a narrative description demonstrating sustainability of the Project, all of which show sufficient resources and expertise to undertake and complete the Project and how the Project will be sustained following completion must be provided. Applicants must provide three years of pro-forma financial statements for the Project.

(j) Evidence of Legal Authority and Existence. The lead entity must provide evidence of its legal existence and authority to enter into a grant agreement with the Agency and perform the activities proposed under the grant application.

(k) Service Area Maps. Maps with sufficient detail to show the area that will benefit from the proposed facilities and services and the location of the facilities improved or purchased with grant funds, if applicable, must be provided.

(l) Environmental information necessary to support the Agency's environmental finding. Required information can be found in 7 CFR part 1970, specifically in Subpart B, and Subpart C. These documents can be found here: *https://www.rd.usda.gov/resources/directives/instructions.* Construction related activities funded by RD must comply with State and local building codes and 7 CFR part 1924. Depending on the construction actions anticipated, an appropriate 7 CFR part 1970 compliant environmental document will need to be submitted and approved, prior to commencement of construction. Non-construction Projects applying under this Notice are hereby classified as Categorical Exclusions in accordance with 7 CFR 1970.53(b), including the award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses, and which do not require any additional environmental documentation.

3. System for Awards Management (SAM) and Assigned UEI

(a) must be registered in SAM before submitting an application and must provide a valid UEI, unless determined exempt under 2 CFR 25.110(b), (c) or (d). You may register in SAM at no cost at *https://sam.gov.*

(b) You must maintain an active SAM registration with current, accurate and complete information at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) You must complete the Financial Assistance General Certifications and Representations in SAM.

If you have not fully complied with all applicable UEI and SAM requirements by the time the Agency is ready to make an award, the Agency 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. Please refer to Section F.2 for additional submission requirements that apply to grantees selected for this program.

4. Submission Date and Time

Application Deadline Date: July 12, 2022.

Explanation of Deadline: Electronic applications must be RECEIVED by *http://www.grants.gov* by 11:59 p.m. Eastern Time July 12, 2022, to be eligible for funding. Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you can meet the electronic application deadline. *Grants.gov* will not accept applications submitted after the deadline.

The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification on materials contained in the submitted application. See the Application Guide for a full discussion of each item. For requirements of completed grant applications, refer to Section D of this document.

5. Intergovernmental Review

Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/wp-content/uploads/2020/04/SPOC-4-13-20.pdf.* If your State has a SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application.

6. Funding Restrictions

Project funds may not be used for ineligible purposes. In addition, you may not use Project Funds for the following:

(a) To duplicate current services or to replace or to substitute support previously provided; provided, however, Project Funds may be used to expand the level of effort or a service beyond what is currently being provided;

(b) To pay for costs to prepare the application for funding under this Notice;

(c) To pay for costs of the Project incurred prior to the effective date of the period of performance;

(d) To pay expenses for applicant employee training not directly related to the Project;

(e) To fund political activities;

(f) To pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(g) To pay any judgment or debt owed to the United States;

(h) To engage in any activities that are considered a Conflict of Interest, as defined by this Notice; or

(i) To fund any activities prohibited by 2 CFR part 200.

In addition, your application will not be considered for funding if it does any of the following:

(1) Requests more than the maximum grant amount; or

(2) Proposes ineligible costs that equal more than 10 percent of the Project Funds.

The Agency will consider your application for funding if it includes ineligible costs of 10 percent or less of total Project Funds, if it is determined eligible otherwise. However, if your application is successful, those ineligible costs must be removed and replaced with eligible costs before the Agency will make the grant award or the amount of the grant award will be reduced accordingly. If the Agency cannot determine the percentage of ineligible costs, your application will not be considered for funding.

7. Other Submission Requirements

(a) Applications will not be accepted if the text is less than 11-point font.

(b) National Environmental Policy Act. This Notice has been reviewed in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.'' We have determined that an Environmental Impact Statement is not required because the issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial programs is categorically excluded in the Agency's National Environmental Policy Act regulation found at 7 CFR 1970.53(f). We have determined that this Notice does not constitute a major Federal action significantly affecting the quality of the human environment.

The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

(c) Civil Rights Compliance Requirements. All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973.

E. Application Review Information

The State Offices will review applications to determine if they are eligible for assistance based on requirements in this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. Applications will be funded in rank order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion.

1. Scoring Criteria

All eligible and complete applications will be evaluated based on the following criteria. Evaluators will base scores only on the information provided or cross-referenced by page number in each individual scoring criterion. DHCS is a competitive program, so you will receive scores based on the quality of your responses. Simply addressing the criteria will not guarantee higher scores. The total points possible for the criteria are 110. The minimum score requirement for funding is 60 points. It is at the Agency's discretion to fund applications with a score of 59 points or less if it is in the best interest of the Federal Government.

(a) *Community Needs and Benefits Derived from the Project (maximum of 30 points).* A panel of USDA employees will assess how the Project will benefit the residents in the Delta Region. This criterion will be scored based on the documentation in support of the community needs for health services and public health-related facilities and the benefits to people living in the Delta Region derived from the implementation of the proposed Project. It should lead clearly to the identification of the Project participant pool and the target population for the Project and provide convincing links between the Project and the benefits to the community to address its health needs. You must discuss the:

(1) Health care needs/issues/challenges facing the service area and explain how the identified needs/issues/challenges were determined. Discussion should also identify problems faced by the residents in the region.

(2) Proposed assistance to be provided to the service area and how the Project will benefit the residents in the region.

(3) Implementation plan for the Project and provide milestones which are well-defined and can be realistically completed.

(4) Expected outcomes of the proposed Project and how they will be tracked and monitored. You should attempt to quantify benefits in terms of outcomes from the Project; that is, ways in which peoples' lives, or the community, will be improved. Provide estimates of the number of people affected by the benefits arising from the Project.

(b) *The Project Management and Organization Capability (maximum of 30 points).* A panel of USDA employees will evaluate the Consortium's experience, past performance, and accomplishments addressing health care issues to ensure effective Project implementation. This criterion will be scored based on the documentation of the Project's management and organizational capability. You must discuss:

(1) Your organization's management and fiscal structure including well-defined roles for administrators, staff, and established financial management systems.

(2) Relevant qualifications, capabilities, and educational background of the identified key personnel (at a minimum, the Project Manager) who will manage and implement programs.

(3) Your organization's current successful and effective experience (or demonstrated experience within the past five years) addressing the health care issues in the Delta Region.

(4) Your organization's experience managing grant-funded programs.

(5) The extent to which administrative/management costs are balanced with funds designated for the provision of programs and services.

(6) The extent and diversity of eligible entity types within the applicant's Consortium of regional institutions of higher education, academic health and research institutes, and economic development entities located in the Delta Region.

(c) *Work Plan and Budget (maximum of 30 points).* You must provide a work plan and budget that includes the following: (1) The specific activities, such as programs, services, trainings, and/or construction-related activities for a facility to be performed under the Project; (2) the estimated line item costs associated with each activity, including grant funds and other necessary sources of funds; (3) the key personnel who will carry out each activity (including each Consortium member's role); and (4) the specific time frames for completion of each activity.

An eligible start and end date for the Project and for individual Project tasks must be clearly shown and may not exceed Agency specified timeframes for the grant period. You must show the source and use of both grant and other contributions for all tasks. Other contributions must be spent at a rate equal to, or in advance of, grant funds.

A panel of USDA employees will evaluate your work plan for detailed actions and an accompanying timetable for implementing the proposal. Clear and comprehensive work plans detailing all project goals, tasks, timelines, costs, and responsible personnel in a logical and realistic manner will result in a higher score.

(d) *Local Support (maximum 10 points).* A panel of USDA employees will evaluate your application for local support of the proposed Project. The application must include documentation detailing support solicited from local government, public health care providers, and other entities in the Delta Region. Evidence of support can include, but is not limited to, surveys conducted amongst Delta Region residents and stakeholders, notes from focus groups, or letters of support from local entities.

(e) *Administrator Discretionary Points (maximum of 10 points).* The Administrator may choose to award up to 10 points to support geographic distribution of funds and/or key priorities as follows (more details available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities recover economically from the impacts of the COVID–19 pandemic, particularly disadvantaged communities (3 points);
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects (3 points); and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities (3 points).

Applicants that provide a clear and comprehensive response to how they are addressing the Administration's priorities (1 point)

The DHCS program is a nationally-competed program with a panel that reviews all Administration priority point requests and makes recommendations to the Administrator based on which applicants provided the most comprehensive and clear plan for meeting the Administration's priorities.

2. Review and Selection Process

The State Offices will review applications to determine if they are eligible for assistance based on requirements in this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. The review panel will convene to reach a consensus on the scores for each of the eligible applications. The Administrator may choose to award up to 10 Administrator discretionary points based on criterion (e) in section E.1. of this Notice. These points will be added to the cumulative score for a total possible score of 110. Applications will be funded in highest ranking order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. If your application is ranked and not funded, it will not be carried forward into the next competition.

F. Federal Award Administration Information

1. Federal Award Notices

If you are selected for funding, you will receive a signed notice of Federal award by postal or electronic mail, containing instructions on requirements necessary to proceed with execution and performance of the award.

If you are not selected for funding, you will be notified in writing via postal or electronic mail and informed of any review and appeal rights. Funding of successfully appealed applications will be limited to available FY 2022 funding.

2. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in 2 CFR parts 25, 170, 180, 200, 400, 415, 417, 418, and 421; and 48 CFR 31.2, and successor regulations to these parts. All recipients of Federal financial assistance are required to report information about first tier subawards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)). These regulations may be obtained at *https://www.ecfr.gov/cgi-bin/ECFR?page=browse.*

The following additional requirements apply to grantees selected for this program:

(a) Execution of an Agency approved Financial Assistance Agreement.

(b) Acceptance of a written Letter of Conditions.

(c) Submission of Form RD 1940–1, ''Request for Obligation of Funds.''

(d) RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

(e) SF–LLL, ''Disclosure of Lobbying Activities'' if applicable.

3. Reporting

After grant approval and through grant completion, you will be required to provide the following:

a. A SF–425, ''Federal Financial Report,'' and a project performance report will be required on a semiannual basis (due 30 working days after the end of the semiannual period). For the purposes of this grant, semiannual periods end on June 30th and December 31st. The project performance reports shall include a comparison of actual accomplishments to the objectives established for that period.

b. Reasons why established objectives were not met, if applicable.

c. Reasons for any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation.

d. Objectives and timetable established for the next reporting period.

e. A final project and financial status report within 90 days after the expiration or termination of the grant.

f. Outcome project performance reports and final deliverables.

G. Agency Contacts

For general questions about this announcement and for program Technical Assistance, please contact the appropriate State Office at *http://www.rd.usda.gov/contact-us/state-offices.* You may also contact Honie Turner, Program Management Division, Direct Programs Branch, Rural Business-Cooperative Service, USDA at (202) 720–1400 or email *CPgrants@usda.gov.* You are also encouraged to visit the application website for application tools, including an application template, at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

H. Other Information

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), OMB must approve all ''collection of information''

as a requirement for ''answers to . . . identical reporting or recordkeeping requirements imposed on, ten or more persons . . .'' (44 U.S.C. 3502(3)(A)). RUS has concluded that the reporting requirements contained in this rule/funding announcement will involve less than 10 persons and do not require approval under the provisions of the Act.

Applications must contain all the required elements of this NOSA, and all standard requirements as required by 7 CFR part 1734. Additional supporting data or documents may be required by RUS depending on the individual application or financial conditions. All applicants must comply with all Federal laws and regulations.

Executive Order (E.O.) 13175 Consultation and Coordination With Indian Tribal Governments

This Executive Order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this Notice does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this Notice is not subject to the requirements of Executive Order 13175. Tribal Consultation inquiries and comments should be directed to RD's Native American Coordinator at *aian@usda.gov* or (720) 544–2911.

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 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 *https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf* and at any USDA office, or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; and

(2) *Email: OAC@usda.gov.*

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2022–10361 Filed 5–12–22; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with March anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable May 13, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with March anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

With respect to antidumping administrative reviews, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov,* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) sets a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a Separate Rate Application or Certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register**

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for respondent selection. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than March 30, 2023.

	Period to be reviewed
AD Proceedings	
BRAZIL: Certain Uncoated Paper, A–351–842	3/1/21–2/28/22
Suzano S.A./Suzano Papel e Celulose S.A.[5]	
Sylvamo do Brasil Ltda./Sylvamo Exports Ltda.[6]	
INDIA: Certain New Pneumatic Off-The-Road Tires, A–533–869	3/1/21–2/28/22
Apollo Tyres Ltd.	
Asian Tire Factory Ltd.	
ATC Tires Private Limited.	
Balkrishna Industries Ltd.	
Cavendish Industries Ltd.	
CEAT Ltd.	
Celite Tyre Corporation.	
Emerald Resilient Tyre Manufacturer.	
Forech India Private Limited.	
HRI Tires India.	
Innovative Tyres & Tubes Limited.	
JK Tyres and Industries Ltd.	
K.R.M. Tyres.	
M/S. Caroline Furnishers Pvt Ltd.	
Mahansaria Tyres Private Limited.	
MRF Limited.	
MRL Tyres Limited (Malhotra Rubbers Ltd.).	
OTR Laminated Tyres (I) Pvt. Ltd.	
Rubberman Enterprises Pvt. Ltd.	
Speedways Rubber Company.	
Sun Tyres & Wheel Systems.	
Sundaram Industries Private Limited.	
Superking Manufacturers (Tyre) Pvt., Ltd.	
TVS Srichakra Limited.	
INDIA: Frozen Warmwater Shrimp, A–533–840	2/1/21–1/31/22
Rajyalakshmi Marine Exports.[7]	
PORTUGAL: Certain Uncoated Paper, A–471–807	3/1/21–2/28/22
The Navigator Company, S.A.	
REPUBLIC OF KOREA: Acetone, A–580–899	3/1/21–2/28/22
Kumho P&B Chemicals, Inc.	
LG Chem, Ltd.	
THAILAND: Circular Welded Carbon Steel Pipes and Tubes, A–549–502	3/1/21–2/28/22
Thai Premium Pipe Co. Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Corrosion Inhibitors, A–570–122	9/10/20–2/28/22
Alvarez Schaer S.A.	
Anhui Trust Chem Co., Ltd.	
Bollore Logistics Le Havre.	
CAC Shanghai Chemical Co., Ltd.	
Dalsem Greenhouse Technology B.V.	
Dandee Holdings Ltd. (Hk).	
Gold Chemical Limited.	
Gooyer International Co., Ltd. (Hk).	
Haruno Sangyo Kaisha Ltd.	
Jiangsu Bohan Industry Trade Co., Ltd.	
Jiangsu Trust Chem Co., Ltd.	
Jiangsu Yangnong Chemical Group Co., Ltd.	
Jiangyin Delian Chemical Co., Ltd.	
Jiangyin Gold Fuda Chemical Co., Ltd.	

[5] During the POR, Commerce determined that Suzano S.A. is the successor-in-interest to Suzano Papel e Celulose S.A. *See Certain Uncoated Paper from Brazil: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 55820 (October 7, 2021).

[6] During the POR, Commerce determined that Sylvamo do Brasil Ltda. is the successor-in-interest to International Paper do Brasil Ltda. and that Sylvamo Exports Ltda. is the successor-in-interest to International Paper Exportadora Ltda. *See Certain Uncoated Paper from Brazil: Final Results of Antidumping Duty Changed Circumstances Review,* 87 FR 1395 (January 11, 2022).

[7] The name of this company was incorrectly listed as Rajyalaksmi Marine Exports in the initiation notice which published on April 12, 2022. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 21619, 21621 (April 12, 2022).

[8] Commerce previously found Nantong Yutu Group Co., Ltd. to be a cross-owned affiliate of Nantong Botao Chemical Co., Ltd. *See Certain Corrosion Inhibitors From the People's Republic of China: Antidumping Duty and Countervailing Duty Orders,* 86 FR 14869, 14871 (March 19, 2021).

	Period to be reviewed
Johoku Chemical Co., Ltd.	
K. Uttamlal Exports Private Limited.	
Nanjing Hengrun Hogsu Import & Export Company.	
Nanjing Innochem Co., Ltd.	
Nanjing Singchem Co., Ltd.	
Nanjing Trust Chem Co., Ltd.	
Nantong Bestime Chemical Co., Ltd.	
Nantong Botao Chemical Co., Ltd.	
Nantong Kanghua Chemical Co., Ltd.	
Sagar Speciality Chemicals Pvt., Ltd.	
Sinochem Pharmaceutical Co., Ltd.	
Solenis Especialidades Quimicas Ltda.	
Techwell Technology Holding Limited.	
Tianjin Jinbin International Trade.	
Vcare Medicines.	
Wuxi Base International Trade Co., Ltd.	
Wuxi Connect Chemicals Co., Ltd.	
Xingji Xi Chen Re Neng Co., Ltd.	
Yasho Industries Pvt. Ltd.	
Zaozhuang Kerui Chemicals Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Plastic Decorative Ribbon, A–570–075	3/1/21–2/28/22
Chiapton Gifts Decorative Limited.	
Colorart Plastic Ribbon Productions Limited.	
Dongguan Mei Song Plastic Industry Co., Ltd.	
Expressive Design Group, Inc.	
Huizhou Wonderful Packaging Materials Co., Ltd.	
Joynice Gifts & Crafts Co., Ltd.	
Ningbo Junlong Craft Gift Co., Ltd.	
Ricai Film Artwork Materials Co., Ltd.	
Santa's Collection Shaoxing Co. Ltd.	
Seng San Enterprises Co., Ltd.	
Shenzhen SHS Technology R&D Co., Ltd.	
Sun Rich (Asia) Ltd.	
Wingo Gift & Crafts (Shenzhen) Co., Ltd.	
Xiangxin Decoration Factory.	
Xinghui Packaging Co., Ltd.	
Zhejiang Shaoxing Royal Arts & Crafts Co., Ltd.	
China-Wide Entity.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Vertical Shaft Engines Between 22C and 999CC, and Parts Thereof, A–570–119	8/19/20–2/28/22
Chongqing Rato Technology Co., Ltd.	
Loncin Motor Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Difluoromethane (R–32), A–570–121	8/27/20–2/28/22
HUANTAI DONGYUE INTERNATIONAL TRADE CO. LTD.	
Taizhou Qingsong Refrigerant New Material Co., Ltd.	
Zhejiang Sanmei Chemical Ind. Co., Ltd.	
CVD Proceedings	
INDIA: Certain New Pneumatic Off-The-Road Tires, C–533–870	1/1/21–12/31/21
Apollo Tyres Ltd.	
Asian Tire Factory Ltd.	
ATC Tires Private Limited.	
Balkrishna Industries Ltd.	
Cavendish Industries Ltd.	
CEAT Ltd.	
Celite Tyre Corporation.	
Emerald Resilient Tyre Manufacturer.	
HRI Tires India.	
Innovative Tyres & Tubes Limited.	
JK Tyres and Industries Ltd.	
K.R.M. Tyres.	
M/S. Caroline Furnishers Pvt Ltd.	
MRF Limited.	
MRL Tyres Limited (Malhotra Rubbers Ltd.).	
OTR Laminated Tyres (I) Pvt. Ltd.	
Rubberman Enterprises Pvt. Ltd.	
Sheetla Polymers.	
Speedways Rubber Company.	
Sun Tyres & Wheel Systems.	
Sundaram Industries Private Limited.	
Superking Manufacturers (Tyre) Pvt., Ltd.	
TVS Srichakra Limited.	
INDIA: Sulfanilic Acid, C–533–807	1/1/21–12/31/21
All Producers and Exporters.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Corrosion Inhibitors, C–570–123	7/13/20–12/31/21

	Period to be reviewed
Alvarez Schaer S.A. Anhui Trust Chem Co., Ltd. Bollore Logistics Le Havre. CAC Shanghai Chemical Co., Ltd. Dandee Holdings Ltd. (Hk). Dalsem Greenhouse Technology B.V. Gold Chemical Limited. Gooyer International Co., Ltd. (Hk). Haruno Sangyo Kaisha Ltd. Jiangyin Delian Chemical Co., Ltd. Jiangsu Bohan Industry Trade Co., Ltd. Jiangsu Trust Chem Co., Ltd. Jiangsu Yangnong Chemical Group Co., Ltd. Jiangyin Gold Fuda Chemical Co., Ltd. Johoku Chemical Co., Ltd. K. Uttamlal Exports Private Limited. Nanjing Hengrun Hogsu Import & Export Company. Nanjing Innochem Co., Ltd. Nanjing Singchem Co., Ltd. Nanjing Trust Chem Co., Ltd. Nantong Bestime Chemical Co., Ltd. Nantong Botao Chemical Co., Ltd.[8] Nantong Kanghua Chemical Co., Ltd. Sagar Speciality Chemicals Pvt., Ltd. Sinochem Pharmaceutical Co., Ltd. Solenis Especialidades Quimicas Ltda. Techwell Technology Holding Limited. Tianjin Jinbin International Trade. Vcare Medicines. Wuxi Base International Trade Co., Ltd. Wuxi Connect Chemicals Co., Ltd. Xinji Xi Chen Re Neng Co., Ltd. Yasho Industries Pvt. Ltd. Zaozhuang Kerui Chemicals Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Vertical Shaft Engines Between 22C and 999CC, and Parts Thereof, C–570–120	6/19/20–12/31/21
Honda Power Products (China) Co., Ltd. Jialing-Honda Motors Co., Ltd. Loncin Motor Co., Ltd.	

Suspension Agreements

None.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such

factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[9] available at *www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[10]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[11] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[12] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: May 9, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–10331 Filed 5–12–22; 8:45 am]

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[9] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[11] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[12] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–844]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Germany: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain carbon and alloy steel cut-to-length plate from Germany was not sold in the United States at less than normal value during the period of review (POR), May 1, 2020, through April 30, 2021.

DATES: Applicable May 13, 2022.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Paul Gill, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–5673, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2022, Commerce published the *Preliminary Results* and invited comments from interested parties.[1] No interested party submitted comments.

Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Germany. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[2]

Final Results of the Review

We received no comments from interested parties on the *Preliminary Results* and, therefore, are making no changes to our calculations in the final results of this review. Accordingly, as a result of this review, we determine that the following weighted-average dumping margin exists for the respondent for the period May 1, 2020, through April 30, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
AG der Dillinger Hüttenwerke	0.00

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (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.

Because the weighted average dumping margin for Dillinger is zero or *de minimis* (*i.e.,* less than 0.5 percent), we will instruct CBP to liquidate the appropriate entries without regard to

[1] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Germany: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 6499 (February 4, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] For a full description of the scope of the order, *see Preliminary Results* PDM at 2–6.

antidumping duties. 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.[3]

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Dillinger for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, 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.[4]

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 the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a previous review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 21.04 percent, the all-others rate established in the LTFV investigation.[5] These 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.

Notification Regarding Administrative Protective Order

This notice serves as the only 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 return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 6, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–10302 Filed 5–12–22; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* section 751(a)(2)(C) of the Act.

[4] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[5] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–831]

Urea Ammonium Nitrate Solutions From the Russian Federation: Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is initiating a changed circumstance review (CCR) to examine whether the Russian Federation (Russia) remains a market economy (ME) country for purposes of the antidumping duty (AD) law.

DATES: Applicable May 13, 2022.

FOR FURTHER INFORMATION CONTACT: Leah Wils-Owens, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4551.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2021, Commerce received petitions for the imposition of ADs and countervailing duties (CVD) on urea ammonium nitrate solutions (UAN) imported into the United States from Russia and the Republic of Trinidad and Tobago. In the petitions, the petitioner [1] stated that information reasonably available to it indicated that Russia does not operate on market principles, and thus, Commerce should initiate an investigation into whether, and should determine that, Russia is a non-market economy (NME) country. After finding that the petitioner's allegation met the requirements of section 732 of the Tariff Act of 1930, as amended (the Act), on July 30, 2021, Commerce initiated an investigation into Russia's status as a market economy (ME) country.[2]

On October 29, 2021, based on the information on the record, Commerce determined to continue to confer ME status on Russia for purposes of AD law.[3] However, in its determination, Commerce noted that,

[1] The petitioner is CF Industries Nitrogen, LLC and its subsidiaries, Terra Nitrogen, Limited Partnership and Terra International (Oklahoma) LLC (collectively, the petitioner).

[2] *See Investigation of Urea Ammonium Nitrate Solutions from the Russian Federation: Opportunity to Comment on the Russian Federation's Status as a Market Economy Country Under the Antidumping Duty Laws,* 86 FR 41008 (July 30, 2021).

[3] *See* Memorandum, ''Review of Russia's Status as a Market Economy Country,'' dated October 29, 2021.

when Commerce determined Russia to be a market economy country in 2002, {it} expected market-oriented reforms to continue to progress significantly. Since they have not progressed as significantly as expected and in some cases have backtracked, Commerce will monitor the progress of reforms in the Russian economy for the near future for purposes of the antidumping duty law.[4]

In its March 26, 2022 case brief in the less-than-fair-value (LTFV) investigation of UAN from Russia, the petitioner argued that the final phase of the LTFV investigation of UAN from Russia was an appropriate time in the ''near future'' for Commerce to revisit its determination regarding Russia's ME status and examine whether its October 2021 findings regarding that status remain valid, including its ''findings concerning ruble convertibility, the environment for foreign investment, the {Government of Russia's} control over Russia's economy, rule of law, and freedom of information.'' [5] Given Commerce's observations in its October 29, 2021 determination, the request in the petitioner's case brief, and the additional information gathered concerning changes to the economic conditions in Russia, we have determined to revisit Russia's status as an ME country in the context of a CCR.

Initiation of a Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, when Commerce receives information concerning, or a request from an interested party for a review of, a final affirmative determination that resulted in an AD or CVD order, which shows changed circumstances sufficient to warrant a review of such determination, Commerce shall conduct a review of the determination after publishing notice of the review in the **Federal Register**. Section 751(b)(4) of the Act provides that in the absence of good cause, Commerce may not review final determinations regarding whether subject merchandise is being, or is likely to be, sold in the United States at less than its fair value, or whether or not a countervailable subsidy is being provided with respect to subject merchandise, less than 24 months after the date of publication of the notice of that determination.

Since making a final determination concerning Russia's status, information available to Commerce indicates that there may be important changes in the economic conditions in Russia related to the six statutory factors governing NME determinations sufficient for Commerce to reexamine the issue of Russia's ME status. For a full description of recent changes in Russia related to the six statutory factors, *see* the memorandum ''Reconsideration of Russia's Status as a Market Economy Country,'' dated concurrently with this **Federal Register** notice.[6] Given the developments since Commerce's October 2021 determination, and the provision in section 771(18)(C)(ii) of the Act that Commerce may determine whether a country does not operate on market principles at any time, Commerce has determined that good cause exists within the meaning of 19 CFR 351.216(c) to initiate a CCR to determine whether to continue to confer ME status on Russia for purposes of the AD law.

Therefore, Commerce is initiating a CCR to determine whether to continue to confer ME status on Russia for purposes of the AD law, pursuant to sections 751(b) and 771(18)(C)(ii) of the Act, and 19 CFR 351.216(c).

Opportunity for Public Comment and Submission of Factual Information

As part of this CCR, Commerce is providing interested parties with an opportunity to submit comments and factual information regarding developments in the Russian economy since October 2021 with respect to the following factors enumerated in section 771(18)(B) of the Act. Commerce must consider these factors in making an ME/NME determination:

(i) The extent to which the currency of the foreign country is convertible into the currency of other countries;

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management;

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;

(iv) the extent of government ownership or control of the means of production;

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and

(vi) such other factors as the administering authority considers appropriate.

Interested parties may submit comments and factual information regarding Russia's current status as an ME country not later than 21 days after the date of publication of this notice in the **Federal Register**. Rebuttal comments, limited to comments on issues raised in parties' affirmative comments, may be filed not later than 10 days after the date for filing affirmative comments. Interested parties must submit comments and factual information at the Federal eRulemaking Portal: *www.Regulations.gov.* The identification number is ITA–2022–0005.

Parties may request a hearing in their comments. After reviewing all comments, and factual information, Commerce will determine whether to hold a public hearing in this CCR. If Commerce determines that a public hearing is warranted, it will announce a time and forum for the hearing. If Commerce holds an in-person hearing, the hearing will be held at the main Commerce building, 1401 Constitution Avenue NW, Washington, DC 20230, in a room, and at a time, to be determined.

Unless extended, consistent with 19 CFR 351.216(e), we intend to issue the final results of this CCR no later than 270 days after the date on which this review was initiated or within 45 days of that date if all parties agree to the outcome of the review.

Notification to Interested Parties

This initiation notice is issued and published in accordance with sections 751(b) and 771(18)(C)(ii) of the Act.

Dated: May 6, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–10330 Filed 5–12–22; 8:45 am]

BILLING CODE 3510–DS–P

[4] *Id.* at 6.

[5] *See* Petitioner's Letter, ''Urea Ammonium Nitrate Solutions from the Russian Federation (A–821–831): Petitioner's Case Brief,'' dated March 15, 2022, at 3.

[6] *See* Memorandum, ''Reconsideration of Russia's Status as a Market Economy Country,'' dated concurrently with, and hereby adopted by, this notice.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC032]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council's is convening its Scientific and Statistical Committee (SSC) via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will

be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Tuesday, June 7, 2022, beginning at 1 p.m. Webinar registration information: *https://attendee.gotowebinar.com/register/7278432047484204811.* Call in information: +1 (631) 992–3221, Access Code: 827–025–783.

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scientific and Statistical Committee will meet to comment on the annual update to Council research priorities; give feedback on draft Monkfish fishery performance report prepared by the Monkfish Plan Development Team and Advisory Panel and receive an update on development of Acceptable Biological Catch control rule alternatives under consideration for the Northeast Multispecies Fishery Management Plan. They will consider other business as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 9, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–10337 Filed 5–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC030]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Thursday, June 2, 2022, at 9:30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/9178923602599667725.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Advisory Panel will meet to discuss development of draft specifications and measures: Status determination criteria, rebuilding plans for Gulf of Maine (GOM) cod and Southern New England/Mid-Atlantic (SNE/MA) winter flounder, FY2023–24 US/CA total allowable catches, FY2023–24 specifications: Georges Bank (GB) yellowtail flounder and GB cod (including a catch target for the recreational fishery), FY2023–25 specifications for 14 stocks, additional measures to promote stock rebuilding for GOM cod and SNE/MA winter flounder, and revised acceptable biological catch control rules, in consultation with the Scientific and Statistical Committee. They will discuss progress on development of metrics. The panel will also discuss a Council priority to develop a transition plan for Atlantic cod management from the current two management unit to up to five management units (multi-year priority). As a part of the transition plan, there will be a white paper on potential approaches to allocate ''Georges Bank cod'' to the recreational fishery delivered in 2022 to inform the 2023 priorities discussion. They will review the current list of Council research priorities and suggest changes or additions to the list. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 9, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–10335 Filed 5–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC025]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council is convening a joint ad-hoc sub-panel of its Scientific and Statistical Committee (SSC) with members of the Mid-Atlantic Fishery Council's SSC to provide the Northeast Regional Marine Fish Habitat Assessment (NRHA) with input on their workplan and to consider actions affecting New England fisheries in the

exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held for on Wednesday, June 1, 2022, from 9 a.m. to 12 p.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/8869822296640320014.* Call in information: Phone: +1 (914) 614–3221/ Access Code: 219–562–344.

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The joint SSC Subpanel, comprised of SSC members from both the New England and Mid-Atlantic Fishery Management Councils, will meet to review and provide input on initial work products related to the Northeast Regional Marine Fish Habitat Assessment (NRHA). The panel will review the workplan, methods used, and inferences made from the single species and community level function models under development. The subpanel will consider the overall utility of the NRHA including the use of specific products in stock assessment, habitat management and conservation (including Essential Fish Habitat and Habitat Area of Particular Concern designations), and ecosystem approaches for the Councils. Finally, the subpanel will provide input on how to present and communicate the data and analyses to various end users. The subpanel will provide a report summarizing their input. This input will be provided directly to the NRHA habitat assessment/modeling team as well as the New England and Mid-Atlantic Fishery Management Councils. There will be opportunities for public input and comment.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 9, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–10333 Filed 5–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC031]

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) Trawl Electronic Monitoring Committee will meet May 31, 2022.

DATES: The meeting will be held on Tuesday, May 31, 2022, from 8 a.m. to 5 p.m., Alaska Time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2937.*

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: Anna Henry, Council staff; phone: (907) 271–2809 and email: *Anna.Henry@noaa.gov.* For technical support, please contact administrative Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, May 31, 2022

The agenda will include committee discussion and recommendations for the Trawl EM Initial Review analysis. The Agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2937* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smartphone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2937.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2937.*

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

Dated: May 9, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–10336 Filed 5–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB970]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of New Jersey

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

ACTION: Notice; issuance of Renewal incidental harassment authorization (IHA).

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to Ocean Wind LLC (Ocean Wind) to incidentally harass marine mammals incidental to marine site characterization survey activities off the coast of New Jersey in the areas of the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS)–A 0498 (Lease Area) and federal and state waters along potential export cable routes (ECRs) to landfall

locations between Raritan Bay (part of the New York Bight) and Delaware Bay.

DATES: This renewal IHA is valid May 10, 2022 to May 09, 2023 (one year from the expiration of the initial IHA).

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), 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 Marine Mammal Protection Act (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 take 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 such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a Renewal would allow for completion of the activities beyond that described in the **DATES** section of the initial IHA issuance, provided all of the following conditions are met:

(1) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

(2) The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

(3) Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On May 10, 2021, NMFS issued an IHA to Ocean Wind to take marine mammals incidental to marine site characterization survey activities off the coast of New Jersey in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0498) and along potential submarine cable routes to landfall locations in New Jersey (86 FR 6465), effective from May 10, 2021 through May 09, 2022. On February 18, 2022, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal, the activities for which incidental take is requested are identical to those covered in the initial authorization. As required, the applicant also provided a preliminary monitoring report (available at *www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-llc-marine-site-characterization-surveys-new-jersey*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed Renewal incidental harassment authorization was published on April 11, 2022 (87 FR 21098).

Description of the Specified Activities and Anticipated Impacts

Ocean Wind plans to conduct a second year of high-resolution geophysical (HRG) marine site characterization surveys in the Lease Area and along potential ECRs to landfall locations in New Jersey, between Raritan Bay (part of the New York Bight) and Delaware Bay. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the original IHA. The purpose of the marine site characterization surveys are to obtain an assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of a planned offshore wind facility development. Surveys are also conducted to support engineering design and to map unexploded ordnance. Underwater sound resulting from Ocean Wind's site

characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of Level B harassment.

In their 2020 IHA application, Ocean Wind estimated it would conduct surveys at a rate of 70 kilometers (km) per survey day. Ocean Wind defined a survey day as a 24-hour activity day. Based on the planned 24-hours operations, the number of estimated survey days varies between the Lease Area and ECR area, with 142 vessel survey days expected in the Lease Area and 133 vessel survey days in the ECR area, with a total of 275 survey days. A maximum of 2 vessels would operate concurrently in areas where 24-hr operations would be conducted, with an additional third vessel potentially conducting daylight-only survey effort in shallow-water areas. The Renewal IHA authorizes harassment of marine mammals for a second year of identical survey activities to be completed in one year, in the same area, using survey methods identical to those described in the initial IHA application; therefore, the anticipated impacts on marine mammals and the affected stocks also remain the same.

Accordingly, the amount of take requested for the Renewal IHA is also identical to that authorized in the initial IHA. All active acoustic sources and mitigation and monitoring measures would remain exactly as described in the **Federal Register** notices of the initial proposed IHA (86 FR 17783; April 06, 2021) and issued initial final IHA (86 FR 26465; May 14, 2021).

The following documents are referenced in this notice and include important supporting information:

- Initial final IHA (86 FR 26465; May 14, 2021);
- Initial proposed IHA (86 FR 17783; April 06, 2021); and
- 2021 IHA application, references cited, and previous public comments received (available at *www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-llc-marine-site-characterization-surveys-new-jersey*).

Detailed Description of the Activity

A detailed description of the planned marine site characterization survey activities may be found in the **Federal Register** notice of the IHA (86 FR 17783; April 06, 2021) for the initial authorization. Ocean Wind plans to complete the survey activities analyzed in the initial IHA by the date the IHA expires (May 09, 2022). The surveys Ocean Wind plans to conduct under this renewal would be a second year of identical surveys in the same area. The general location and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The Renewal IHA is effective for a maximum period of one year from the date of issuance, with the expiration date not later than May 09, 2023 (one year from the expiration of the initial IHA).

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is planned here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (86 FR 17783; April 06, 2021). NMFS has reviewed the preliminary monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. Newly available information is described below.

The draft 2021 Stock Assessment Reports (SARs, available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*) provide updated information for several stocks. Estimated abundance has increased for the U.S. population of gray seals (from 27,131 (CV=0.19) to 27,300 (CV=0.22)). Abundance estimates have decreased for Risso's dolphins (from 35,493 (CV=0.19 to 35,215 (CV=0.19)) and harbor seals (from 75,834 (CV=0.15) to 61,336 (CV=0.08)). Abundance estimates for North Atlantic right whales have also been updated in the draft 2021 SAR, which states that right whale abundance has decreased from 412 to 368 (95% CI 356–378) individuals (Hayes *et al.,* 2021).

Roberts *et al.* (2021) provided updated modeling methodology (statistical methods for characterizing model uncertainty) with updated monthly densities of North Atlantic right whales since the time of the initial IHA. This model also incorporated additional data from spring 2019 which added transect and sighting data. The new model results slightly increased density estimates for North Atlantic right whales in southern New England, but these results do not meaningfully impact the information supporting exposure estimation in the survey area here.

In addition, NMFS has recently acknowledged that the population estimate of NARWs is now under 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). We anticipate that this information will be presented in the draft 2022 SAR. However, NMFS has determined that this change in abundance estimate would not change the estimated take of NARWs or authorized take numbers, nor affect our ability to make the required findings under the MMPA for the Ocean Wind survey activities. The status and trends of the NARW population remain unchanged.

NMFS has determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the **Federal Register** notice for the proposed initial IHA (86 FR 17783; April 06, 2021). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, other scientific literature, and the public comments, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed (86 FR 17783; April 06, 2021) and final (86 FR 26465; May 14, 2021) initial IHAs. The acoustic source types, as well as source levels applicable to this renewal authorization, methods of take, and methodology of estimating take remain unchanged from the initial IHA. Accordingly, the stocks taken, type of take (*i.e.,* Level B harassment only), and amount of take remain unchanged from what was previously authorized in the previously issued IHA. The amount of take authorized through this renewal is indicated below in Table 1.

TABLE 1—AUTHORIZED TAKE AND PROPORTION OF POPULATION POTENTIALLY AFFECTED

Species	Abundance estimate [1]	Takes by Level B harassment	% Population
North Atlantic right whale (*Eubalaena glacialis*)	[2] 368	9	2.44
Humpback whale (*Megaptera novaeangliae*)	1,396	2	0.14
Fin whale (*Balaenoptera physalus*)	6,802	6	0.09
Sei whale (*Balaenoptera borealis*)	6,292	1	0.02
Minke whale (*Balaenoptera acutorostrata*)	21,968	2	0.01
Sperm whale (*Physeter macrocephalus*)	4,349	3	0.07
Long-finned pilot whale (*Globicephala melas*)	39,215	2	0.01
Common bottlenose dolphin (offshore) (*Tursiops truncatus*)	62,851	262	0.42
Common bottlenose dolphin (migratory) (*Tursiops truncatus*)	6,639	1,410	21.24
Short-finned pilot whale (*Globicephala macrorhynchus*)	28,924	2	0.01
Atlantic white-sided dolphin (*Lagenorhynchus acutus*)	93,233	16	0.02
Atlantic spotted dolphin (*Stenella frontalis*)	39,921	3	0.01
Risso's dolphin (*Stenella frontalis*)	35,215	30	0.09
Common dolphin (*Delphinus delphis*)	172,974	124	0.07
Harbor porpoise (*Phocoena phocoena*)	95,543	91	0.10
Harbor seal (*Phoca vitulina*)	61,336	11	0.02
Gray seal (*Halichoerus grypus*)	451,431	11	0.00

W.N.A.=Western North Atlantic.

[1] Abundance estimates have been updated from the initial IHA (86 FR 26465; May 14, 2021) using the 2021 Draft SARs (Hayes *et al.,* 2021).

[2] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (86 FR 26465; May 14, 2021), and the discussion of the least practicable adverse impact included in that document remains applicable. All mitigation, monitoring and reporting measures in the initial IHA are carried over to this Renewal IHA and summarized below.

- *Exclusion Zones (EZ):* Marine mammal EZs would be established around the HRG survey equipment and monitored by PSOs during marine site characterization surveys as follows: A 500-m EZ for North Atlantic right whales during use of all acoustic sources, and a 100-m EZ for all other marine mammals during use of impulsive acoustic sources (*e.g.,* boomers and/or sparkers).
- *Ramp-up:* A ramp-up procedure would be used for HRG equipment capable of adjusting energy levels at the start or re-start of survey activities.
- *Shutdown of HRG Equipment:* If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above), an immediate shutdown of the HRG survey equipment would be required. If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (48 m, non-impulsive; 141 m impulsive), shutdown would occur.
- *Vessel strike avoidance measures:* Vessel strike measures include, but are not limited to, separation distances for large whales (500 m North Atlantic right whales, 100 m other large whales; 50 m other cetaceans and pinnipeds), restricted vessel speeds, and operational maneuvers.
- *Protected Species Observers (PSOs):* A minimum of one NMFS-approved PSO would be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and two active duty PSOs will be on watch during all nighttime operations.
- *Reporting:* Ocean Wind would submit a final technical report within 90 days following completion of the surveys. In the event that Ocean Wind personnel discover an injured or dead marine mammal, Ocean Wind shall report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator through the NOAA Fisheries Marine Mammal and Sea Turtle Stranding and Entanglement Hotline as soon as feasible. In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, Ocean Wind shall report the incident immediately to OPR, NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator through the NOAA Fisheries Marine Mammal and Sea Turtle Stranding and Entanglement Hotline.

Comments and Responses

A notice of NMFS' proposal to issue a Renewal IHA to Ocean Wind was published in the **Federal Register** April 11, 2022 (87 FR 21098). That notice either described, or referenced descriptions of, Ocean Wind's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received comments from Clean Ocean Action and Save Long Beach Island (LBI). The comments and our responses are summarized below, and the letters are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-llc-marine-site-characterization-surveys-new-jersey*). Please review the letters for full details regarding the comments and underlying justification. We note that LBI, in addition to providing comments via email, referenced and submitted a February 2022 letter originally submitted for a different action. Where appropriate, we respond herein to comments referenced from that letter. Full responses to the comments provided in that letter may be found in the notice of issuance of IHA to Atlantic Shores Offshore Wind, LLC (87 FR 24103; April 22, 2022).

Comment 1: LBI requested that NMFS extend the comment period for the proposed renewal IHA, asserting that the proposed renewal raises substantial concerns and that the proposed renewal notice does not provide sufficient

information on which to evaluate the proposed action.

Response: NMFS disagrees with LBI's comments and does not grant the request. NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA renewals (*e.g.,* 87 FR 24103; April 22, 2022, 84 FR 52464; October 2, 2019 and 85 FR 53342; August 28, 2020), NMFS has explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. The Notice of the proposed IHA published in the **Federal Register** on April 06, 2021 (86 FR 17783) made clear that the agency was seeking comment on the proposed IHA and the potential issuance of a renewal for this survey.

Because any renewal is limited to another year of identical or nearly identical activities in the same location or the same activities that were not completed within the 1-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one in the coming months. While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days. In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for renewals in the regulations, description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency's decision-making process'', as Congress intended.

Moreover, NMFS disagrees with LBI's assertions regarding the supposed ''substantial issues'' presented by the proposed issuance of the renewal IHA. NMFS has addressed these concerns in detail through response to LBI's February 2022 letter (87 FR 24103; April 22, 2022), which was attached to its comments on this proposed action and, as appropriate relative to its comments on this action, we reiterate certain of those responses below.

Comment 2: COA asserted that NMFS has failed to appropriately account for cumulative impacts, noting that this was specifically important given the large number of offshore wind-related activities being planned in the northeast region. LBI provided similar concerns regarding NMFS' evaluation of cumulative impacts.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this renewal IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Ocean Wind was the applicant for the renewal IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey; the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island; the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; and the 2019 Orsted EA for survey activities offshore southern New England. Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by Ocean Wind have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically

excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion for issuance of Ocean Wind's renewal IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the same geographic region have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued Atlantic Shores' 2020 IHA and subsequent 2021 renewal IHA (85 FR 21198; April 16, 2020 and 86 FR 21289; April 22, 2021), which are substantially similar to those planned by Ocean Wind under this current renewal IHA request and their previous 2021 IHA. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes, that while issuance of this renewal IHA is covered under a different consultation, this BiOp remains valid and the surveys currently planned by Ocean Wind from 2022 to 2023 could have fallen under the scope of those analyzed previously.

Comment 3: LBI stated that NMFS should ''consolidate'' its review of Ocean Wind's request for renewal IHA with the recent IHA request made by Atlantic Shores Offshore Wind, LLC, suggesting that activities occurring within the same ''specified geographical region'' should be considered singly. LBI notes that the respective survey activities are occurring during similar timeframes in similar spatial locations.

Response: NMFS disagrees with this comment. We reiterate that section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals, and will not result in an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses, and that the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is appropriately defined and described by the applicant. Please see the response to Comment #2, regarding NMFS' analysis of cumulative impacts.

NMFS is required to consider applications upon request. To date, NMFS has not received any joint application from Ocean Wind and Atlantic Shores regarding their site characterization surveys off of New Jersey (or from any joint entity). While an individual company owning multiple lease areas may apply for a single authorization to conduct site characterization surveys across a combination of those lease areas (see 85 FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022), this is not applicable in this case to the leases owned by Atlantic Shores and Orsted found off New Jersey. In the future, if applicants wish to undertake this approach, NMFS is open to the receipt of joint applications and additional discussions on joint actions.

Comment 4: COA asserted that NMFS is not using the best available science with regards to the North Atlantic right whale (NARW) population estimate and state that NMFS should be using the 336 estimate presented in the recent North Atlantic Right Whale Report Card (*https://www.narwc.org/report-cards.html*).

Response: While NMFS agrees that the best available science should be used for assessing NARW abundance estimates, we disagree that the North Atlantic Right Whale Report Card (*i.e.,* Pettis *et al.* (2022)) study represents the best available estimate for NARW abundance. Rather the revised abundance estimate (368; 95 percent with a confidence interval of 356–378) published by Pace (2021) (and subsequently included in the 2021 draft Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*)), which was used in the proposed renewal IHA, provides the most recent and best available estimate, and introduced improvements to NMFS' right whale abundance model. Specifically, Pace (2021) looked at a different way of characterizing annual estimates of age-specific survival. NMFS considered all relevant information regarding NARW, including the information cited by the commenters. However, NMFS relies on the SAR. Recently (after publication of the notice of proposed renewal IHA), NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). We anticipate that this information will be presented in the draft 2022 SAR. We note that this change in abundance estimate would not change the estimated take of NARWs or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Ocean Wind's survey activities.

NMFS further notes that the commenters seem to be conflating the phrase ''best available data'' with ''the most recent data.'' The MMPA specifies that the ''best available data'' must be used, which does not always mean the most recent. As is NMFS' prerogative, we referenced the best available NARW abundance estimate of 368 from the draft 2021 SARs as NMFS's determination of the best available data that we relied on in our analysis. The Pace (2021) results strengthened the case for a change in mean survival rates after 2010–2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model. Furthermore, NMFS notes that the SARs are peer reviewed by other scientific review groups prior to being finalized and published and that the North Atlantic Right Whale Report Card (Pettis *et al.,* 2022) does not undertake this process.

Comment 5: COA and LBI assert that Level A harassment is reasonably likely to occur, and that this was not accounted for in NMFS' analysis.

Response: NMFS acknowledges the concerns brought up by the commenters regarding the potential for Level A harassment of marine mammals. However, no Level A harassment is expected to result, even in the absence of mitigation, given the characteristics of the sources planned for use. This is additionally supported by the required mitigation and very small estimated Level A harassment zones. Furthermore, the commenters do not provide any persuasive support for the apparent contention that Level A harassment is a potential outcome of these activities.

NMFS acknowledges that sufficient disruption of behavioral patterns could theoretically, likely in connection with other stressors, result in a reduction in fitness and ultimately injury or mortality. However, such an outcome could likely result only from repeated disruption of important behaviors at critical junctures, or sustained displacement from important habitat with no associated compensatory ability. NMFS has thoroughly analyzed the potential effects of noise exposure resulting from the specified activity and, as discussed in the initial notice of proposed IHA (see Potential Effects of Specified Activities on Marine Mammals and Their Habitat) and in this notice (see Negligible Impact Analysis and Determination), no such effects are

reasonably anticipated to occur as a result of this activity. Therefore, no such outcome is expected as a result of these surveys. NMFS considers this category of survey operations to be near *de minimis,* with the potential for Level A harassment for any species to be discountable. Please refer also to NMFS' response to comment 2.

Comment 6: COA and LBI do not agree with NMFS' negligible impact and small numbers findings for NARWs. Additionally, LBI finds fault with NMFS' approach to the small numbers determination, suggesting that a limit of one-third of the most relevant population abundance estimate is not appropriate and inconsistent with a prior court decision, citing the *NRDC* v. *Evans* decision of October 31, 2002. LBI goes on to suggest reevaluating the small numbers finding with specific regard to endangered species like NARW.

Response: NMFS disagrees with the commenters' position regarding the negligible impact analysis, and the commenters do not provide a reasoned basis for finding that the effects of the specified activity would be greater than negligible on any species or stock. The Negligible Impact Analysis and Determination section of the initial and proposed renewal IHA (86 FR 26465; 87 FR 21098) provides a detailed qualitative discussion supporting NMFS' determination that any anticipated impacts from this action would be negligible. The section contains a number of factors that were considered by NMFS based on the best available scientific data and why we concluded that impacts resulting from the specified activity are not reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

With specific regard to NARW, we note that take is authorized for only a very small percentage of the right whale population (see Table 1). We further note that Ocean Wind's previous monitoring report (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-llc-marine-site-characterization-surveys-new-jersey*) indicates that no right whales were taken during the previous activity. However, the numbers of potential incidents of take or animals taken are only part of an assessment and are not, alone, decisively indicative of the degree of impact. In order to adequately evaluate the effects of noise exposure at the population level, the total number of take incidents must be further interpreted in context of relevant biological and population parameters and other biological, environmental, and anthropogenic factors and in a spatially and temporally explicit manner. The effects to individuals of a ''take'' are not necessarily equal. Some take events represent exposures that only just exceed a Level B harassment threshold, which would be expected to result in lower-level impacts, while other exposures occur at higher received levels and would typically be expected to have comparatively greater potential impacts on an individual. Further, responses to similar received levels may result in significantly different impacts on an individual dependent upon the context of the exposure or the status of the individuals (*e.g.,* if it occurred in an area and time where concentrated feeding was occurring, or to individuals weakened by other effects). In this case, NMFS reiterates that no such higher level takes are expected to occur. The maximum anticipated Level B harassment zone is 141 m, a distance smaller than the precautionary shutdown zone of 500 m. To the extent that any exposure of NARW does occur, it would be expected to result in lower-level impacts that are unlikely to result in significant or long-lasting impacts to the exposed individual and, given the relatively small amount of exposures expected to occur, it is unlikely that these exposures would result in population-level impacts. NMFS acknowledges that impacts of a similar degree on a proportion of the individuals in a stock may have differing impacts to the stock based on its status, *i.e.,* smaller stocks may be less able to absorb deaths or reproductive suppression and maintain similar growth rates as larger stocks. However, even given the precarious status of the NARW, the low-level nature of the impacts expected to occur for only a few individuals means that the population status does not weigh meaningfully in NMFS' consideration of population-level impacts. The commenters provide no substantive reasoning to contradict this finding, and do not support their assertions of effects greater than NMFS has assumed may occur.

Additionally, the initial IHA was subject to a section 7 consultation, with NMFS Greater Atlantic Regional Fisheries Office (GARFO) as the consulting agency. NMFS GARFO determined that issuance of the initial IHA to Ocean Wind was not likely to adversely affect listed species or the critical habitat of any ESA-listed species or result in the take of any marine mammals in violation of the ESA. During the initial consultation, GARFO considered the potential for a renewal. The proposed renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require re-initiation of the Opinion; therefore, the incidental take statement issued for the initial IHA remains valid.

NMFS disagrees with LBI's arguments on the topic of small numbers. Although there is limited legislative history available to guide NMFS and an apparent lack of biological underpinning to the concept, we have worked to develop a reasoned approach to small numbers. NMFS explains the concept of ''small numbers'' in recognition that there could also be quantities of individuals taken that would correspond with ''medium'' and ''large'' numbers. As such, NMFS considers that one-third of the most appropriate population abundance number—as compared with the assumed number of individuals taken—is an appropriate limit with regard to ''small numbers.'' This relative approach is consistent with the statement from the legislative history that ''[small numbers] is not capable of being expressed in absolute numerical limits'' (H.R. Rep. No. 97–228, at 19 (September 16, 1981)), and relevant case law (*Center for Biological Diversity* v. *Salazar,* 695 F.3d 893, 907 (9th Cir. 2012) (holding that the U.S. Fish and Wildlife Service reasonably interpreted ''small numbers'' by analyzing take in relative or proportional terms)). In regards to LBI's suggestion that the one-third number is inconsistent with prior caselaw, we note that LBI cited the *NRDC* v. *Evans* decision of October 31, 2002 (232 F. Supp. 2d 1003), which was related to the plaintiffs' motion for a preliminary injunction. Ultimately, after parties' cross-motions for summary judgment, the Evans court held that NMFS' regulatory definition of small numbers (which NMFS did not apply here) improperly conflated the small numbers and negligible impact issues. *NRDC* v. *Evans,* 279 F. Supp. 2d 1129 (N.D. Cal. 2003). Contrary to LBI's suggestion, the Evans court expressly stated that it was not setting any numerical limit for small numbers. *NRDC* v. *Evans*, 279 F. Supp. 2d at 1153. As for LBI's suggestion to reconsider small numbers specifically for NARW, the argument to establish a small numbers threshold on the basis of stock-specific context is unnecessarily duplicative of the required negligible impact finding, in which relevant biological and contextual factors are considered in conjunction with the amount of take.

Comment 7: COA is concerned regarding the number of species that could be impacted by the activities, as

well as a lack of baseline data being available for species (in particular, harbor seals) in the area. In addition, COA has stated that NMFS did not adequately address the potential for cumulative impacts to bottlenose dolphins from Level B harassment over several years of project activities.

Response: We appreciate the concern expressed by COA. NMFS utilizes the best available science when analyzing which species may be impacted by an applicant's proposed activities. Based on information found in the scientific literature, as well as based on density models developed by Duke University, all marine mammal species included in the proposed renewal **Federal Register** Notice have some likelihood of occurring in Ocean Wind's survey areas. Furthermore, the MMPA requires us to evaluate the effects of the specified activities in consideration of the best scientific evidence available and, if the necessary findings are made, to issue the requested take authorization. The MMPA does not allow us to delay decision making in hopes that additional information may become available in the future. Furthermore, NMFS notes that it has previously addressed discussions on cumulative impact analyses in previous comments and references COA back to these specific responses in this Notice. Regarding the lack of baseline information cited by COA, with specific concern pointed out for harbor seals, NMFS points towards two sources of information for marine mammal baseline information: The Ocean/Wind Power Ecological Baseline Studies, January 2008–December 2009 completed by the New Jersey Department of Environmental Protection in July 2010 (*https://dspace.njstatelib.org/xmlui/handle/10929/68435*) and the Atlantic Marine Assessment Program for Protected Species (AMAPPS; *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/atlantic-marine-assessment-program-protected*) with annual reports available from 2010 to 2020 (*https://www.fisheries.noaa.gov/resource/publication-database/atlantic-marine-assessment-program-protected-species*) that cover the areas across the Atlantic Ocean. NMFS has duly considered this and all available information. Based on the information presented, NMFS has determined that no new information has become available, nor do the commenters present additional information, that would change our determinations since the publication of the proposed notice.

Comment 8: LBI suggested that the notice lacks sufficient technical data, and referred to their February 2022 letter in which it requested that NMFS explain why a 20 dB transmission loss coefficient was applicable to the analysis or to present a new analysis using a 15 dB transmission loss coefficient.

NMFS' response: NMFS first acknowledges that the notice of proposed renewal IHA does not include the same level of technical information as was presented in the initial notice of proposed IHA. This was purposeful, as the information relied upon is the same as that presented in the initial notice, and in the proposed renewal notice, NMFS referred the reader to those initial notices, stating that the notices provide important supporting information (*e.g.,* initial proposed IHA notice; 86 FR 17783; April 06, 2021).

In its February 2022 letter providing comments on the proposed issuance of an IHA to Atlantic Shores, LBI states that NMFS' assumption that use of a 20logR transmission loss factor (*i.e.,* spherical spreading) is inappropriate, and states that ''According to a number of scientific sources, the use of a noise propagation loss coefficient of 20 dB per tenfold increase in distance represents ''spherical spreading'' and is only appropriate in the ''near field'' where the calculated horizontal distance is comparable with the water depth.'' NMFS disagrees with that comment, and reiterates its response below. NMFS also notes that LBI did not cite any such scientific sources, so NMFS must evaluate LBI's recommendations based only on its comment.

A major component of transmission loss is spreading loss and, from a point source in a uniform medium, sound spreads outward as spherical waves (''spherical spreading'') (Richardson *et al.,* 1995). In water, these conditions are often thought of as being related to deep water, where more homogenous conditions may be likely. However, the theoretical distinction between deep and shallow water is related more to the wavelength of the sound relative to the water depth, versus to water depth itself. Therefore, when the sound produced is in the kilohertz range, where wavelength is relatively short, much of the continental shelf may be considered ''deep'' for purposes of evaluating likely propagation conditions.

As described in the initial notice of proposed IHA, the area of water ensonified at or above the root mean square (RMS) 160 dB threshold was calculated using a simple model of sound propagation loss, which accounts for the loss of sound energy over increasing range. Our use of the spherical spreading model (where propagation loss = 20 * log [range]; such that there would be a 6-dB reduction in sound level for each doubling of distance from the source) is a reasonable approximation over the relatively short ranges involved. Even in conditions where cylindrical spreading (where propagation loss = 10 * log [range]; such that there would be a 3-dB reduction in sound level for each doubling of distance from the source) may be appropriate (*e.g.,* non-homogenous conditions where sound may be trapped between the surface and bottom), this effect does not begin at the source. In any case, spreading is usually more or less spherical from the source out to some distance, and then may transition to cylindrical (Richardson *et al.,* 1995). For these types of surveys, NMFS has determined that spherical spreading is a reasonable assumption even in relatively shallow waters (in an absolute sense) as the reflected energy from the seafloor will be much weaker than the direct source and the volume influenced by the reflected acoustic energy would be much smaller over the relatively short ranges involved.

In support of its position, LBI cites several examples of use of practical spreading (a useful real-world approximation of conditions that may exist between the theoretical spreading modes of spherical and cylindrical; 15logR) in asserting that this approach is also appropriate here. However, these examples (U.S. Navy construction at Newport, RI, and NOAA construction in Ketchikan, AK) are not relevant to the activity at hand. First, these actions occur in even shallower water (*e.g.,* less than 10 m for Navy construction). Of greater relevance to the action here, pile driving activity produces sound with longer wavelengths than the sound produced by the acoustic sources planned for use here. As noted above, a determination of appropriate spreading loss is related to the ratio of wavelength to water depth more than to a strict reading of water depth. NMFS indeed uses practical spreading in typical coastal construction applications, but for reasons described here, uses spherical spreading when evaluating the effects of HRG surveys on the continental shelf. In addition, this analysis is likely conservative for other reasons, *e.g.,* the lowest frequency was used for systems that are operated over a range of frequencies and other sources of propagation loss are neglected.

NMFS has determined that spherical spreading is the most appropriate form of propagation loss for these surveys

and has relied on this approach for past IHAs with similar equipment, locations, and depths. Please refer back to the 2022 Atlantic Shores HRG IHA (87 FR 24103; April 22, 2022), Garden State HRG IHA (83 FR 14417; April 4, 2018) and the 2019 Skipjack HRG IHA (84 FR 51118; September 27, 2019) for examples. Prior to the issuance of these IHAs (approximately 2018 and older), NMFS typically relied upon practical spreading for these types of survey activities. However, as additional scientific evidence became available, including numerous sound source verification reports, NMFS determined that this approach was inappropriately conservative and, since that time, as consistently used spherical spreading. Furthermore, NMFS' User Spreadsheet tool assumes a ''safe distance'' methodology for mobile sources where propagation loss is spherical spreading (20LogR) (*https://media.fisheries.noaa.gov/2020-12/User_Manual%20_DEC_2020_508.pdf?null*), and NMFS calculator tool for estimating isopleths to Level B harassment thresholds also incorporates the use of spherical spreading.

Determinations

The survey activities planned by Ocean Wind are identical to those analyzed in the initial IHA, including the planned number of days and general location of activity (*i.e.,* OCS–A 0498 and OCS–A 0532), as are the method of taking and the effects of the action. Therefore, the amount of authorized take is unchanged from that authorized in the initial IHA. The potential effects of Ocean Wind's activities remain limited to Level B harassment in the form of behavioral disturbance. No serious injury or mortality of marine mammal is anticipated. In analyzing the effects of the activities in the initial IHA, NMFS determined that Ocean Wind's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of Ocean Wind's monitoring report and changes in estimated abundances of the affected stocks. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will affect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Ocean Wind's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our final action (*i.e.,* the issuance of an incidental harassment authorization) 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 Renewal IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (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, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources is authorizing the incidental take of four species of marine mammals that are listed under the ESA: The North Atlantic right, fin, sei and sperm whales. We requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on February 04, 2021, for the issuance of the initial IHA. NMFS GARFO determined that issuance of the IHA to Ocean Wind is not likely to adversely affect the North Atlantic right, fin, sei, and sperm whale or the critical habitat of any ESA-listed species or result in the take of any marine mammals in violation of the ESA, and at this time considered the potential for a renewal. The Renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require re-initiation of the Opinion; therefore, the incidental take statement issued for the initial IHA remains valid.

Renewal

NMFS has issued a Renewal IHA to Ocean Wind for the take of marine mammals incidental to conducting marine site characterization surveys offshore of New Jersey, from May 10, 2022 to May 09, 2023.

Dated: May 10, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–10389 Filed 5–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC029]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Recreational Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, June 1, 2022, at 9:30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/8625727416827386891.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Recreational Advisory Panel will meet to discuss development of draft specifications and measures: Status determination criteria, rebuilding plans for Gulf of Maine (GOM) cod and Southern New England/Mid-Atlantic (SNE/MA) winter flounder, FY2023–24 US/CA total allowable catches, FY2023–24 specifications: Georges Bank (GB) yellowtail flounder and GB cod (including a catch target for the recreational fishery), FY2023–25 specifications for 14 stocks, additional measures to promote stock rebuilding for GOM cod and SNE/MA winter flounder, and revised acceptable biological catch control rules, in consultation with the Scientific and Statistical Committee. They will also discuss a Council priority to develop a transition plan for Atlantic cod management from the current two management unit to up to five management units (multi-year priority). As a part of the transition plan, there will be a white paper on potential approaches to allocate ''Georges Bank cod'' to the recreational fishery delivered in 2022 to inform the 2023 priorities discussion.

The panel will review the current list of Council research priorities and suggest changes or additions to the list. Other business, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 9, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–10334 Filed 5–12–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds product(s) and service(s)to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* May 29, 2022 and June 12, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 51/7/2022; 2/4/2022; and 2/25/2022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s): 7520–00–NIB–2491—Pen, All-Weather, Cord Loop, Black Ink, 1mm point
Designated Source of Supply: Alphapointe, Kansas City, MO
Mandatory For: Total Government Requirement
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS ADMIN SVCS ACQUISITION BR(2
Distribution: A-List

NSN(s)—Product Name(s):
MR 10831—Container, Carrot and Dip To Go, Includes Shipper 20831
MR 10816—Marvel Toys, Includes Shipper 20816
MR 10819—Celery & Dip to Go, Includes Shipper 20819
MR 10795—Party Popper Cake Topper, Includes Shipper 20795
MR 13501—Wing Corkscrew
MR 13502—Double Waiters Corkscrew
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
Mandatory For: The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4
Contracting Activity: Military Resale-Defense Commissary Agency
Distribution: C-List

Service(s)

Service Type: Acquisition Support Services
Mandatory for: U.S. Coast Guard, Surface Forces Logistics Center, Baltimore, MD, Norfolk, VA and Oakland, CA
Mandatory Source of Supply: Skookum Educational Programs, Bremerton, WA
Contracting Activity: U.S. COAST GUARD, SFLC PROCUREMENT BRANCH 3(00040)

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of

the U.S. Coast Guard, Acquisition Support Services, Baltimore, MD, Norfolk, VA & Oakland, CA contract. The Federal customer contacted and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the U.S. Coast Guard will refer its business elsewhere, this addition must be effective on May 29, 2022, ensuring timely execution for a June 1, 2022, start date while still allowing 16 days for comment. Pursuant to its own regulation 41 CFR 51–2.4, the Committee has been in contact with one of the affected parties, the incumbent of the expiring contract, since June 2021 and determined that no severe adverse impact exists. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on January 7, 2022 and did not receive any comments from any interested persons, including from the incumbent contractor. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–10313 Filed 5–12–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) and service(s) to the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: June 12, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s): MR 13109—Cookie Tool, Scoop N' Cut
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
7510–00–224–7676—Felt Stamp Pad, Size #1, 2¾″ x 4¼″, Un-Inked
7510–00–526–1741—Foam Stamp Pad, Size #2, 3¼″ x 6¼″, Un-Inked
7510–01–431–6518—Felt Stamp Pad, Size #1, 2¾″ x 4¼″, Red
7510–01–431–6519—Foam Stamp Pad, Size #2, 3¼″ x 6¼″, Red
7510–01–431–6521—Felt Stamp Pad, Size #1, 2¾″ x 4¼″, Black
7510–01–431–6522—Foam Stamp Pad, Size #2, 3¼″ x 6¼″, Black
7510–00–526–1740—Foam Stamp Pad, Size #3, 4½″ x 7½″, Uninked
7510–00–231–6531—Felt Stamp Pad, Size #2, 3¼″ x 6¼″, Un-Inked
7510–00–526–1742—Foam Stamp Pad, Size #1, 2¾″ x 4½″, Un-Inked
7510–01–431–6517—Foam Stamp Pad, Size #1, 2¾″ x 4½″, Red
7510–01–431–6523—Felt Stamp Pad, Size #2, 3¼″ x 6¼″, Black
7510–01–431–6524—Foam Stamp Pad, Size #3, 4½″ x 7½″, Black
7510–01–431–6525—Foam Stamp Pad, Size #1, 2¾″ x 4½″, Black
7510–01–431–6526—Foam Stamp Pad, Size #3, 4½″ x 7½″, Red
7510–01–431–8625—Felt Stamp Pad, Size #2 3¼″ x 6¼″, Red
7520–00–117–5627—Fingerprint Pad, Size #1, 2¾″ x 4½″, Black
Designated Source of Supply: NYSARC, Inc., Cattaraugus Niagara Counties Chapter, Olean, NY
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s): 7520–00–281–5896—Stapler, Long Reach, 12″ Throat, Black
Designated Source of Supply: Access: Supports for Living Inc., Middletown, NY
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
7510–01–664–8785—DAYMAX System, 2021 Calendar Pad, Type I
7510–01–664–8814—DAYMAX System, 2021, Calendar Pad, Type II
Designated Source of Supply: Anthony Wayne Rehabilitation Ctr for Handicapped and Blind, Inc., Fort Wayne, IN
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Janitorial/Custodial
Mandatory for: U.S. Fish and Wildlife Service, Great Swamp National Wildlife Refuge, 241 Pleasant Plains Road, Basking Ridge, NJ
Designated Source of Supply: Employment Horizons, Inc., Cedar Knolls, NJ
Contracting Activity: U.S. Fish and Wildlife Service, Contracting and General Services Div

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–10317 Filed 5–12–22; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2022–HQ–0003]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 13, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exchange Employment Applications; Exchange Forms 1200–718 and 1200–026; OMB Control Number 0702–0133.

Type of Request: Revision.

Number of Respondents: 111,660.

Responses per Respondent: 1.

Annual Responses: 111,660.

Average Burden per Response: 30.29 minutes.

Annual Burden Hours: 56,369.69.

Needs and Uses: This information collection covers the documentation related to the employment of individuals to the Army and Air Force Exchange Service (Exchange) within the Continental United States of America (CONUS) and Exchange facilities outside the Continental United States of America (OCONUS). The collection allows the Exchange to capture the essential information required to evaluate applicants for Exchange civilian opportunities in order to hire the best, qualified individuals empowering the Exchange's mission of enhancing the quality of life for members of the U.S. Military.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: May 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10307 Filed 5–12–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0052]

Proposed Collection; Comment Request

AGENCY: Cost Assessment and Program Evaluation (CAPE), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* CAPE announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 12, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to OSD CAPE, 1800 Defense Pentagon, Room BE798, Washington, DC 20301–1800, Kelly Hazel, or call (703) 614–5397.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Software Resource Data Reports; DD Forms 3026–1, 3026–2, 3026–3; OMB Control Number 0704–SRDR.

Needs and Uses: The intent of the Software Resource Date Reports is to capture software resource and effort data, at the Software Release and Computer Software Configuration Item levels that are significant either for a current program, or when a similar effort may be required for a future program. The collected data is the primary data source utilized when completing cost estimates. Respondents are any weapon system contractor or government entity with contracts, subcontracts, or agreements that are required to provide Cost and Software Data Reports based on all anticipated costs that individually or collectively surpass the corresponding dollar thresholds established in DoDI 5000.73.

Affected Public: Individuals and households.

Annual Burden Hours: 2,946

Number of Respondents: 13.

Responses per Respondent: 12.

Annual Responses: 156.

Average Burden per Response: 16 hours.

Frequency: Annually.

CAPE is statutorily required by Title 10, United Stated Code (U.S.C.) in Section 2334(g), to ''develop policies, procedures, guidance and a collection method to ensure that quality acquisition cost data are collected to facilitate cost estimation and comparison across acquisition programs.'' Section 2334(g) also contains a $100,000,000 threshold statutory requirement for providing cost data from each acquisition program that exceeds this amount.

Dated: May 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10311 Filed 5–12–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees—Board of Visitors, Marine Corps University

AGENCY: Department of Defense (DoD).

ACTION: Charter renewal of Federal advisory committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the charter for the Board of Visitors, Marine Corps University (BoV MCU).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

SUPPLEMENTARY INFORMATION: The BoV MCU's charter is being renewed pursuant to 10 U.S.C. 8592(d) and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix) and 41 CFR 102–3.50(a). The charter and contact information for the BoV MCU's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

Pursuant to 10 U.S.C. 8592(d), the BoV MCU was established so as to meet all requirements of the appropriate regional accrediting association. Additionally, the BoV MCU provides the Secretary of Defense with independent advice and recommendations on matters pertaining to the Marine Corps University (MCU) and U.S. Marine Corps professional military education programs. The BoV MCU shall provide advice and recommendations on academic and administrative matters critical to the full accreditation and successful operation of the MCU.

The BoV MCU shall be composed of at least seven and not more than 11 members who are eminent authorities in the fields of defense, academic administration, international affairs and/or leadership. Individual members will be appointed in accordance with DoD policy and procedures, and members will serve a term of service of one-to-four years with annual renewals.

One member, according to DoD policy and procedures, will be appointed as Chair of the BoV MCU. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the BoV MCU, to include its subcommittees, or serve on more than two DoD federal advisory committees at one time.

Members of the BoV MCU who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. BoV MCU members who are full-time or permanent part-time Federal officers or employees will be appointed, pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All members of the BoV MCU are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

Except for reimbursement of official BoV MCU-related travel and per diem expenses, members serve without compensation.

The public or interested organizations may submit written statements to the BoV MCU membership about the BoV MCU's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the BoV MCU. All written statements shall be submitted to the DFO for the BoV MCU, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: May 10, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10403 Filed 5–12–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0053]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 12, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Collection of Required Data Elements to Verify Eligibility; OMB Control Number 0704–0545.

Needs and Uses: Defense Manpower Data Center (DMDC) has implemented the Office of Personnel Management (OPM) Verification portal to provide a self-service, easy to use, navigable public facing website that allows individuals potentially impacted by the OPM data breach to securely provide personal identifiable information in order to investigate their eligibility for credit monitoring as a result of being affected by the OPM background investigation data breach without calling a Government call center. The information collected will be used only to verify whether an individual was impacted by the OPM cybersecurity incident involving background investigation records and to send a letter confirming status as ''impacted'' or ''not impacted'' by this incident. Once the minimally required information has been entered into the OPM Verification portal, it will be compared to an electronic master file and verification will be accomplished electronically. After the Government has validated the individual's status, the DMDC will

generate and mail a response letter. This letter will either confirm eligibility and contain a pin for impacted individuals, or confirm that the individual was not impacted by this cybersecurity incident.

Affected Public: Individuals or households.

Annual Burden Hours: 4,166.67.

Number of Respondents: 50,000.

Responses per Respondent: 1.

Annual Responses: 50,000.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: May 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10321 Filed 5–12–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees—U.S. Army Science Board

AGENCY: Department of Defense (DoD).

ACTION: Charter renewal of Federal advisory committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the U.S Army Science Board (ASB).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

SUPPLEMENTARY INFORMATION: The ASB is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., appendix) and 41 CFR 102–3.50(d). The charter and contact information for the ASB's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The ASB provides the Secretary of Defense and the Deputy Secretary of Defense (''the DoD Appointing Authority''), through the Secretary of the Army, independent advice and recommendations related to the Department of the Army's scientific, technical, manufacturing, acquisition, logistics, and business management functions. The ASB shall be composed of no more than 20 members who are eminent authorities in one or more of the following disciplines and fields: Science; technology; manufacturing; acquisition; logistics; business management functions natural (*e.g.,* biology, ecology), social (*e.g.,* anthropology, community planning), and related sciences; and other matters of special interest to the DoD Appointing Authority or the Secretary of the Army.

Individual members are appointed according to DoD policy and procedures, and serve a term of service of one-to-four years with annual renewals. One member will be appointed as Chair of the ASB. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the ASB, or serve on more than two DoD Federal advisory committees at one time.

ASB members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, are appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. ASB members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services are appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All ASB members are appointed to provide advice based on their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official ASB-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements about the ASB's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the ASB. All written statements shall be submitted to the DFO for the ASB, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: May 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10402 Filed 5–12–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0030]

Submission for OMB Review; Comment Request

AGENCY: Defense Counterintelligence and Security Agency (DCSA), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 13, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Contract Security Classification Specification; DD Form 254; OMB Control Number 0704–0567.

Type of Request: Revision.

Number of Respondents: 8,000.

Responses per Respondent: 6.

Annual Responses: 48,000.

Average Burden per Response: 36 minutes.

Annual Burden Hours: 28,800.

Needs and Uses: Pursuant to 48 CFR 27, in conjunction with subpart 4.4 of the Federal Acquisition Regulation, contracting officers shall determine whether access to classified information may be required by a contractor during contract performance. DoD Components shall use the DD Form 254, ''Contract Security Classification Specification,'' as an attachment to contracts or agreements requiring access to classified information by U.S. contractors. The DD Form 254 is used to identify the classified areas of information involved in a contract and the specific items of information that require protection. The National Industrial Security Program Contract Classification System (NCCS) is the electronic repository for the DD Form 254. NCCS expedites the processing and distribution of contract classification specifications for contracts requiring access to classified information. NCCS also has a built-in automated process for the Request for Approval to Subcontract and provides workflow support for the Facility Clearance Request and National Interest Determination processes.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: May 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10308 Filed 5–12–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0014]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 12, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Naval Postgraduate School, 1 University Circle, Monterey, CA 93943, ATTN: Dr. Kathryn Aten, or call (831) 656–2644.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Optimized Fleet Response Plan Phase Variation in Signature and Destructive Behaviors; OMB Control Number 0703–OFRP.

Needs and Uses: Congruent with research findings, the Chief of Naval Operations has directed the Navy to create a ''Culture of Excellence,'' noting that by focusing on positive, signature behaviors, the Navy can build and sustain a lethal force of tough sailors who are ethical and masters of their trade. The Navy has identified ten signature behaviors to drive a culture of excellence: Treat every person with respect, take responsibility, hold others accountable, intervene, when necessary, be a leader and encourage leadership, embrace diversity, uphold integrity, exercise discipline, and contribute to team success.

The Culture of Excellence Campaign's Perform to Plan effort will empower warfighting capability by fostering psychological, physical, and emotional toughness. To meet this goal, the Navy needs to understand what encourages signature behaviors and reduces destructive behaviors and how these behaviors impact readiness. The overarching aim of this study is to support this effort. The study will answer three questions: (1) What are the rates of signature and destructive behaviors during three phases of Optimized Fleet Response Plan (OFRP)? (2) Do rates differ by organizational command (department)? (3) How do signature and destructive behaviors impact readiness?

Researchers will utilize a mixed-methods, explanatory sequential design where the first phase will be quantitative (survey) followed by a qualitative phase (interviews) to elaborate on the quantitative findings. The team will ascertain the rates of signature and destructive behaviors and differences across selected command types by collecting self-report survey data on the prevalence of selected signature and destructive behaviors from sailors in different phases of the OFRP and in selected different command types. The team will compare the data across phases and selected commands to assess differences and identify patterns. The team will investigate how selected signature and destructive behaviors affect readiness through quantitative and qualitative data collection and analysis.

Affected Public: Individuals or households.

Annual Burden Hours: 292.5.

Number of Respondents: 585.

Responses per Respondent: 1.

Annual Responses: 585.

Average Burden per Response: 30 minutes.

Frequency: One-time.

Dated: May 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10318 Filed 5–12–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0007]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 13, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Navy Flight Demonstration Squadron (Blue Angels) Backseat Rider Programs Forms; OPNAV Forms 5720/13, 5720/14, and 5720/15; OMB Control Number 0703–0073.

Type of Request: Revision.

Number of Respondents: 384.

Responses per Respondent: 1.25.

Annual Responses: 480.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 240.

Needs and Uses: This information collection requirement is necessary to medically clear and coordinate with individuals selected through the Key Influencer program and media personnel so that they may participate in backseat flights at Blue Angels' air shows and demonstrations. Flying these candidates, in coordination with media presence, is intended to promote the Navy and Marine Corps as professional and exciting organizations in which to serve. The completed forms certify that the selected individuals are physically fit to fly and that the Blue Angels Public Affairs staff are able to coordinate flight information with respondents. If these forms are not completed, Blue Angels' staff cannot be readily assured of the physical fitness, qualifications and contact information of respondents. Having these forms reviewed by medical personnel and public affairs staff is essential in maintaining the safety and integrity of the Navy Flight Demonstration Backseat Rider process and program.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: May 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10305 Filed 5–12–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–26–000.

Applicants: Liberty Utilities Co., Kentucky Power Company, AEP Kentucky Transmission Company, Inc.

Description: Liberty Utilities Company, et. al. submits Supplemental Information in Response to FERC April 25, 2022 Deficiency Letter.

Filed Date: 5/5/22.

Accession Number: 20220505–5174.

Comment Date: 5 p.m. ET 5/26/22.

Docket Numbers: EC22–63–000.

Applicants: Alliance Energy Group LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Greeley Energy Facility, LLC.

Filed Date: 5/9/22.

Accession Number: 20220509–5053.

Comment Date: 5 p.m. ET 5/30/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–114–000.

Applicants: Great Prairie Wind, LLC.

Description: Great Prairie Wind, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 5/9/22.

Accession Number: 20220509–5116.

Comment Date: 5 p.m. ET 5/30/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1079–000.

Applicants: Pacific Gas and Electric Company.

Description: Refund Report: CCSF Sunol Additional Refund Compliance Filing (SA 275) to be effective N/A.

Filed Date: 5/6/22.

Accession Number: 20220509–5000.

Comment Date: 5 p.m. ET 5/27/22.

Docket Numbers: ER22–1707–000.

Applicants: Duquesne Light Company.

Description: Duquesne Light Company Requests Authorization to use Incentive Rate Treatment of 100 Percent CWIP, Related to Its Investments in the Brunot Island—Carson 345 kV Underground Cable Forced Cooling Project.

Filed Date: 4/26/22.

Accession Number: 20220426–5331.

Comment Date: 5 p.m. ET 5/17/22.

Docket Numbers: ER22–1811–000.

Applicants: Wisconsin Power and Light Company.

Description: Initial rate filing: WPL-Kossuth Assignment Co-Tenancy and SFA to be effective 5/7/2022.

Filed Date: 5/6/22.

Accession Number: 20220506–5176.

Comment Date: 5 p.m. ET 5/27/22.

Docket Numbers: ER22–1812–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6429; Queue No. AC2–023 to be effective 4/6/2022.

Filed Date: 5/6/22.

Accession Number: 20220506–5187.

Comment Date: 5 p.m. ET 5/27/22.

Docket Numbers: ER22–1813–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Escambia County Solar (Hybrid Project) LGIA Filing to be effective 4/26/2022.

Filed Date: 5/9/22.

Accession Number: 20220509–5015.

Comment Date: 5 p.m. ET 5/30/22.

Docket Numbers: ER22–1814–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6453; Queue No. AE2–133 to be effective 4/7/2022.

Filed Date: 5/9/22.

Accession Number: 20220509–5035.

Comment Date: 5 p.m. ET 5/30/22.

Docket Numbers: ER22–1815–000.

Applicants: Mulligan Solar, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 7/8/2022.
Filed Date: 5/9/22.
Accession Number: 20220509–5064.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1816–000.
Applicants: Florida Power & Light Company.
Description: Tariff Amendment: Termination of TFCAT between FPL and Southern to be effective 5/31/2023.
Filed Date: 5/9/22.
Accession Number: 20220509–5071.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1817–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: Amendment to RS No. 329 Certificate of Concurrence between FPL and Southern to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5072.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1818–000.
Applicants: Gulf Power Company.
Description: Tariff Amendment: Notice of Cancellation of eTariff .Records—Agreements to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5073.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1819–000.
Applicants: Gulf Power Company.
Description: Tariff Amendment: Notice of Cancellation of eTariff Records—Cost Based Rate Tariffs to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5074.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1820–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company, Southern Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Amended and Restated IIC Filing (Gulf Exiting Pool) to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5076.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1821–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: FPL NITSA Termination Filing (Gulf Exiting Pool) to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5077.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1822–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: FP&L NITSA Filing to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5078.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1823–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: FPL (885 MW) Long-Term Firm PTP Agreement Filing to be effective 6/1/2022.
Filed Date: 5/9/22.
Accession Number: 20220509–5080.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1824–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: FPL (Daniel 1&2) Long-Term Firm PTP Agreement Amendment Filing (Gulf Exit) to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5081.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1825–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: FPL (Scherer 3) Long-Term Firm PTP Agreement Amendment Filing (Gulf Exit) to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5082.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1826–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: FPL (Kingfisher I) Long-Term Firm PTP Agreement Amendment Filing (Gulf Exit) to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5083.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1827–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: FPL (Kingfisher II) Long-Term Firm PTP Agreement Amendment Filing (Gulf Exit) to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5084.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1828–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: FP&L Interconnection Contract Amendment Filing (Gulf Exiting Pool) to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5087.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1829–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Transition Services Agreement Termination Filing (Gulf Exiting Pool) to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5090.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1830–000.
Applicants: Georgia Power Company.
Description: Tariff Amendment: Transition Services Agreement Termination Filing (Gulf Exiting Pool) to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5091.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1831–000.
Applicants: Mississippi Power Company.
Description: Tariff Amendment: Transition Services Agreement Termination Filing (Gulf Exiting Pool) to be effective 12/31/9998.
Filed Date: 5/9/22.
Accession Number: 20220509–5092.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1832–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: TFCAT Amendment Filing (Gulf Exiting Pool) to be effective 5/31/2023.
Filed Date: 5/9/22.
Accession Number: 20220509–5093.
Comment Date: 5 p.m. ET 5/30/22.
Docket Numbers: ER22–1833–000.
Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–05–09_SA 1758 GRE-Ewington Energy 2nd Rev GIA (G536) to be effective 4/26/2022.

Filed Date: 5/9/22.

Accession Number: 20220509–5095.

Comment Date: 5 p.m. ET 5/30/22.

Docket Numbers: ER22–1834–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6436; Queue No. AE2–224 to be effective 4/7/2022.

Filed Date: 5/9/22.

Accession Number: 20220509–5098.

Comment Date: 5 p.m. ET 5/30/22.

Docket Numbers: ER22–1835–000.

Applicants: Alabama Power Company, Mississippi Power Company, Georgia Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: OATT Attachment V Amendment (Gulf Exiting Pool) to be effective 12/31/9998.

Filed Date: 5/9/22.

Accession Number: 20220509–5099.

Comment Date: 5 p.m. ET 5/30/22.

Docket Numbers: ER22–1836–000.

Applicants: Gulf Power Company.

Description: Tariff Amendment: Notice of Cancellation of OATT for Service in the Florida Panhandle to be effective 12/31/9998.

Filed Date: 5/9/22.

Accession Number: 20220509–5112.

Comment Date: 5 p.m. ET 5/30/22.

Docket Numbers: ER22–1837–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL and Gulf Data Migration Filing to be effective 12/31/9998.

Filed Date: 5/9/22.

Accession Number: 20220509–5113.

Comment Date: 5 p.m. ET 5/30/22.

Docket Numbers: ER22–1838–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5366; Queue No. AB2–161 (consent/amend) to be effective 4/16/2019.

Filed Date: 5/9/22.

Accession Number: 20220509–5118.

Comment Date: 5 p.m. ET 5/30/22.

Docket Numbers: ER22–1840–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 6434; Queue No. AD1–101 to be effective 4/7/2022.

Filed Date: 5/9/22.

Accession Number: 20220509–5123.

Comment Date: 5 p.m. ET 5/30/22.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH22–13–000.

Applicants: American Century Investment Management Inc.

Description: American Century Investment Management Inc. submits FERC 65–A Exemption Notification.

Filed Date: 5/6/22.

Accession Number: 20220506–5215.

Comment Date: 5 p.m. ET 5/27/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10346 Filed 5–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
New Market Solar ProjectCo 1, LLC	EG22–48–000
New Market Solar ProjectCo 2, LLC	EG22–49–000
Sapphire Sky Wind Energy LLC	EG22–50–000
Waiawa Solar Power LLC	EG22–51–000
Highland Solar Transco Interconnection LLC	EG22–52–000
Madero Grid, LLC	EG22–53–000
Ignacio Grid, LLC	EG22–54–000
Rabbitbrush Solar, LLC	EG22–55–000
Corazon Energy Services, LLC	EG22–56–000
Panorama Wind, LLC	EG22–57–000
Victoria WLE, LP	EG22–58–000
Brookfield White Pine Hydro LLC	EG22–59–000
Number Three Wind LLC	EG22–60–000

Take notice that during the month of April 2022, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2021).

Dated: May 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10348 Filed 5–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Discontinuance of FTP Uploads to the eTariff Sandbox

Take notice that on June 14, 2022, filers wanting to verify eTariff filings in the eTariff sandbox will no longer have the ability to upload XML files using FTP protocols as Microsoft is ending support for FTP. Instead, users will be able to verify their filings by uploading XML filings through a Commission website portal at *https://etariff.ferc.gov/TariffSandbox.aspx.*

Until June 14, 2022, both the FTP portal and the new web portal will be available for use and testing. More detailed instructions for using the web

portal will be available on or before June 14th at: *https://www.ferc.gov/sandbox-electronic-test-site.*

To report any problems with testing the new web portal or for more information, contact the eTariff Advisory Staff at 202–502–6501 or *etariffresponse@ferc.gov.*

Dated: May 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10357 Filed 5–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–911–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: MU Mktg LLC—Replacement Contract NR_ 264875 to be effective 6/1/2022.

Filed Date: 5/6/22.

Accession Number: 20220506–5110.

Comment Date: 5 p.m. ET 5/18/22.

Docket Numbers: RP22–912–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: System Map URL Link and Contact Update to be effective 6/6/2022.

Filed Date: 5/6/22.

Accession Number: 20220506–5133.

Comment Date: 5 p.m. ET 5/18/22.

Docket Numbers: RP22–913–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: § 4(d) Rate Filing: Housekeeping—System Map URL and Contact to be effective 6/6/2022.

Filed Date: 5/6/22.

Accession Number: 20220506–5135.

Comment Date: 5 p.m. ET 5/18/22.

Docket Numbers: RP22–914–000.

Applicants: Crossroads Pipeline Company.

Description: § 4(d) Rate Filing: Housekeeping—System Map URL and Contact to be effective 6/6/2022.

Filed Date: 5/6/22.

Accession Number: 20220506–5137.

Comment Date: 5 p.m. ET 5/18/22.

Docket Numbers: RP22–915–000.

Applicants: Hardy Storage Company, LLC.

Description: § 4(d) Rate Filing: Housekeeping—System Map URL & Contact to be effective 6/6/2022.

Filed Date: 5/6/22.

Accession Number: 20220506–5141.

Comment Date: 5 p.m. ET 5/18/22.

Docket Numbers: RP22–916–000.

Applicants: Portland Natural Gas Transmission System.

Description: § 4(d) Rate Filing: Housekeeping—System Map URL and Contact to be effective 6/6/2022.

Filed Date: 5/6/22.

Accession Number: 20220506–5143.

Comment Date: 5 p.m. ET 5/18/22.

Docket Numbers: RP22–917–000.

Applicants: Northern Border Pipeline Company.

Description: § 4(d) Rate Filing: Housekeeping—System Map URL and Contact to be effective 6/6/2022.

Filed Date: 5/6/22.

Accession Number: 20220506–5146.

Comment Date: 5 p.m. ET 5/18/22.

Docket Numbers: RP22–918–000.

Applicants: Bison Pipeline LLC.

Description: § 4(d) Rate Filing: Housekeeping—System Map URL and Contact to be effective 6/6/2022.

Filed Date: 5/6/22.

Accession Number: 20220506–5148.

Comment Date: 5 p.m. ET 5/18/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10344 Filed 5–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1804–000]

Yaphank Fuel Cell Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Yaphank Fuel Cell Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 31, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10347 Filed 5–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7569–008]

University of Notre Dame, ND Hydro, LLC; Notice of Transfer of Exemption

1. On April 21, 2022, University of Notre Dame, exemptee for the 2.5 Megawatts South Bend Hydroelectric Project No. 7569, filed a letter notifying the Commission that the project was transferred from University of Notre Dame to ND Hydro, LLC. The exemption from licensing was originally issued on April 18, 1984.[1] The project is located on the St. Joseph River, St Joseph County, Indiana. The transfer of an exemption does not require Commission approval.

2. ND Hydro, LLC is now the exemptee of the South Bend Hydroelectric Project No. 7569. All correspondence must be forwarded to Paul Kempf, ND Hydro, LLC, 100 Facilities Building, Notre Dame, IN 46556, Phone: 574–631–6594 (main), 574–631–0142 (direct), and 574–631–8468 (fax), Email: *Paul.A.Kempf.2@nd.edu*.

Dated: May 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10358 Filed 5–12–22; 8:45 am]

BILLING CODE 6717–01–P

[1] *City of South Bend, Indiana,* 27 FERC ¶ 62,056 (1984). Subsequently, on January 31, 2017, the project was transferred to University of Notre Dame. (P–7569–005)

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0105; FRL–9863–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Semiconductor Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Semiconductor Manufacturing (EPA ICR Number 2042.08, OMB Control Number 2060–0519), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2022. Public comments were previously requested, via the **Federal Register** (86 FR 19256), on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 13, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0105, online using *https://www.regulations.gov/* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Semiconductor Manufacturing (40 CFR part 63, subpart BBBBB) were proposed on May 8, 2002; and promulgated on May 22, 2003. These regulations apply to both existing facilities and new facilities that either emits, or has the potential to emit, considering controls, in the aggregate, any single hazardous air pollutants (HAP) at a rate of 10 tons per year (tpy) or more or any combination of HAP at a rate of 25 tpy or more. New facilities include those that either commenced construction, modification, or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart BBBBB.

Form Numbers: None.

Respondents/affected entities: Semiconductor manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart BBBBB).

Estimated number of respondents: Approximately one (total).

Frequency of response: Semiannually.

Total estimated burden: 41 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $5,450 (per year), which includes $550 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) The regulations have

not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–10353 Filed 5–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0667; FRL–9854–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after May 14, 2007 (EPA ICR Number 2263.07, OMB Control Number 2060–0602), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 13, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0667, online using *https://www.regulations.gov/* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after May 14, 2007 (40 CFR part 60 subpart Ja) apply to apply to fluid catalytic cracking units (FCCU), fluid coking units (FCU), delayed coking units, fuel gas combustion devices (FGCD), process heaters, flares and sulfur recovery plants located at new and existing petroleum refineries that are constructed, reconstructed, or modified after May 14, 2007. This information is being collected to assure compliance with 40 CFR part 60, subpart Ja.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Petroleum refineries.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Ja).

Estimated number of respondents: 129 (total).

Frequency of response: Initially, semiannually.

Total estimated burden: 431,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $171,000,000 (per year), which includes $120,000,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an increase in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This increase is due primarily to an increase in the number of facilities at existing petroleum refineries subject to Subpart Ja. The petroleum refining industry has been decreasing in size, but as facilities at refineries are either constructed, modified, or reconstructed, they become newly subject to Subpart Ja. This ICR adjusts the number of facilities at refineries to reflect those sources constructed, modified, or reconstructed over the last three years. Since these newly affected facilities are required to install monitoring equipment to comply with the regulations, this has resulted in increases in capital/startup costs, performance testing costs, and operating and maintenance (O&M) costs, as well as for labor burden associated with periodic testing.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–10354 Filed 5–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0103: FRL–9856–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Asphalt Processing and Asphalt Roofing Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Asphalt Processing and Asphalt Roofing Manufacturing (EPA ICR Number 2029.09, OMB Control Number 2060–0520), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2022. Public comments were previously requested via the **Federal Register** on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may nether conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 13, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0103,, online using *https://www.regulations.gov/* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of existing and new facilities that are engaged in asphalt processing or asphalt roofing manufacturing are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the applicable specific standards in 40 CFR part 63 subpart LLLLL. This includes submitting initial notifications, performance tests and periodic reports and results, and any period during which the add-on control system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: 5900–567.

Respondents/affected entities: Owners or operators of asphalt processing or asphalt roofing manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart LLLLL).

Estimated number of respondents: 8 (total).

Frequency of response: Initially, semiannually, periodically.

Total estimated burden: 4,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $558,000 (per year), which includes $84,900 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an increase in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. This ICR merges the 'burdens' from EPA ICR Number 2029.08 and EPA ICR No. 2598.02 (OMB No. 2060–0724), and from the ICR that the RTR amendments finalized on March 12, 2020 at 85 FR 14526. The prior RTR amendments revised the rule to add periodic testing requirements which increased burden, and resulted in an increase in periodic testing costs and an increase in operation and maintenance (O&M) costs for control devices. The regulations are not anticipated to change over the next three years. The growth rate for this industry is very low or non-existent. There are no changes in the capital/startup costs as no new sources have been constructed.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–10352 Filed 5–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–016]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed May 2, 2022 10 a.m. EST Through May 9, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20220063, Final, USFWS, WA, Thurston County Habitat Conservation Plan, Thurston County, Washington, Review Period Ends: 06/13/2022, Contact: Kevin Connally 360–753–9440.

EIS No. 20220064, Final, NMFS, MD, Final Amendment 13 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan, Review Period Ends: 06/13/2022, Contact: Tom Warren 978–281–9347.

EIS No. 20220065, Draft, NMFS, Other, Saltonstall-Kennedy Grant Program Programmatic Environmental Impact Statement, Comment Period Ends: 06/27/2022, Contact: Clifford Cosgrove 301–427–8736.

EIS No. 20220066, Final Supplement, USFWS, AZ, Proposed Revision to the

Regulations for the Nonessential Experimental Population of the Mexican Wolf, Review Period Ends: 06/13/2022, Contact: Brady McGee 505–761–4748.

EIS No. 20220067, Final Supplement, USACE, WA, Howard A. Hanson Dam Additional Water Storage Project Final Integrated Validation Report and Supplemental Environmental Impact Statement, Review Period Ends: 06/13/2022, Contact: Nancy Gleason 206–764–6577.

EIS No. 20220068, Final, TVA, AL, North Alabama Utility-Scale Solar Project, Review Period Ends: 06/13/2022, Contact: Elizabeth R Smith 865–632–3053.

Dated: May 9, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–10366 Filed 5–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–SFUND–2022–0328; FRL–9757–01–R8]

CERCLA Administrative Settlement Agreement for Removal Action and Payment of Response Costs by Prospective Purchaser, Idaho Pole Company Superfund Site, Bozeman, Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: Notice is hereby given by the U.S. Environmental Protection Agency (EPA), Region 8, of a prospective purchaser settlement agreement embodied in an ''Administrative Settlement Agreement for Removal Action and Payment of Response Costs by Prospective Purchaser,'' with State of Montana (''State''), and the prospective purchaser, Scout DAC, LLC (''Purchaser''). This agreement provides for the performance of a removal action by Purchaser and the payment of certain response costs incurred by the United States at or in connection with the property located at Cedar Street, Bozeman, Montana 59715 near the northern limits of Bozeman, Montana, in the east half of Section 6 and the west half of Section 5, Township 28, Range 6E of Gallatin County (the ''Property''), which is part of the Idaho Pole Company Superfund Site (''Site'').

DATES: Comments must be submitted on or before June 13, 2022.

ADDRESSES: The proposed agreement and additional background information relating to the agreement will be available upon request. To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Comments and requests for a copy of the proposed agreement should be addressed to Julie Nicholson, Enforcement Specialist, Superfund and Emergency Management Division, Environmental Protection Agency—Region 8, Mail Code 8SEM–PAC, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312–6343, *nicholson.julie@epa.gov* and Kayleen Castelli, Senior Assistant Regional Counsel, Office of Regional Counsel, Environmental Protection Agency, Region 8, Mail Code 8ORC–C, 1595 Wynkoop, Denver, Colorado 80202, email address: *castelli.kayleen@epa.gov* and should reference the Idaho Pole Company Superfund Site.

You may also send comments, identified by Docket ID No. EPA–R08–SFUND–2022–0328 to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Kayleen Castelli, Senior Assistant Regional Counsel, Office of Regional Counsel, Environmental Protection Agency, Region 8, Mail Code 8ORC–C, 1595 Wynkoop, Denver, Colorado 80202, telephone number: (303) 312–6143, email address: *castelli.kayleen@epa.gov.*

SUPPLEMENTARY INFORMATION: For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

Betsy Smidinger,

Division Director, Superfund and Emergency Management Division, Region 8.

[FR Doc. 2022–10381 Filed 5–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0124; FRL–9857–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Aluminum, Copper and Other Non-Ferrous Metals Foundries (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Aluminum, Copper and Other Non-ferrous Metals Foundries (EPA ICR Number 2332.06, OMB Control Number 2060–0630) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2022. Public comments were previously requested via the **Federal Register** (86 FR 19256) on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 13, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0124, online using *https://www.regulations.gov/* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information

collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Aluminum, Copper and Other Non-ferrous Metals Foundries apply to both existing and new facilities conducting melting operations located at an aluminum, copper, or other non-ferrous foundry that is an area source of hazardous air pollutants (HAP) emissions, melts 600 tons per year (tpy) of aluminum, copper, or other non-ferrous metal or greater, and uses material that contains or has the potential to emit HAP for which the source category was listed. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP. This information is being collected to assure compliance with 40 CFR part 63, subpart ZZZZZZ.

Form Numbers: None.

Respondents/affected entities: Aluminum, copper, and other non-ferrous foundries.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart ZZZZZZ).

Estimated number of respondents: 318 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 11,900 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,410,000 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Second, the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–10351 Filed 5–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–9843–01–ORD]

Board of Scientific Counselors (BOSC) Executive Committee Meeting—June 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), gives notice of virtual meetings of the Board of Scientific Counselors (BOSC) Executive Committee (EC) to review and deliberate on ORD's Strategic Research Action Plans (StRAPs).

DATES: The deliberation meetings will be held over two days via videoconference:

a. Thursday, June 2, 2022, from 11 a.m. to 6 p.m. (EDT); and

b. Friday, June 10, 2022, from 12 p.m. to 5 p.m. (EDT).

Attendees must register by June 1, 2022.

Meeting times are subject to change. This series of meetings is open to the public. Comments must be received by June 1, 2022, to be considered by the BOSC. Requests for the draft agenda or making a presentation at the meeting will be accepted until June 1, 2022.

ADDRESSES: Instructions on how to connect to the videoconference will be provided upon registration at: *https://epa-bosc-ecmeeting.eventbrite.com.*

Submit your comments to Docket ID No. EPA–HQ–ORD–2015–0765 by one of the following methods:

- *www.regulations.gov*: Follow the online instructions for submitting comments.
- *Note:* Comments submitted to the *www.regulations.gov* website are anonymous unless identifying information is included in the body of the comment.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0765.
- *Note:* Comments submitted via email are not anonymous. The sender's email will be included in the body of the comment and placed in the public docket which is made available on the internet.

Instructions: All comments received, including any personal information provided, will be included in the public docket without change and may be made available online at *www.regulations.gov.* Information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute will not be included in the public docket and should not be submitted through *www.regulations.gov* or email. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Public Docket: Publicly available docket materials may be accessed *Online* at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO), Tom Tracy, via phone/voicemail at: 919–541–4334; or via email at: *tracy.tom@epa.gov.* Any member of the public interested in receiving a draft agenda, attending the meeting, or making a presentation at the meeting should contact Tom Tracy no later than June 1, 2022.

SUPPLEMENTARY INFORMATION: The Board of Scientific Counselors (BOSC) is a federal advisory committee that provides advice and recommendations to EPA's Office of Research and Development on technical and management issues of its research programs. The meeting agenda and

materials will be posted to *https://www.epa.gov/bosc.*

Proposed agenda items for the meeting include, but are not limited to, the following: Review the StRAPs and BOSC deliberation.

Information on Services Available: For information on translation services, access, or services for individuals with disabilities, please contact Tom Tracy at 919–541–4334 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy at least ten days prior to the meeting to give the EPA adequate time to process your request.

Authority: Pub. L. 92–463, 1, Oct. 6, 1972, 86 Stat. 770.

Mary Ross,

Director, Office of Science Advisor, Policy and Engagement.

[FR Doc. 2022–10383 Filed 5–12–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0192 and OMB 3060–0599; FR ID 86552]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before June 13, 2022.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control No.: 3060–0192.

Title: Section 87.103, Posting Station License.

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 and tribal government.

Number of Respondents and Responses: 33,622 respondents, 33,622 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 303.

Total Annual Burden: 8,406 hours.

Annual Cost Burden: No cost.

Needs and Uses: Section 87.103 states the following: (a) Stations at fixed locations. The license or a photocopy must be posted or retained in the station's permanent records. (b) Aircraft radio stations. The license must be either posted in the aircraft or kept with the aircraft registration certificate. If a single authorization covers a fleet of aircraft, a copy of the license must be either posted in each aircraft or kept with each aircraft registration certificate. (c) Aeronautical mobile stations. The license must be retained as a permanent part of the station records. The recordkeeping requirement contained in Section 87.103 is necessary to demonstrate that all transmitters in the Aviation Service are properly licensed in accordance with the requirements of Section 301 of the Communications Act of 1934, as amended, *47 U.S.C. 301,* No. 2020 of the International Radio Regulation, and Article 30 of the Convention on International Civil Aviation.

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, Office of the Secretary.

[FR Doc. 2022–10406 Filed 5–12–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. on Tuesday, May 17, 2022.

PLACE: The meeting is open to the public. Out of an abundance of caution related to current and potential coronavirus developments, the public's means to observe this Board meeting will be via a Webcast live on the internet and subsequently made available on-demand approximately one week after the event. Visit *https://youtu.be/qsDyG2_IdDU* to view the meeting. If you need any technical assistance, please visit our Video Help page at: *https://www.fdic.gov/video.html.*

Observers requiring auxiliary aids (*e.g.,* sign language interpretation) for this meeting should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

STATUS: Open.

MATTERS TO BE CONSIDERED: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Memorandum and resolution re: Amendments to the Guidelines for Appeals of Material Supervisory Determinations.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final Rule on False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo.

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated at Washington, DC, on May 10, 2022.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–10429 Filed 5–11–22; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

TIME AND DATE: May 18, 2022; 10:00 a.m.

PLACE: This meeting will be held at the Federal Maritime Commission at the address below and also streamed live at *www.fmc.gov.*

800 N Capitol Street NW, 1st Floor

Hearing Room, Washington, DC

STATUS: Part of the meeting will be open to the public: Held in-person with a limited capacity for public attendants and also available to view streamed live, accessible from *www.fmc.gov.* The rest of the meeting will be closed to the public.

Requests to register to attend the meeting in-person should be submitted to *secretary@fmc.gov* and contain ''May 18, 2022 Meeting'' in the subject line. Interested members of the public have until 5:00 p.m. (Eastern) Monday, May 16, 2022, to register to attend in-person. Seating for members of the public is limited and will be available on a first-come, first-served basis for those who have registered in advance. Health and safety protocols for meeting attendees will depend on the COVID–19 Community Transmission Level for Washington DC as determined on Friday, May 12, 2022. Pre-registered attendees will be notified of the required health and safety protocols before the meeting and no later than Tuesday, May 17, 2022.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Commissioner Dye, Update on Fact Finding 29: International Ocean Transportation Supply Chain Engagement
2. Commissioner Bentzel, Assessment of the People's Republic of China's Control of Container and Intermodal Chassis Manufacturing
3. Staff Briefing on Carrier Automated Tariffs
4. Staff Update on Vessel-Operating Common Carrier Audit Program

Portions Closed to the Public

1. Staff Update on Vessel-Operating Common Carrier Audit Program

CONTACT PERSON FOR MORE INFORMATION: William Cody, Secretary, (202) 523–5725.

William Cody,

Secretary.

[FR Doc. 2022–10432 Filed 5–11–22; 11:15 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

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 whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

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 June 13, 2022.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *Prevail Mutual Holdings, Inc., Medford, Wisconsin;* to become a mutual savings and loan holding company, in connection with the reorganization of Prevail Bank, Medford, Wisconsin, from a federal mutual savings bank to a federal stock savings bank.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–10391 Filed 5–12–22; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0184; Docket No. 2022–0053; Sequence No. 15]

Information Collection; Contractors Performing Private Security Functions Outside the United States

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning contractors performing private security functions outside the United States. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through October 31, 2022. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by July 12, 2022.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0184, Contractors Performing Private Security Functions Outside the United States. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Carrie Moore, Procurement Analyst, at telephone 571–300–5917, or *carrie.moore@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0184, Contractors Performing Private Security Functions Outside the United States.

B. Need and Uses

This justification supports an extension of the expiration date of OMB Control No. 9000–0184. This clearance covers the information that contractors must submit to comply with FAR clause 52.225–26, Contractors Performing Private Security Functions Outside the United States. When contract performance is required outside the United States in an area of combat operations or significant military operations, this clause requires contractors to ensure employees performing private security functions under the contract comply with 32 CFR part 159, and any orders, directives, or instructions that are identified in the contract for: (1) Registering, processing, accounting for, managing, overseeing, and keeping appropriate records of personnel performing private security functions; (2) Requesting authorization of and accounting for weapons to be carried by or available to personnel performing private security functions; (3) Registering and identifying armored vehicles, helicopters, and other military vehicles operated by employees performing private security functions; and (4) Reporting incidents in which personnel performing private security functions: Discharge a weapon; are attacked, killed, or injured; kill or injure a person or destroy property as a result of conduct by contractor personnel; have a weapon discharged against them or believe a weapon was so discharged; or employ active, non-lethal countermeasures in response to a perceived immediate threat.

The information provided in accordance with FAR clause 52.225–26 is used to ensure accountability, visibility, force protection, medical support, personnel recovery, and other related support can be accurately forecasted and provided to deployed contractors, as required.

C. Annual Burden

Respondents: 28.

Total Annual Responses: 140.

Total Burden Hours: 70.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0184, Contractors Performing Private Security Functions Outside the United States.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–10359 Filed 5–12–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0029; Docket No. 2022–0053; Sequence No. 16]

Information Collection; Extraordinary Contractual Action Requests

AGENCY: Department of Defense (DOD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning extraordinary contractual action requests. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through September 30, 2022. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by July 12, 2022.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0029, Extraordinary Contractual Action Requests. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Marissa Ryba, Procurement Analyst, at telephone 314–586–1280, or *marissa.ryba@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0029, Extraordinary Contractual Action Requests.

B. Need and Uses

This justification supports an extension of OMB Control No. 9000–0029. This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

FAR 50.103–3, Contract Adjustment. FAR 50.103–3 specifies the minimum information that a contractor must include when seeking a contract adjustment that would facilitate the national defense, as set forth in Public Law 85–804. The request, normally a letter, shall state as a minimum—

(1) The precise adjustment requested;

(2) The essential facts, summarized chronologically in narrative form;

(3) The contractor's conclusions based on these facts, showing, in terms of the considerations set forth in FAR 50.103–1 and 50.103–2, when the contractor considers itself entitled to the adjustment; and

(4) Whether or not—

(i) All obligations under the contracts involved have been discharged;

(ii) Final payment under the contracts involved has been made;

(iii) Any proceeds from the request will be subject to assignment or other transfer, and to whom; and

(iv) The contractor has sought the same, or a similar or related, adjustment from the Government Accountability Office or any other part of the Government, or anticipates doing so.

If the request exceeds the simplified acquisition threshold, the contractor must certify that the request is made in good faith and the data are accurate and complete.

FAR 50.103–4, Facts and Evidence. FAR 50.103–4 sets forth additional information that the contracting officer or other agency official may request from the contractor to support any request made under FAR 50.103–3.

FAR 50.104–3 Special Procedures for Unusually Hazardous or Nuclear Risks. FAR 50.104–3 provides the information a contractor shall submit to the contracting officer when requesting the inclusion of the indemnification clause for unusually hazardous or nuclear risks at FAR 52.250–1.

FAR 52.250–1, Indemnification Under Public Law 85–804. This clause allows contractors to be indemnified against unusually hazardous or nuclear risks. Paragraph (g) requires the contractor to promptly notify the contracting officer and furnish pertinent information for any claim or loss that may involve indemnification under the clause.

This information is used by the Government to determine if relief can be granted to the contractor and to determine the appropriate type and amount of relief.

C. Annual Burden

Respondents: 28.

Total Annual Responses: 165.

Total Burden Hours: 6,848.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0029, Extraordinary Contractual Action Requests.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–10368 Filed 5–12–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–22FI; Docket No. CDC–2022–0064]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National HIV Behavioral Surveillance: Brief HIV Bio-behavioral Assessment (NHBS–BHBA). CDC is requesting approval to collect data on behaviors related to HIV infection and prevention among priority populations at high risk for HIV using mixed methods in selected geographic

areas across two funded states in the United States.

DATES: CDC must receive written comments on or before July 12, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0064, by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
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; and
5. Assess information collection costs.

Proposed Project

National HIV Behavioral Surveillance: Brief HIV Bio-behavioral Assessment (NHBS–BHBA)—New—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this data collection is to monitor behaviors of populations at high risk for Human Immunodeficiency Virus (HIV) infection using mixed-methods in selected geographic areas in the United States which lack biobehavioral data related to HIV transmission and prevention.

Preventing HIV, especially among populations at high risk, is an effective strategy for reducing individual, local, and national healthcare costs. The utility of this information is to provide CDC and health department staff with data for evaluating progress towards state public health goals, such as reducing new HIV infections, increasing the use of condoms, and focusing on populations at high risk by describing and monitoring the HIV risk behaviors, HIV seroprevalence and incidence, and HIV prevention experiences of persons at highest risk for HIV infection. Data will be systematically collected using mixed methods of quantitative and qualitative interviews. Brief screening interviews will be used to determine eligibility for participation in the quantitative and qualitative interviews.

Project teams will conduct brief standardized quantitative interviews and anonymous HIV blood-based rapid testing and supplemental testing to those who participate in quantitative data collection to assess HIV seroprevalence. The data from the quantitative interviews will provide estimates of: (1) Behavior related to the risk of HIV and other sexually transmitted diseases, (2) prior testing for HIV, and (3) use of HIV prevention services. HIV screening results will be made available to participants, and those with preliminary positive test results will be linked to HIV care. Qualitative data collection includes key informant interviews with community members and professionals familiar with the population and focus groups to interpret standardized quantitative findings and inform grantee-developed recommendations for state/local public health partners. The data from qualitative interviews will be used to interpret standardized quantitative findings and inform recipient-developed recommendations for state and local public health authorities. No other federal agency collects this type of information in the populations at high risk in these selected geographic areas using mixed methods of quantitative and qualitative interviews.

CDC estimates that during quantitative interviewing, 1338 individuals will complete the quantitative base eligibility screener, 1204 will complete the quantitative population eligibility screener, and 338 will be either not interested or ineligible, yielding a total of 1,000 eligible respondents over a 12-month period. Because HIV testing is a clinical procedure, it is not included in the burden estimates. For qualitative data collection, approximately 96 individuals will complete the eligibility screener, 16 of the respondents will be either not interested in completing a qualitative interview, or will be ineligible, yielding a total of 80 eligible respondents over a 12-month period.

CDC requests OMB approval for an estimated 497 annual burden hours. Participation of respondents is voluntary, and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Persons Screened	Quantitative Base Eligibility Screener	1,338	1	1/60	23
Persons Screened	Quantitative Population Eligibility Screener	1,204	1	5/60	101
Eligible Participants	Quantitative Core Survey	1,000	1	10/60	167

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Eligible Participants	Quantitative Population-specific Questions	1,000	1	5/60	84
Persons Screened	Qualitative Eligibility Screener	96	1	1/60	2
Eligible Participant	Qualitative Interviews	80	1	90/60	120
Total					497

Jeffery M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–10380 Filed 5–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0213]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Vital Statistics Report Form'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 7, 2022 to obtain comments from the public and affected agencies. CDC did not receive any comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Vital Statistics Report Form (OMB Control No. 0920–0213, Exp. 10/31/2023)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The compilation of national vital statistics dates back to the beginning of the 20th Century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics (NCHS), CDC. The collection of this data is authorized by 42 U.S.C. 242k, and this submission requests to continue use of the Annual Vital Statistics Report Form for collection of annual marriage and divorce/annulment summary statistics for three years. Additionally, this Revision requests to discontinue the Monthly Vital Statistics Report, which is currently used to provide counts of monthly occurrences of births, deaths, and infant deaths. The collection of the provisional birth and death data is now being achieved on a more timely, ongoing basis which negates the need to continue to use the monthly form.

Continued use of the Annual Vital Statistics Report Form collects final annual counts of marriages and divorces by month for the United States and for each State. These final counts are usually available from State or county officials about eight months after the end of the data year. The data are widely used by the Department of Health and Human Services (HHS), and other government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution. Respondents for the Annual Vital Statistics Reports Form are registration officials in all 50 States, seven U.S. Territories, including American Samoa, Guam, Northern Mariana Islands, Puerto Rico, Virgin Islands, the District of Columbia, and New York City, as well as the 33 local (county clerk) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico.

CDC requests OMB approval for an estimated 46 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State, Territory, and New Mexico County Officials.	Monthly Vital Statistics Report	91	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–10371 Filed 5–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–1050]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on February 14, 2022 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (OMB Control No. 0920–1050, Exp. 5/31/2022)—Extension—Office of Science (OS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Centers for Disease Control and Prevention (CDC) seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on our service delivery activities. The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: (1) The target population to which generalizations will be made, (2) the sampling frame, (3) the sample design (including stratification and clustering), (4) the precision requirements or power calculations that justify the proposed sample size, (5) the expected response rate, (6) methods for assessing potential non-response bias, (7) the protocols for data collection, and (8) any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The qualitative feedback collected using this Generic mechanism has been a vital source of information that has helped CDC improve the services and resources provided to the public. The Agency is requesting an additional three years to continue this important effort. CDC requests OMB approval for an

estimated 22,250 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Type of Collection	Number of respondents	Number of responses per respondent	Average hours per response
Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.	Interviews, in person surveys, telephone surveys, in person observation/testing.	10,000	1	30/60
	Focus groups	1,000	1	2
	Customer comment cards, interactive voice surveys.	61,000	1	15/30

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–10370 Filed 5–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0469]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Program of Cancer Registries Cancer Surveillance System'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 22, 2021 to obtain comments from the public and affected agencies. CDC received one non-substantive comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Program of Cancer Registries Cancer Surveillance System (NPCR CSS) (OMB Control No. 0920–0469, Exp. 12/31/2022)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2018, the most recent year for which complete incidence information is available, almost 600,000 people died of cancer and more than 1.7 million were diagnosed with cancer. It is estimated that 16.3 million Americans are currently alive with a history of cancer. In the U.S., state/territory-based central cancer registries are the only method for systematically collecting and reporting population-based information about cancer incidence and outcomes such as survival. These data are used to measure the changing incidence and burden of each cancer; identify populations at increased or increasing risk; target preventive measures; and measure the success or failure of cancer control efforts in the U.S.

In 1992, Congress passed the Cancer Registries Amendment Act which established the National Program of Cancer Registries (NPCR). The NPCR provides support for state/territory-based cancer registries that collect, manage, and analyze data about cancer cases. The state/territory-based cancer registries report information to CDC through the National Program of Cancer Registries Cancer Surveillance System (NPCR CSS) (OMB Control No. 0920–0469, Exp. 12/31/2022). CDC plans to request OMB approval to continue collecting this information for three years. Data definitions will be updated to reflect changes in national standards for cancer diagnosis and coding. No changes to the total estimated annualized burden hours or number of respondents are anticipated.

The NPCR CSS allows CDC to collect, aggregate, evaluate, and disseminate cancer incidence data at the national level. The NPCR CSS is the primary source of information for the *United States Cancer Statistics* (*USCS*), which CDC has published annually since 2002. The latest *USCS* report published in 2021 provided cancer statistics for 99% of the U.S. population from cancer registries in the United States. Prior to the publication of *USCS,* cancer incidence data at the national level were available for only 14% of the population of the United States.

The NPCR CSS also allows CDC to monitor cancer trends over time, describe geographic variation in cancer incidence throughout the country, and

provide incidence data on racial/ethnic populations and rare cancers. These activities and analyses further support CDC's planning and evaluation efforts for state and national cancer control and prevention. In addition, datasets can be made available for secondary analysis.

Respondents are NPCR-supported central cancer registries (CCR) in 46 U.S. states, 3 territories, and the District of Columbia. Fifty CCRs submit data elements specified for the Standard NPCR CSS Report. Each CCR is asked to transmit two data files to CDC per year. The first NPCR CSS Standard file, submitted in January, is a preliminary report consisting of one year of data for the most recent year available. CDC evaluates the preliminary data for completeness and quality and provides a report back to the CCR. The second NPCR CSS Standard file, submitted by November, contains cumulative cancer incidence data from the first diagnosis year for which the cancer registry collected data with the assistance of NPCR funds (*e.g.,* 1995) through 12 months past the close of the most recent diagnosis year (*e.g.,* 2018). The cumulative file is used for analysis and reporting.

The burden for each file transmission is estimated at two hours per response. Because cancer incidence data are already collected and aggregated at the state level, the additional burden of reporting the information to CDC is small. All information is transmitted to CDC electronically. CDC requests OMB approval for an estimated 200 annual burden hours. Participation is required as a condition of the cooperative agreement with CDC. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Central Cancer Registries in States, Territories, and the District of Columbia.	Standard NPCR CSS Report	50	2	2

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–10379 Filed 5–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–22FC; Docket No. CDC–2022–0061]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Assessing the Capacity of Vector Management Programs in the United States to Provide Comprehensive Community-level Tick Management Services. Data will be collected from vector management programs in the United States to determine their capacity and interest in providing comprehensive community-level tick management services.

DATES: CDC must receive written comments on or before July 12, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0061, by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, GA 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, GA 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

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; and

5. Assess information collection costs.

Proposed Project

Assessing the Capacity of Vector Management Programs in the United States to Provide Comprehensive Community-level Tick Management Services—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

A number of previously conducted surveys have focused on private pest management firms or agencies in a single state. The overall capacity for publicly-funded comprehensive tick management in the regions of interest remains poorly understood, especially in high incidence areas. Data collected by engaging vector management program staff will inform the development of sustainable and effective community-level tick management programs by assessing the feasibility of program components, the resources necessary to add new functions to existing vector management programs, and the expected costs associated with delivering comprehensive tick management services. This survey will identify robust vector management programs with which CDC can partner to refine guidance for the development of comprehensive community-level tick management programs, which can be adapted to specific regional ecologies and communities. Ultimately, this survey is an important first step toward developing a community of practice for publicly-funded, comprehensive tick management programs in the United States. The survey will lay the groundwork for efforts to establish local entities capable of first evaluating the efficacy of tick control methods, and then broadly deploying those measures proven effective and acceptable in order to: (a) Reduce the number of infected ticks in the environment, and (b) reduce human bites by infected ticks.

The primary goals of this project are two-fold: (1) Assess the current tick management capacity and knowledge in vector management programs that receive public funding in the Upper Midwest, mid-Atlantic, Northeast, and Pacific coast states; and (2) determine the services that vector management program staff believe should be part of comprehensive tick management programs if they are developed in the future. We also hope to identify barriers to the development of comprehensive tick management programs and ways CDC can begin to address gaps.

CDC requests OMB approval for an estimated 63 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Public Vector Control Operators	Comprehensive Community-level Tick Management Services Survey.	200	1	15/60	50
Private Vector Control Operators	Comprehensive Community-level Tick Management Services Survey.	100	1	8/60	13
Total					63

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–10376 Filed 5–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–0255; Docket No. CDC–2022–0054]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Resources and Services Database of the CDC National Prevention Information Network (NPIN). This information collection request is designed to support a resource for referrals, to facilitate partnerships and coordination among programs dealing with HIV/AIDS, viral hepatitis, STDs, and TB, and to satisfy the legislative mandate that information and education on HIV/AIDS be made available expeditiously and accurately to the professional community and to the general public.

DATES: CDC must receive written comments on or before July 12, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0054 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

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; and

5. Assess information collection costs.

Proposed Project

Resources and Services Database of the National Prevention Information Network (NPIN) (OMB Control No. 0920–0255, Exp. 01/31/2023)—Revision—National Center for HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is requesting a Revision and three-year approval for Resources and Services Database of the National Prevention Information Network (NPIN) (OMB Control No. 0920–0255). Revisions include, minor formatting, changes to the surveys involving the decrease in the number of services collected, and changes to the NPIN Questionnaire for new organizations and for annual updates to reflect the changes and modernize the look.

NPIN is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about the grave threat to public health posed by HIV/AIDS, viral hepatitis, STDs, and TB, and provides services for persons infected with human immunodeficiency virus (HIV).

The NPIN Resources and Services Database contains entries on approximately 10,700 organizations and is the most comprehensive listing of HIV/AIDS, viral hepatitis, STD, and TB resources and services available throughout the country. The American public can also access the NPIN Resources and Services database through the NPIN website. More than 1,668,000 unique visitors and more than 3,000,000 page views are recorded annually.

To accomplish CDC's goal of continuing efforts to maintain an up-to-date, comprehensive database, NPIN plans each year to add up to 800 newly identified organizations and to verify those organizations currently described in the NPIN Resources and Services Database each year. Organizations with access to the internet will be given the option to complete and submit an electronic version of the questionnaire by visiting the NPIN website.

CDC requests OMB approval for an estimated 1,164 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response	Total burden (in hours)
Registered nurses, Social and community service managers, Health educators, and Social and Human service assistants.	Initial Questionnaire Telephone Script.	800	1	7/60	93
	Telephone Verification	9,095	1	6/60	910
	Email Verification	1,605	1	6/60	161
Total					1,164

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–10372 Filed 5–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–0770; Docket No. CDC–2022–0053]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National HIV Behavioral Surveillance System (NHBS). NHBS collects standardized HIV-related behavioral data from persons at risk for HIV, systematically selected from 20 Metropolitan Statistical Areas (MSAs) throughout the United States.

DATES: CDC must receive written comments on or before July 12, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0053 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
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; and
5. Assess information collection costs.

Proposed Project

National HIV Behavioral Surveillance System (NHBS) (OMB Control No. 0920–0770, Exp. 01/31/2023)—Revision—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this data collection is to monitor behaviors of persons at high risk for infection that are related to Human Immunodeficiency Virus (HIV) transmission and prevention in the United States. The primary objectives of the NHBS are to obtain data from samples of persons at risk to: (a) Describe the prevalence and trends in risk behaviors; (b) describe the prevalence of and trends in HIV testing and HIV infection; (c) describe the prevalence of and trends in use of HIV prevention services; and (d) identify met and unmet needs for HIV prevention services in order to inform health departments, community based organizations, community planning groups and other stakeholders.

By describing and monitoring the HIV risk behaviors, HIV seroprevalence and incidence, and HIV prevention experiences of persons at highest risk for HIV infection, NHBS provides an important data source for evaluating progress towards national public health initiatives, such as reducing new infections, increasing the use of condoms, and targeting populations at high risk.

The Centers for Disease Control and Prevention requests approval for a three-year Revision of this information collection. Data are collected through in-person interviews conducted with persons systematically selected from 20 Metropolitan Statistical Areas (MSAs) throughout the United States; these 20 MSAs are chosen based on highest number of HIV infections diagnosed. Persons at risk for HIV infection to be interviewed for NHBS include men who have sex with men (MSM), persons who inject drugs (PWID), and heterosexually active persons at increased risk of HIV infection (HET). A brief screening interview will be used to determine eligibility for participation in the behavioral assessment.

The data from the behavioral assessment will provide estimates of: (1) Behavior related to the risk of HIV and other sexually transmitted diseases, (2) prior testing for HIV, and (3) use of HIV prevention services.

All persons interviewed will also be offered an HIV test and will participate in a pre-test counseling session. No other federal agency systematically collects this type of information from persons at risk for HIV infection. These data have substantial impact on prevention program development and monitoring at the local, state, and national levels.

CDC estimates that each year in 20 MSAs, NHBS will involve, eligibility screening for 125 persons and eligibility screening plus the behavioral assessment with 500 eligible respondents, resulting in a total of 30,000 eligible survey respondents and 7,500 ineligible screened persons. Data collection will rotate such that interviews will be conducted among one group per year: MSM in Year 1, PWID in Year 2, and HET in Year 3. The type of data collected for each group will vary slightly due to different sampling methods and risk characteristics of the group.

CDC requests OMB approval for an estimated 6,600 annual burden hours. Participation is voluntary and there is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Persons Screened	Eligibility Screener	12,500	1	5/60	1,042
Eligible Participants	Behavioral Assessment MSM	3,333	1	24/60	1,334
Eligible Participants	Behavioral Assessment PWID	3,333	1	43/60	2,389
Eligible Participants	Behavioral Assessment HET	3,333	1	31/60	1,723

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Peer Recruiters	Recruiter Debriefing	3,333	1	2/60	112
Total					6,600

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–10375 Filed 5–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number CDC–2022–0063, NIOSH 063–D]

National Institute for Occupational Safety and Health (NIOSH) Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) Fire Service Community Meeting

AGENCY: The Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) in the Centers for Disease Control and Prevention (CDC), an operating division of the Department of Health and Human Services (HHS), announces the following web-based meeting and request for comment on the NIOSH Fire Fighter Fatality Investigation and Prevention Program (FFFIPP).

DATES: Written comments must be received by July 27, 2022. The public meeting will be held on Monday, June 27, 2022, 10 a.m. to 3:30 p.m. EDT, or after the last public commenter in attendance has spoken, whichever occurs first. The public meeting will be held as a web-based teleconference available by remote access.

ADDRESSES: This is a virtual meeting. You may submit comments, identified by Docket No. CDC–2022–0063; NIOSH 063–D, by either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

Instructions: On June 27, 2022, NIOSH will hold a virtual (web-based) meeting to seek input. The meeting will be open to the fire service community and interested parties, limited only by web conference lines (500 web conference lines are available) using Audio/LiveMeeting Conferencing. Web-based meeting requirements include: A computer with audio capabilities and an internet connection or a telephone, preferably with mute capability. Each participant is required to register for the meeting at the NIOSH website *https://www.cdc.gov/niosh/fire/fsc.html* by June 15, 2022, 5:00 p.m. EDT. NIOSH will reply by email confirming registration and the details needed to participate in the web-based meeting.

All information received in response to this notice must include the agency name and docket number (CDC–2022–0063; NIOSH 063–D). All relevant comments and submissions provided will be reviewed and posted at *http://www.regulations.gov.* Do not submit comments by email. CDC does not accept comments by email.

FOR FURTHER INFORMATION CONTACT: Jeff Funke, Team Lead, Surveillance and Field Investigations Branch, Division of Safety Research; Telephone: 304–285–5894; Email: *NIOSHFireTrauma@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of this web-based meeting and docket is to request public comment from the fire service community and interested parties on the NIOSH Fire Fighter Fatality Investigation and Prevention Program (FFFIPP).

Matters To Be Considered: NIOSH will provide a brief presentation and will facilitate discussion on the following two topics: (1) The primary audiences for NIOSH line-of-duty death investigation reports and the strengths and weaknesses of those reports, including report content, format, and length; and (2) specific feedback on how the NIOSH FFFIPP prioritization guideline for planning investigations can be enhanced to meet the needs of the fire service community.

Additional time will be given for invited and registered participants to bring other topics to the attention to the NIOSH FFFIPP.

Background: Since its inception in 1998, the NIOSH FFFIPP has held periodic meetings to seek input about the program with the fire service community and interested parties. These meetings have been an important component of the program and are vital to ensure the program is meeting the needs and expectations of those it serves. The FFFIPP has posted the results of these periodic meetings on its website at: *https://www.cdc.gov/niosh/fire/abouttheprogram/ourworkreviewed/ourworkreviewed.html.*

Written Fire Service Community and Interested Parties Participation

Interested fire service persons and organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket and may modify the FFFIPP and operations.

Written fire service community and interested parties comments: The docket will be opened to receive written comments on May 13, 2022 through July 27, 2022, 5:00 p.m. EDT.

Oral Fire Service Community and Interested Parties Comments

This meeting will include time for members of the fire service community and interested parties to provide comments about the NIOSH FFFIPP,

including investigation reports and program products to improve firefighter safety and health, and suggestions for enhancing the impact of the program. A discussion period will be provided to enable the audience to contribute to any of the topics discussed. The time allotted for speakers during the discussion period will be at the discretion of the NIOSH moderator based upon overall time constraints. A chat box will also be available during the meeting for participants to submit questions or comments to the speakers or NIOSH. This chat will be part of the official record. Questions will be read by the moderator and answered by the speaker and/or NIOSH as time allows.

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2022–10411 Filed 5–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–22BY]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Importation Regulations (42 CFR 71 Subpart F)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''New Information Collection Submitted for Public Comment and Recommendations'' notice on January 24, 2022 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Importation Regulations (42 CFR 71 Subpart F)—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a request for a new information collection to consolidate forms and information collections related to the importation of animals, animal products, and human remains into one information collection. This information collection was previously part of three separate, approved information collections (0920–1034, expires March 31, 2022, 0920–0263 expires September 30, 2023, and 0920–0199 expires August 31, 2024). CDC is requesting a three-year OMB clearance for this new, combined information collection.

Section 361 of the Public Health Service Act (PHSA) (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission or spread of communicable diseases from foreign countries into the United States. Statute and the existing regulations governing foreign quarantine activities (42 CFR 71) authorizes quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents in order to protect the public's health.

CDC regulations govern the importation of animals and animal products capable of causing human disease. Animals that are regulated by CDC include dogs, cats, turtles, snakes, lizards, non-human primates (NHP), civets, African rodents, and bats. CDC controls the importation of these animals to ensure that these animals, or animal products, being imported into the United States meet CDC regulations. CDC does this through a permitting process for certain animals.

On June 16, 2021 CDC published a **Federal Register** Notice informing the public about a temporary suspension of dogs entering the United States from high-risk rabies countries. The canine rabies virus variant (CRVV) was declared eliminated in the United States in 2007. The importation of just one dog infected with CRVV risks re-introduction of the virus into the United States resulting in a potential public health risk with consequent monetary cost and potential loss of human and animal life. Since 2015 there have been four known rabid dogs imported into the United States.

During the suspension period, CDC will issue permits for importers with dogs who have been in a high-risk CRVV country within the last six months and do not have a current, valid U.S.-issued rabies vaccination certificate. Only importers who are permanently relocating to the United States, are a U.S. government employee traveling on official orders, are an owner of a service dog that is trained to assist them with a disability, are an individual importing dogs for science, education, exhibition, or law enforcement purposes, or people who traveled with their dog before July 31, 2021 are eligible to apply for a permit. Dogs from CRVV-free or low risk countries and dogs with valid U.S.-issued rabies vaccination certificates that are microchipped, healthy, and at least six months of age do not require a permit. The current permit application to import a dog is under collection 0920–1034. When a dog or cat arrives at an airport and is sick or dead, importers are required to notify CDC. There is no form for this notification.

Other animals that require a permit and are included in this information collection are NHPs, which can carry of number of diseases that can cause

severe infections in humans. NHPs may not be imported as pets and may only be imported for bona fide scientific, educational, or exhibition purposes, as defined in the regulations. Forms for the importation of NHPs are currently under information collection 0920–0263. These forms will move into this new information collection to consolidate all forms related to the importation of animals or animal products into one collection.

A new form to request a permit to import a regulated animal that is neither a dog nor an NHP (*e.g.,* turtles, African rodents, civets) is included in this information collection. It also incorporates the addition of bats, which is currently approved under OMB control number 0920–0199.

Regarding human remains, the Division of Global Migration and Quarantine (DGMQ) works with the Division of Select Agents and Toxins (DSAT) on the importation for human remains. DGMQ requests death certificates from those wishing to import remains and then determines if the importer will need a permit, which is issued by DSAT and will remain in 0920–0199.

Lastly, people importing animal products must make a statement or provide documentation demonstrating that the animal product is not infectious.

CDC requests OMB approval for an estimated 60,219 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Dog Importers (42 CFR 71.51(c)(2), (d))	Dog Permit Application Form	60,000	1	60/60
NHP Importers (42 CFR 71.53)	NHP Shipment Arrival Notification Form	120	1	15/60
First Time NHP Importer (42 CFR 71.53)	NHP Importer Form	15	1	120/60
Regulated Animal Importer (42 CFR 71)	Other animal import form	2	1	30/60
Dog and Cat Importers (42 CFR 71.51(b)(3))	Record of sickness or death	43	1	60/60
Human Remains Importers (42 CFR 71.55, 42 CFR 71.32).	Provide death certificate	50	1	15/60
Importer of animal products (42 CFR 71.32)	Statement or documentation of non-infectiousness.	391	1	15/60
NHP Importers (42 CFR 71.53)	Lab-to-Lab Form	2	1	60/60
NHP Importers (42 CFR 71.53)	Zoo-to-Zoo Form	2	1	60/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–10374 Filed 5–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9136–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January Through March 2022

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from January through March 2022, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone No.
I CMS Manual Instructions	Ismael Torres	(410) 786–1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786–4481
III CMS Rulings	Tiffany Lafferty	(410) 786–7548
IV Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786–7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786–6877
VI Collections of Information	William Parham	(410) 786–4669
VII Medicare—Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786–2749
VIII American College of Cardiology-National Cardiovascular Data Registry Sites	Sarah Fulton, MHS	(410) 786–2749
IX Medicare's Active Coverage-Related Guidance Documents	JoAnna Baldwin, MS	(410) 786–7205
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786–7205
XI National Oncologic Positron Emission Tomography Registry Sites	David Dolan, MBA	(410) 786–3365
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	David Dolan, MBA	(410) 786–3365
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XIV Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	David Dolan, MBA	(410) 786–3365
All Other Information	Annette Brewer	(410) 786–6580

SUPPLEMENTARY INFORMATION:

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

The Director of the Office of Strategic Operations and Regulatory Affairs of the Centers for Medicare & Medicaid Services (CMS), Kathleen Cantwell, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Trenesha Fultz-Mimms,

Federal Register Liaison, Department of Health and Human Services.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: May 3, 2021 (86 FR 23373), August 17, 2021 (86 FR 45986), November 18, 2021 (86 FR 64492) and February 9, 2022 (87 FR 7458). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (January through March 2022)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of

Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for Updates to Medicare Benefit Policy Manual and Medicare Claims Processing Manual for Opioid Treatment Programs and New Modifier for Audio-only Services, use (CMS-Pub. 100-02) Transmittal No. 11219.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual.

Fee-For Service Transmittal Numbers

Please Note: Beginning Friday, March 20, 2020, there will be the following change regarding the Advance Notice of Instructions due to a CMS internal process change. Fee-For Service Transmittal Numbers will no longer be determined by Publication. The Transmittal numbers will be issued by a single numerical sequence beginning with Transmittal Number 10000.

For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
Medicare General Information (CMS-Pub. 100-01)	
11223	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11275	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11297	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
Medicare Benefit Policy (CMS-Pub. 100-02)	
11181	Internet-Only Manual Updates (IOM) for Critical Care, Split/Shared Evaluation and Management Services, Teaching Physicians, and Physician Assistants
11219	Updates to Medicare Benefit Policy Manual and Medicare Claims Processing Manual for Opioid Treatment Programs and New Modifier for Audio-only Services
11249	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11272	An Omnibus CR Covering: (1) Removal of Two National Coverage Determination (NCDs), (2) Updates to the Medical Nutrition Therapy (MNT) Policy, and (3) Updates to the Pulmonary Rehabilitation (PR), Cardiac Rehabilitation (CR), and Intensive Cardiac Rehabilitation (ICR) Conditions of Coverage Pulmonary Rehabilitation (PR) Program Services Furnished On or After January 1, 2010 Cardiac Rehabilitation (CR) and Intensive Cardiac Rehabilitation (ICR) Services Furnished on or After January 1, 2010
11288	Internet-Only Manual Updates (IOM) for Critical Care, Split/Shared Evaluation and Management Services, Teaching Physicians, and Physician Assistants
Medicare National Coverage Determination (CMS-Pub. 100-03)	
11171	National Coverage Determination (NCD) 270.3 Blood-Derived Products for Chronic, Non-Healing Wounds Blood-Derived Products for Chronic, Non-Healing Wounds
11214	National Coverage Determination (NCD) 270.3 Blood-Derived Products for Chronic, Non-Healing Wounds
11263	Revisions to National Coverage Determination (NCD) 240.2 (Home Use of Oxygen) and 240.2.2 (Home Oxygen Use for Cluster Headache) Home Use of Oxygen Home Oxygen Use to Treat Cluster Headache (CH)
11272	An Omnibus CR Covering: (1) Removal of Two National Coverage Determination (NCDs), (2) Updates to the Medical Nutrition Therapy (MNT) Policy, and (3) Updates to the Pulmonary Rehabilitation (PR), Cardiac Rehabilitation (CR), and Intensive Cardiac Rehabilitation (ICR) Conditions of Coverage Medical Nutrition Therapy Enteral and Parenteral Nutritional Therapy Positron Emission Tomography (PET) Scans
Medicare Claims Processing (CMS-Pub. 100-04)	
11171	National Coverage Determination (NCD) 270.3 Blood-Derived Products for Chronic, Non-Healing Wounds Autologous Platelet-Rich Plasma (PRP) for Chronic Non-Healing Wounds Policy Healthcare Common Procedure Coding System (HCPCS) Codes, Diagnosis Coding and Frequency Requirements Types of Bill (TOB) Payment Method Place of Service (POS) for Professional Claims Medicare Summary Notices (MSNs), Remittance Advice Remark Codes (RARCs), Claim Adjustment Reason Codes (CARCs) and Group Codes
11180	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction

11186	Calendar Year (CY) 2022 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
11187	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11188	New Waived Tests
11189	Update to the Internet Only Manual (IOM) Publication (Pub.) 100-04, Chapter 3, Section 40.2.4 Inpatient Prospective Payment System (IPPS) Transfers Between Hospitals IPPS Transfers Between Hospitals
11200	Implementation of the GV Modifier for Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs) for Billing Hospice Attending Physician Services RHCs and FQHCs for Billing Hospice Attending Physician Services
11202	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11208	Healthcare Common Procedure Coding System (HCPCS) Codes Subject to and Excluded from Clinical Laboratory Improvement Amendments (CLIA) Edits
11210	Expedited Review Process for Hospital Inpatients in Original Medicare Expedited Determinations of Inpatient Hospital Discharges Statutory Authority Scope Exceptions Important Message from Medicare (IM) Alterations to the IM Completing the IM Hospital Delivery of the IM Required Delivery Timeframes First IM Follow up copy of the IM Refusal to Sign the IM Ensuring Beneficiary Comprehension IM Delivery to Representatives Notice Retention for the IM Expedited Determination Process Beneficiary Responsibilities Timeframe for Requesting an Expedited Determination Provide Information to BFCC-QIO Beneficiary Liability During BFCC-QIO Review Untimely Requests for Review Hospital Responsibilities The Detailed Notice of Discharge (DND BFCC-QIO Responsibilities Receive Beneficiary Requests for Expedited Review Notify Hospitals and Allow Explanation of Why Covered Services Should End Validate Delivery of the IM Solicit the Views of the Beneficiary Solicit the Views of the Hospital Make Determinations and Notify Required Parties Effect of a BFCC-QIO Expedited Determination Right to Pursue an Expedited Reconsideration Effect of a BFCC-QIO Expedited Determination on Continuation of Care Right to Pursue the Standard Claims Appeal Process
11214	Effect of a BFCC-QIO Expedited Determination Right to Pursue an Expedited Reconsideration
	Effect of a BFCC-QIO Expedited Determination on Continuation of Care Right to Pursue the Standard Claims Appeal Process
11215	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11219	Updates to Medicare Benefit Policy Manual and Medicare Claims Processing Manual for Opioid Treatment Programs and New Modifier for Audio-only Services Site of service (telecommunications) Coding Adjustments to the Bundled Payment Rate Locality Adjustments
11221	Quarterly Update for Clinical Laboratory Fee Schedule (CLFS) and Laboratory Services Subject to Reasonable Charge Payment
11224	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11225	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11231	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11233	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11239	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11241	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11251	Claim Status Category and Claim Status Codes Update
11255	April 2022 Update to the Medicare Severity – Diagnosis Related Group (MS-DRG) Grouper and Medicare Code Editor (MCE) Version 39.1 for the International Classification of Diseases, Tenth Revision (ICD-10) Diagnosis Codes for 2019 Novel Coronavirus (COVID-19) Vaccination Status and ICD-10 Procedure Coding System (PCS) Codes for Introduction or Infusion of Therapeutics and Vaccines for COVID-19 Treatment
11257	Shared System Support Hours for Application Programming Interfaces (APIs)
11258	Gap Billing Between Hospice Transfers
11259	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11263	Revisions to National Coverage Determination (NCD) 240.2 (Home Use of Oxygen) and 240.2.2 (Home Oxygen Use for Cluster Headache) Oxygen and Oxygen Equipment
11265	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11267	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11268	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - April 2022 Update
11269	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11271	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11272	An Omnibus CR Covering: (1) Removal of Two National Coverage Determination (NCDs), (2) Updates to the Medical Nutrition Therapy (MNT) Policy, and (3) Updates to the Pulmonary Rehabilitation (PR), Cardiac Rehabilitation (CR), and Intensive Cardiac Rehabilitation (ICR) Conditions of Coverage Medical Nutrition Therapy (MNT) Services General Conditions and Limitations on Coverage

	Referrals for MNT Services Dieticians and Nutritionists Performing MNT Services Payment for MNT Services General Claims Processing Information Rural Health Centers (RHCs)/Federally Qualified Health Centers (FQHCs) Special Billing Instructions Common Working File (CWF) Edits Claims Processing Requirements for CR and ICR Services Furnished On or After January 1, 2010 Frequency Edits for CR and ICR Claims ICR Program Services Furnished On or After January 1, 2010 Coding Requirements for ICR Services Furnished On or After January 1, 2010 PR Program Services Furnished On or After January 1, 2010 Coding Requirements for PR Services Furnished On or After January 1, 2010 Edits for CR Services Exceeding 36 Sessions Edits for PR Services Exceeding 72 Sessions
11274	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11278	Quarterly Update to the End-Stage Renal Disease Prospective Payment System (ESRD PPS)
11280	Gap Billing Between Hospice Transfers
11284	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11287	Internet-Only Manual Updates for Critical Care Evaluation and Management Services Definition of a Global Surgical Package Billing Requirements for Global Surgeries Claims Review for Global Surgeries Adjudication of Claims for Global Surgeries
11295	April Quarterly Update for 2022 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
11299	Quarterly Update of HCPCS Codes Used for Home Health Consolidated Billing Enforcement
11300	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11301	Remittance Advice Remark Code (RARC), Claims Adjustment Reason Code (CARC), Medicare Remit Easy Print (MREP) and PC Print Update
11302	Combined Common Edits/Enhancements Modules (CCEM) Code Set Update
11303	April 2022 Update of the Ambulatory Surgical Center (ASC) Payment System
11304	April 2022 Integrated Outpatient Code Editor (I/OCE) Specifications Version 23.1
11305	April 2022 Update of the Hospital Outpatient Prospective Payment System (OPPS)
11309	Quarterly Update to the National Correct Coding Initiative [NCCI] Procedure-to-Procedure [PTP] Edits, Version 28.2, Effective July 1, 2022
11310	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11311	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11313	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11319	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11320	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
Medicare Secondary Payer (CMS-Pub. 100-05)	
11197	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
Medicare Financial Management (CMS-Pub. 100-06)	
11199	Notice of New Interest Rate for Medicare Overpayments and Underpayments -1st Qtr Notification for FY 2022
11203	Notice of New Interest Rate for Medicare Overpayments and Underpayments -2nd Qtr Notification for FY 2022
Medicare State Operations Manual (CMS-Pub. 100-07)	
	None
Medicare Program Integrity (CMS-Pub. 100-08)	
11177	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11206	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11207	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11211	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11212	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11216	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11217	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11218	Updates to Chapter 4 in Publication (Pub.) 100-08, Including Removal of Requests for Anticipated Payment (RAP) Suppressions and Updates to Exhibit 16 - Model Payment Suspension Letters in Pub. 100-08
11246	Updates to Chapter 4 in Publication (Pub.) 100-08, Including Removal of Requests for Anticipated Payment (RAP) Suppressions and Updates to Exhibit 16 - Model Payment Suspension Letters in Pub. 100-08
11250	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11253	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11256	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11283	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11308	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11314	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11315	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
11222	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11276	The Supplemental Security Income (SSI)/Medicare Beneficiary Data for Fiscal Year (FY) 2020 for Inpatient Prospective Payment System (IPPS) Hospitals, Inpatient Rehabilitation Facilities (IRFs), and Long Term Care Hospitals (LTCHs)

11298	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
Medicare Quality Improvement Organization (CMS- Pub. 100-10)	
	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
	None
Medicare Managed Care (CMS-Pub. 100-16)	
	None
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
	None
Medicare Prescription Drug Benefit (CMS-Pub. 100-18)	
	None
Demonstrations (CMS-Pub. 100-19)	
11201	ESRD Treatment Choices (ETC) Model Demo Priorities Correction
11242	ESRD Treatment Choices (ETC) Model Performance Payment Adjustment (PPA) - Facility Component (Implementation CR)
11244	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
11245	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
11266	ESRD Treatment Choices (ETC) Model Demo Priorities Correction
11294	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
One Time Notification (CMS-Pub. 100-20)	
11175	CY2022 Telehealth Update Medicare Physician Fee Schedule
11178	Skilled Nursing Facility (SNF) Claims Processing Update to Fiscal Year End (FYE) Edits
11179	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs) -- April 2022 (CR 1 of 2)
11185	CR: MCS - Enhancement to Automate the XHIC Error Process
11190	Correction to Processing When Osteoporosis Drugs Are Billed for Other Indications
11191	New Occurrence Span Code and Revenue Code for Acute Hospital Care at Xs k+/*Home
11192	Updating the 32287 Reason Code Edit in the Fiscal Intermediary Shared System (FISS) to Allow Processing of Claims Containing Healthcare Common Procedure Coding System (HCPCS) Code Q0249
11193	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
11194	Prevent Loading of Dental HCPCS Codes in the Fiscal Intermediary Shared System (FISS)
11196	MAC Participation in Change Request (CR) Development
11198	Implementation of Medicare Administrative Contractor (MAC) Appeals Upload Process Changes for the Recovery Audit Contractor (RAC) Data Warehouse (RACDW) and Addition of Disposition Category "U" to RACDW Appeals Layout File
11204	Modify Fiscal Intermediary Shared System (FISS) Existing Logic for Vaccine Administration Codes for Non-outpatient Prospective Payment System (Non-OPPS) Island Providers
11205	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
11209	Send Electronic Funds Transfer (EFT) Information from Provider Enrollment Chain and Ownership System (PECOS) to Fiscal Intermediary Shared System (FISS) - Implementation CR, Consolidation of January 2022 and April 2022 Releases
11220	Updating the 32287 Reason Code Edit in the Fiscal Intermediary Shared System (FISS) to Allow Processing of Claims Containing Healthcare Common Procedure Coding System (HCPCS) Code Q0249
11226	User Change Request (UCR): Fiscal Intermediary Shared System (FISS) - Expert Claims Processing System (ECPS) Enhancement to Process Notice of Elections (NOEs) with Frequency B or E
11227	User CR: MCS - Test UAT Future Dates Beyond the Current Year
11228	User Change Request (UCR): Fiscal Intermediary Shared System (FISS) – MAP1I81 Online Grab Request to Include Line Numbers
11229	User Change Request (UCR): Fiscal Intermediary Shared System (FISS) - Clear PRMNAPRO Screen Upon Completion of Job
11230	User Change Request (UCR): Fiscal Intermediary Shared System (FISS) – Modify Reason Code 38205 to Include All Patient Status Codes
11232	User Change Request (UCR): Fiscal Intermediary Shared System (FISS) - Claim Page 2 Adjustment Document Control Number (AD DCN) to Match the Claim Page 6 Cross Reference DCN (XREF DCN)
11234	User Change Request (UCR): Fiscal Intermediary Shared System (FISS) – Medicare Secondary Payer (MSP) Reports RPT800AA and RPT800AB Updates
11235	User Change Request (UCR): Fiscal Intermediary Shared System (FISS) – Modify Access to Reason Code File Update to Allow Narrative Only Updates
11236	Updating the Exempt Diagnosis Codes Present on Admission (POA) File to Accommodate Multiple Effective and Termination Dates
11237	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11238	ViPS Medicare System (VMS) - Track Claim Counter Activity in SuperOp – Implementation of User CR 11558
11240	Updates to the Common Working File (CWF) for Editing and Claims Processing to Allow Medicare Fee-For-Service (FFS) Coverage of Kidney Acquisition Costs for Medicare Advantage (MA) Beneficiaries Provided by Maryland Waiver (MW) Hospitals
11243	Method of Payment and Cost Settlement for Inpatient Services for Hospitals Participating under the Rural Community Hospital Demonstration
11248	Nursing and Allied Health Medicare Advantage Payment - Revision to CY 2018
11252	User CR: ViPS Medicare System (VMS) - Update Beneficiary Information Tracking System (BITS) Menu to Include a Selection Field of Electronic Submission of Medical Documentation (esMD) Transaction ID
11254	Mobile Personal Identity Verification (PIV) Station
12562	Common Working File (CWF) Editing - National Coverage Determination (NCD) 270.3 Blood-Derived Products for Chronic, Non-Healing Wounds
12564	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs) -- July 2022
Medicare Quality Reporting Incentive Programs (CMS- Pub. 100-22)	
	None
State Payment of Medicare Premiums (CMS-Pub.100-24)	
	None
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
	None

Addendum II: Regulation Documents Published in the Federal Register (January through March 2022)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: https://www.cms.gov/files/document/regs1q22qpu.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (January through March 2022)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (January through March 2022)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates to national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Common Working File (CWF) Editing - National Coverage Determination (NCD) 270.3 Blood-Derived Products for Chronic, Non-Healing Wounds	NCD 270.3	R11262OTN	02/10/2022	04/13/2021
Revisions to National Coverage Determination (NCD) 240.2 (Home Use of Oxygen) and 240.2.2 (Home Oxygen Use for Cluster Headache) Metastasis of Cancer	NCD 240.2 and NCD 240.2.2	11263	02/10/2022	09/27/2021
An Omnibus CR Covering: (1) Removal of Two National Coverage Determination (NCDs), (2) Updates to the Medical Nutrition Therapy (MNT) Policy, and (3) Updates to the Pulmonary Rehabilitation (PR), Cardiac Rehabilitation (CR), and Intensive Cardiac Rehabilitation (ICR) Conditions of Coverage	Remove 180.2 and 220.6; NCD 180.1	11272	02/18/2022	01/01/2022
National Coverage Determination (NCD) 270.3 Blood-Derived Products for Chronic, Non-Healing Wounds [Rescinds and replaces Transmittal 11171, dated January 12, 2022]	NCD 270.3	11214	01/20/2022	04/13/2021

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (January through March 2022)

(Inclusion of this addenda is under discussion internally.)

Addendum VI: Approval Numbers for Collections of Information (January through March 2022)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities (January through March 2022)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Wellstar North Fulton Hospital 3000 Hospital Boulevard Roswell, GA 30076	1033135959	01/18/2022	GA
Sarasota County Public Hospital District, *d/b/a* Sarasota Memorial Hospital – Venice 2600 Laurel Road E North Venice, FL 34275-3226	10-0539	01/18/2022	FL
Southern Hills Hospital & Medical Center 9300 West Sunset Road Las Vegas, NV 89148	1457306359	02/08/2022	NV
Mount Sinai South Nassau One Healthy Way Oceanside, NY 11572	330198	02/22/2022	NY
The following facilities have editorial changes (in bold).			
FROM: St. Joseph's Hospital **TO: Marshfield Medical Center**	520037	06/28/2005	WI
611 North Saint Joseph Avenue Marshfield, WI, 54449			
The following facility has been removed.			
Highline Medical Center 16251 Sylvester Rd SW Burien, WA 98166	50-0011	10/17/2013	WA

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (January through March 2022)

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum IX: Active CMS Coverage-Related Guidance Documents (January through March 2022)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (January through March 2022)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at http://www.cms.gov . For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (January through March 2022)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (January through March 2022)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA, (410-786-3365).

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
The following facility is new for this quarter.				
Bethesda North Hospital 10500 Montgomery Road Cincinnati, OH 45242	360179	12/16/2021	N/A	OH
Other information: DNV ID # 10000515749-MSC-DNV-USA Previous Re-certification Dates: n/a				
Facility	**Provider Number**	**Date of Initial Certification**	**Date of Re-certification**	**State**
The following facilities have editorial changes (in bold).				
FROM: Intermountain Medical Center; **TO: Intermountain Healthcare Health Services Inc.** 5121 South Cottonwood Street Murry, UT 84157 Other information: Joint Commission ID # 9540 Previous Re-certification Dates: 10/31/2008; 12/07/2010; 12/11/2012; 12/16/2014; 01/24/2017; 3/13/2019	460010	10/23/2003	**11/11/2021**	UT
St. Vincent Hospital and Health Care Services, Inc. 2001 West 86th Street Indianapolis, IN 46260 Other information: Joint Commission ID # 7178 Previous Re-certification Dates: 12/16/2008; 05/17/2011; 06/25/2013; 05/19/2015; 06/13/2017; 7/31/2019	150084	01/05/2004	**11/06/2021**	IN
Montefiore Health System 111 East 210th Street Bronx, NY 10467 Other information: Joint Commission ID # 2514 Previous Re-certification Dates: 09/23/2008; 10/08/2010; 10/23/2012; 09/23/2014; 10/18/2016; 11/07/2018	330059	11/14/2003	**10/29/2021**	NY
Mayo Clinic Arizona 5777 East Mayo Boulevard Phoenix, AZ 85054	030103	02/27/2009	**10/30/2021**	AZ

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
Other information: Joint Commission ID # 261796 Previous Re-certification Dates: 01/27/2009; 04/29/2011; 03/20/2013; 03/24/2015; 05/19/2017; 8/14/2019				
UMass Memorial Medical Center, Inc. 55 Lake Ave North Worcester, MA 01655 Other information: Joint Commission ID # 5640 Previous Re-certification Dates: 02/06/2019	220163	02/06/2019	**11/06/2021**	MA
TO: North Carolina Baptist Hospital DBA Wake Forest Baptist Medical Center; FROM: North Carolina Baptist Hospital dba Atrium Health Wake Forest Baptist Medical Center Boulevard Winston Salem, NC 27157 Other information: Joint Commission ID # 6571 Previous Re-certification Dates: 06/28/2011; 08/13/2013; 08/04/2015; 08/18/2017; 10/9/2019	340047	06/27/2011	**10/16/2021**	NC
Temple University Hospital, Inc. 3401 North Broad Street Philadelphia, PA 19140 Other information: Joint Commission ID # 6152 Previous Re-certification Dates: 02/11/2014; 04/07/2016; 04/04/2018	390027	02/08/2012	**10/13/2021**	PA
St. Luke's University Hospital 801 Ostrum Street Bethlehem, PA 18015 Other information: Joint Commission ID # 6024	390049	12/18/2014	**10/30/2021**	PA
Previous Re-certification Dates: 12/18/2014; 01/24/2017; 03/06/2019				
Aurora Health Care Metro Inc. St. Luke's Medical Center 2900 W Oklahoma Ave Milwaukee, WI, 53215 Other information: DNV ID # 10000509687-MSC-DNV-USA Previous Re-certification Dates: 02/03/2009; 08/09/2011; 07/17/2013; 07/21/2015; 11/14/2017; 2/12/2020	520138	02/03/2009	**01/06/2022**	WI
UT Southwestern William P. Clements Jr. University Hospital 6201 Harry Hines Boulevard Dallas, TX 75390-9262 Other information: Joint Commission ID # 9013 Previous Re-certification Dates: 12/17/2008; 06/07/2011; 06/04/2013; 06/23/2015; 08/08/2017; 10/11/2019	450044	12/17/2008	**02/12/2022**	TX
Inova Fairfax Hospital 3300 Gallows Road Falls Church, VA 22042 Other information: Joint Commission ID # 6351 Previous Re-certification Dates: 12/09/2008; 03/22/2011; 05/01/2013; 06/09/2015; 07/25/2017; 9/25/2019	490063	12/09/2008	**11/17/2021**	VA

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
Hartford Hospital 80 Seymour Street Hartford, CT 06102-5037 Other information: Joint Commission ID # 070025 Previous Re-certification Dates: 03/31/2009; 11/16/2011; 10/22/2013; 10/20/2015; 11/14/2017; 12/10/2019	070025	03/31/2009	**12/15/2021**	CT
UCSF Medical Center 505 Parnassus Avenue San Francisco, CA 94143 Other information: Joint Commission ID # 10095 Previous Re-certification Dates: 09/19/2012; 11/04/2014; 12/06/2016; 1/30/2019 Previous re-certification dates: 10/01/2018	050454	09/19/2012	**11/18/2021**	CA
Loyola University Medical Center 2160 South First Avenue Maywood, IL 60153 Other information: Joint Commission ID # 7288 Previous Re-certification Dates: 05/10/2011; 04/16/2013; 03/17/2015; 05/09/2017; 6/26/2019	140276	05/10/2011	**11/17/2021**	IL
Hackensack University Medical Center 30 Prospect Avenue Hackensack, NJ 07601 Other information: Joint Commission ID # 5934 Previous Re-certification Dates: 10/20/2015; 09/19/2017; 10/4/2019	310001	10/20/2015	**12/15/2021**	NJ
Baystate Medical Center 759 Chestnut Street Springfield, MA 01199 Other information:	220077	07/18/2017	**12/04/2021**	MA
Joint Commission ID # 2768 Previous Re-certification Dates: 07/18/2017; 9/11/2019				
Yale New Haven Hospital 20 York Street New Haven, CT 06510-3203 Other information: Joint Commission ID # 5677 Previous Re-certification Dates: 01/25/2011; 01/15/2013; 12/16/2014; 02/28/2017; 5/22/2019	070022	01/25/2011	**11/24/2021**	CT
Shands Teaching Hospitals & Clinics, Inc. 1600 SW Archer Rd Gainesville, FL 32608 Other information: Joint Commission ID # 6804 Previous Re-certification Dates: 11/18/2008; 02/08/2011; 02/12/2013; 01/27/2015; 02/14/2017; 04/24/2019	100113	11/26/2003	**12/16/2021**	FL
Stanford Health Care 300 Pasteur Drive Stanford, CA 94305 Other information: Joint Commission ID # 10010 Previous Re-certification Dates: 11/24/2010; 12/12/2012; 12/09/2014; 03/14/2017; 08/28/2019	050441	12/22/2003	**12/15/2021**	CA
Deborah Heart and Lung Center 200 Trenton Rd Browns Mills, NJ 08015 Other information: DNV ID # C522707 Previous Re-certification Dates: 02/05/2019	310031	02/05/2019	**02/10/2022**	NJ
Memorial Hermann - Texas Medical Center 6411 Fannin Street	450068	04/10/2013	**12/23/2021**	TX

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
Houston, TX 77030 Other information: Joint Commission ID # 9081 Previous Re-certification Dates: 03/19/2013; 2015-04/14/2015; 05/24/2017; 06/26/2019				
Mayo Clinic Florida 4500 San Pablo Road Jacksonville, FL 32224 Other information: Joint Commission ID # 369946 Previous Re-certification Dates: 03/17/2009; 10/19/2011; 09/24/2013; 09/15/2015; 10/03/2017; 11/6/2019	100151	03/17/2009	**01/15/2022**	FL
Einstein Medical Center Philadelphia 5501 Old York Road Philadelphia, PA 19141 Other information: Joint Commission ID # 6118 Previous Re-certification Dates: 08/24/2011; 08/20/2013; 08/04/2015; 09/19/2017; 10/23/2019	390142	08/24/2011	**01/15/2022**	PA

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (January through March 2022)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no updates to the listing of facilities for lung volume reduction surgery published in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (January through March 2022)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (January through March 2022)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

[FR Doc. 2022–10396 Filed 5–12–22; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Organization, Functions, and Delegations of Authority, Part GFJ, Indian Health Service, Navajo Area Office

Part GFJ, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), as amended at 52 FR 47053–67, December 11, 1987, as amended at 60 FR 56606, November 9, 1995, as amended at 61 FR 67048, December 19, 1996, as amended at 69 FR 41825, July 12, 2004, as amended at 70 FR 24087, May 6, 2005, 70 FR 60350, October 17, 2005, and most recently amended at Vol 79, No 68 FR 19626, April 9, 2014, is hereby amended to reflect a reorganization of the Navajo Area Indian Health Service (NAIHS). The purpose of this re-organization proposal is to update the current approved NAIHS organization to align the overall health care system that supports overall improved efficiency and ensure quality and safe health care services. Delete and/or update functional statements for the NAIHS in their entirety and replace with the following:

Organizations and Functions

Department of Health and Human Services
Indian Health Service (G)
Navajo Area Indian Health Service (GFJ)

Office of the Area Director (GFJ1)

(1) Plans, develops and directs the Area Program within the framework of Indian Health Service (IHS) policy in pursuit of the IHS mission; (2) delivers and ensures the delivery of high quality comprehensive health services; (3) coordinates the IHS activities and resources internally and externally with those of other governmental and nongovernmental programs; (4) promotes optimum utilization of health care services through management and delivery of services to American Indians and Alaska Natives; (5) Ensures the full application of the principles of Indian preference and a model Equal Employment Opportunity (EEO) program; (6) provides Indian Tribes and other Indian community groups with optional ways of participating in the Indian health programs including an opportunity to participate in developing the mission, values and goals for the NAIHS; (7) participates in cross-cutting issues and processes, including, but not limited to emergency preparedness/security, budget formulation, self-determination issues, Tribal shares computations and resolution of audit findings as may be needed and appropriate.

Diversity Management and Equal Employment Opportunity (DMEEO) Program (GFJ1A)

(1) The DMEEO Program will ensure Equal Employment Opportunities for Federal employment for a Diverse, Equitable, and Inclusive work environment; (2) maintains a compliant model EEO Program, as required under both Title VII of Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, and Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; (3) ensures the full application of the principles of Indian preference; (4) maintains a compliant model EEO Program, as required under both Title VII of the Civil Rights Act of 1964; MD–110, and applicable employment laws; (5) advises the Area Director and leadership in the execution of EEO responsibilities; (6) provides program direction and leadership for the Area EEO program and procedures; (7) ensures prohibition of unlawful discrimination practices in Federal employment for employees and applicants; (8) provides the rights, responsibilities, and protections under the Federal anti-discrimination laws that prohibit discrimination in the workplace based on race, ethnicity, color, religion, sex, (including pregnancy, gender identity, and sexual orientation), national origin, age (40 years of age or over), disability (physical or mental), genetic information (family medical history), or in retaliation for EEO or whistleblower activity.

Office of Administration and Management (GFJ2)

(1) Plans, directs, and coordinates NAIHS activities in the areas of policy, internal controls reviews, financial management, human resources management, third-party reimbursements, contracts management, procurement, and information technology, including personal property, records and transportation accountability/management; (2) administrative and management oversight of Gallup Regional Supply Center; (3) serves as the NAIHS principal advisor on all Area organization and management policy activities; (4) provides guidance and assistance to Service Units in the overall development, planning and implementation of administrative functions; (5) advises staff on procedures for the development, revision, or cancellation of Area-issued directives and delegations.

Division of Financial Management (GFJ2A)

(1) Provides direction for the organization, coordination, and execution of all budget and financial operations of the Area; (2) monitors fund control operations of Service Units and program offices; (3) develops and implements budget, fiscal, and accounting procedures; (4) conducts reviews and analyses to ensure compliance with Area policy; (5) interprets policies, guidelines, manual issuances, Office of Management and Budget (OMB) circulars, directives and other instructions issued by IHS, HHS, OMB, and Congress as it relates to the formulation of Area and Service Unit budgets and budget execution; (6) develops and makes recommendations of Area budget execution by Service Units; (7) establishes and maintains memorandum accounts of obligations for allowances through use of commitment registers; (8) monitors and ensures proper obligation of prior year funds and; (9) provides technical support for Tribal relations pertinent to budget activities such as annual budget formulation, Tribal Health Programs Annual Funding Agreements and their budget modifications.

Branch of Accounting (GFJ2A1)

(1) Provides advice and guidance to Area and Service Unit staff in the areas of Accounts Payable, Cash Management, Federal/Inter-agency Transactions, and Travel; (2) advises Area and Service Unit staff on the interpretation of accounting data and reports received from IHS Headquarters (HQ); (3) assures that accounting transactions are entered properly and prepares periodic or special purpose reports and financial statements for Area Divisions and Service Units; (4) provides interpretation and ensures compliance with operating policies, procedures, guidelines via Federal Travel Regulations, Federal Property Management Regulations, Joint Travel Regulations, HHS Travel Manual, Indian Health Manual-Travel Management; (5) participates in reconciliations of all funding sources (Federal, Tribal, and Urban) on a regular basis; (6) completes Debt Management.

Branch of Third Party (GF2A3)

(1) Provides interpretation and ensures compliance with the IHS Indian Health Manual Part 5, Chapter 1 (Third-Party Revenue Accounts Management and Internal Controls), On-line Reporting Tool Manual, Debt

Management, Recovery of Funds Under Federal Medical Care Recovery Act (FMCRA) Policy, NAO Business Office Report Internal Policy, and other pertinent policies; (2) plans and coordinates and provides oversight of third party revenue accounts management of NAIHS facilities, including standardized reports and reporting; (3) provides technical assistance and guidance to Service Unit third-party staff in areas of patient registration, patient benefits coordination, billing, denial management, accounts receivable, internal audits, and pertinent requirements; (4) establishes liaison and coordinates Medicare/Medicaid activities with State agencies, including policy interpretation; (5) ensures accurate and current information and trends, including analysis of trends, are consistently available to the NAIHS executives and Service Unit Chief Executive Officers.

Branch of Budget (GFJ2A2)

(1) Ensures accurate and current information are available at all times for the NAIHS Executive Staff, Division Directors, and Service Unit management teams; (2) ensures that funds are allotted properly and accounted for in line with acceptable Federal accounting practices; (3) analyzes obligation trends and prepares periodic reports and; (4) assures that reconciliations of all funding sources (Federal, Tribal, and Urban) are accomplished on a regular basis.

Gallup Regional Supply Service Center (GFJ2B)

(1) Responsible for the overall management of expendable medical supplies such as provides bulk supply support directly to federal and Public Law 93–638 Service Units/healthcare facilities located in Arizona and New Mexico through management and operation of laboratory, dental, medical, subsistence, and general medical supply items; (2) plans, develops, and manages supply budgets; (3) provides technical and staff assistance to Service Units in matters related to the acquisition, utilization, disposition, and accountability of supplies; (4) serves as the Regional emergency management response team for logistical coordination of medical supplies; (5) provides technical expertise and recommendations for automated logistical software requirements for just in time delivery product management.

Division of Acquisition Management and Contracts (GFJ2C)

(1) Plans, develops, and coordinates the execution of administrative systems, methods, and techniques for Area procurement activities; (2) provides guidance to Service Units on the administrative aspects of Federal contracting, procurement, and grant requirements; (3) serves as the principal focus for liaison activities regarding the administrative aspects of procurements, intra/inter-agency agreements, collaborative agreements, Memorandum of Agreements (MOA) and Memorandum of Understanding (MOU), etc.; (4) determines and delegates procurement authority; (5) administers the purchase card program; (6) provides planning, direction, monitoring, and evaluation assistance to Service Units on procurement functions; (7) ensures compliance with applicable Federal regulations and statutes; (8) audits in-progress and completed work of the Area Office and Service Units; (9) prepares and issues internal and field policy and guidance; (10) serves as NAIHS Ombudsman for development and fostering of contractual relationships; (11) provides technical assistance to non-acquisition personnel in the government.

Division of Information Technology (GFJ2D)

(1) Plans, coordinates and assists in implementation of new software/hardware in support of clinical care, including assists in deployment of clinical software/hardware for electronic health records and associated Information Technology (IT) programs and systems; (2) Provides direction, supervision and management of all activities related to data processing, word processing, networking, video-conferencing, digital imaging transmission, computer security, telecommunications and archiving; (3) provides direct services through operation and management of associated automated data processing hardware and software; (4) provides technical assistance in related activities involving systems design, development, implementation, testing and training throughout the NAIHS, including staff assistance to Area and Service Unit staff; (5) provides data processing services, including computer operations, and information retrieval and analysis for operational data systems within the NAIHS; (6) performs systems analysis, computer programming, computer systems security, system implementation and user training for the Area's data system; (7) ensures security of government IT systems, privacy of patient information, and compliance with Federal laws, regulations, and policies applicable to the IHS; (8) advises the Area executive management staff on effective, efficient, and successful IT strategies; (9) directs the acquisition, development, enhancement, deployment, support, and training for information systems that support health services and business operations of NAIHS; (10) participates in cross-government initiatives and collaborates with IHS Headquarters, IHS Areas, Tribal, and other partners to effectively and efficiently support NAIHS objectives and; (11) ensures a viable security program for protection of the NAIHS and Gallup Regional Services Supply Center (GRSSC) grounds and buildings; (12) assists as the administrative authority on Capital Investment Planning Program for all non-expendable equipment.

Branch of Systems Administration (GFJ2D1)

(1) Provides overall system administration support functions for the NAIHS and Service Unit Resource and Patient Management System (RPMS), Microsoft ®Windows©, Unix and Commercial Off The Shelf operating systems; (2) plans, develops, and manages the NAIHS website; (3) monitors and ensures all security requirements are met or exceeded; (4) develops applications for administrative, financial and clinical reporting requirements; (5) evaluates new technologies and internet services.

Information Systems Security Staff (GFJ2D3)

(1) Develops and monitors information systems security requirements for NAIHS; (2) plans, develops, and monitors security policies, procedures and requirements for the Area Office and Service Units; (3) installs, manages and monitors security systems to protect patient privacy and confidentiality; (4) plans, designs and implements network and telecommunications systems to provide optimum voice, video and data transmission; (5) manages and monitors a wide area network and local area networks for optimum digital imaging/telehealth utilization and availability.

Policy, Planning, and Management Staff (GFJ2D4)

(1) Coordinates and promotes the NAIHS IT strategic planning initiatives; (2) monitors, develops and manages the NAIHS information systems policies and procedures; (3) consults with administrative services and

management regarding information systems initiatives and provides IT support; (4) maintains, monitors and coordinates the RPMS system-wide data elements requirements; (5) assembles performance improvement measurements required by The Joint Commission (TJC) or Centers for Medicare and Medicaid Services.

Property and Supply Management Staff (GFJ2D5)

(1) Provides leadership, direction and overall management of all personal property in key areas of planning, accountability, utilization, control, and disposal; (2) provides guidance on Area property management procedures including property accounting and reporting instructions; (3) executes physical inventories including the reconciliation of inventory reports and standard general ledger accounts; (4) documents all transactions affecting personal property; (5) provides technical assistance Area-wide on property software packages, *e.g.,* Sunflower Assets; (6) provides overall management of Area Office expendable office and federal forms supplies to include reliability, timeliness, quality, service and cost effectiveness; (7) provides technical and staff assistance to Area and Service Units on matters related to the acquisition, utilization, disposition, and accountability of equipment; (8) plans, develops, coordinates, and provides internal audit activities related to all-encompassing Logistical Management functions: Office services, Federal Records Management and delegation/directives control, personal property management, and other administrative services in support of Area programs; (9) provides guidance to Service Units in the operation and evaluation of procurement and acquisition of equipment, office services, and transportation; (10) serves as the subject matter expert on Federal personal property management laws, rules, regulations, policies, procedures, and practices

Office of Clinical Services (GFJ3)

(1) Ensures the delivery of safe and comprehensive care to all primary care and specialty care patients in NAIHS; (2) Responsible for all health programs ensuring safe quality care for all patients in the NAIHS; (3) The Chief Medical Officer assists the Clinical Directors and Chief Nurse Executives by supporting Area-wide initiatives to provide patient access, safety and satisfaction as well as the financial performance of clinical services; (4) provides consultation and technical assistance to all operating and management levels of the NAIHS and Indian Tribes in the design and implementation of a health management delivery system; (5) provides guidance and support to all field activities related to the day-to-day delivery of health care; (6) provides Area-wide leadership in Clinical programs in relation to the IHS goals, objectives, policies, and priorities; (7) provides direction for the operation of the healthcare delivery activities of the NAIHS; (8) handles all logistics associated with the conduct of clinical program reviews of Service Units; (9) directs the development and implementation of health care standards, quality control and quality assurance, operational planning activities and reviews of clinical programs; (10) provides leadership, guidance, and coordination of the clinical manpower and training programs.

Division of Clinical Consultants (GFJ3A)

(1) Provides technical support expertise to Service Units; (2) provides professional guidance in formulating policies, procedures and standards of care and practices; ensures Area-wide compliance with established policies, procedures and regulations; (3) advises on assessment findings for potential implications for NAIHS policy, plans, programs and operations; (4) develops quality of care evaluation criteria, standards of care, and guidance for the maintenance of the quality assurance programs of the NAIHS; (5) conducts monitoring activities to assess the quality of care provided by the NAIHS.

Division of Purchased/Referred Care (GFJ3B)

(1) Establishes and provides organization, coordination, and implementation of policies and procedures for Purchased/Referred Care (PRC) operations, utilizing managed care concepts; (2) coordinates the development of an annual budget, with advice of allowance, for PRC fund control activities; (3) coordinates and evaluates medical, preventive, and hospital services provided through formal contractual procedures; (4) implements and administers a PRC quality assurance program that is data based and verifiable for monitoring the quality of PRC; (5) establishes strategic PRC plans that are developed to support organizations, issues, or work processes; (6) coordinates and implements information resources related processes that integrate selected techniques/methods with PRC systems to solve processes/problems; (7) coordinates and analyzes appeal cases, high cost care cases, and deferred PRC services.

Professional Recruitment Staff (GFJ3G)

(1) Develops the NAIHS program to recruit, assign and retain health care professionals; (2) assesses the professional staffing needs, coordinates the development of strategies to satisfy these needs, and increase the morale and retention of all professionals; (3) provides liaison with Commissioned Corps activities; (4) maintains contact with related professional societies, educational institutions, and other Federal, State and local agencies; (5) coordinates professional recruitment, assignment and development of Dental Officers for the Area; (6) enhances partnerships with Tribal healthcare organizations that are administered by the Navajo Nation and its contractors by providing recruitment and retention activities for the organizations that have left Tribal shares at the Area Office for this purpose.

Office of Environmental Health and Engineering (GFJ4)

(1) Establishes policies related to NAIHS health care and sanitation facilities planning, construction, operations, and maintenance; (2) provides leadership, guidance and coordination to the overall Navajo facilities management programs; (3) develops and coordinates program requirements for planning, design and evaluation of health care and sanitation facilities; (4) develops, coordinates, and evaluates technical standards, guides, plans and requirements for health care and sanitation facilities construction requirements within the NAIHS; (5) provides leadership, guidance, and coordination to the overall Area Biomedical Engineering Program and the Occupational Health and Safety Management Programs; (6) allocates appropriation funds to all Office of Environmental Health and Engineering (OEHE) programs and projects; (7) provides non-legal advice to the Area on Public Law 93–638 as it relates to OEHE services and activities.

Division of Environmental Health Services (GFJ4A)

(1) Plans, develops and appraises Area-wide environmental health services programs; (2) provides technical assistance to the Service Units and the Tribes on the implementation of comprehensive environmental health programs and services among Indian families and communities; (3) provides technical assistance on environmental health including institutional environmental health and plan reviews, vector control, epidemiology, sanitary facilities, and food sanitation to the IHS,

Tribes and Federal and State agencies; (4) plans and implements an integrated Area-wide injury prevention and control program designed to reduce injury deaths and hospitalizations; (5) coordinates environmental responses to emerging diseases with Tribes, States, and other Federal agencies; (6) manages and administers a Web-based environmental health database that helps determine resource requirement allocations.

Division of Sanitation Facilities Construction Services (GFJ4B)

(1) Administers the Indian Sanitation Facilities Construction Program through Public Law 86–121; (2) plans, develops, coordinates, appraises and evaluates Area-wide sanitation facilities construction activities conducted in cooperation with Tribal groups and other agencies; (3) provides engineering consultation regarding environmentally related public health programs; (4) provides technical liaison with other Governmental agencies, foundations and groups relative to public health engineering and environmental health; (5) provides personnel staffing, training, orientation, and development; (6) ensures professional/technical/environmental standards compliance and support; (7) provides National Environmental Policy Act (NEPA) compliance documentation, approval, and support; (8) provides right-of-way easement documents, approval, and support; (9) provides specialty use/construction permits, approval, and support; (10) provides project funding document preparation, production, approval, and support; (11) coordinates multi-agency funded projects coordination, procurement, and task tracking; (12) provides procurement/warehousing/inventory of office and special order project materials/equipment/services; (13) provides project services, materials, equipment, and construction via Memorandum of Agreements and Public Law 93–638 contracts with Navajo Engineering Construction Authority and Navajo Tribal Utility Authority; (14) provides vehicle fleet maintenance, management, and support; (15) provides project electrical design, services, and support; (16) provides project accounting and payment services and/or support; (17) provides project final inspection/transfer process documentation, tracking, approval, and support; (18) provides technical support for writing, completion, and distribution of project final reports; (19) coordinates feasibility studies related to Tribal, Tribal Chapter, and other outside agency requests.

Division of Facility Planning and Management (GFJ4C)

(1) Develops and coordinates program requirements for planning, design and evaluation of health care facilities in the NAIHS; (2) develops, coordinates, and evaluates technical standards, guidelines, plans, and requirements for health care facilities construction requirements within NAIHS; (3) develops and coordinates facility construction programs; (4) provides technical assistance and monitors NAIHS and Tribal facilities planning and construction programs; (5) coordinates inter-agency requirements for shared or cooperative projects with agencies such as Department of Defense, Department of Veterans Affairs, State, Tribal, and regional planning bodies; (6) provides technical assistance and consultation to the Tribal Government to assist and brief those organizations on the progress of planning, design and construction projects; (7) ensures compliance with NEPA and other environmental regulations in planning, design and construction of health care facilities, support buildings, major renovations/expansions to existing facilities and staff quarters; (8) responsible for real property asset accountability of all IHS government property; (9) responsible for budget accounting for all construction projects for all funding sources; (10) provides non-legal advice the NAIHS on Public Law 93–638 as it relates to OEHE services and activities.

Facility Planning Staff (GFJ4C1)

(1) Provides leadership and guidance on health planning, program planning, health systems planning, (2) provides coordination for the Area including updates of Area Master Plans for Health Services, including current and proposed new health services, new health facilities, staff housing/quarters, and staffing requirements for current and future needs.

Division of Biomedical Engineering (GFJ4D)

(1) Plans, develops, coordinates, appraises and evaluates Area-wide biomedical engineering programs; (2) assesses Service Unit biomedical engineering needs and develops appropriate action programs and modification to existing program functions; (3) coordinates staff assignments, designs medical equipment training and education programs for hospital and clinical staff and career development activities for the NAIHS; (4) provides engineering and technical assistance and consultation on biomedical engineering and telemedicine equipment, purchases, modifications, installation and hospital renovation and construction projects; (5) coordinates safety and emergency response planning activities; (6) ensures compliance with applicable regulatory requirements from various professional organizations and entities including the National Fire Protection Agency, Association for the Advancement of Medical Instrumentation, TJC, Food and Drug Administration, etc.; (7) coordinates the modification, installation and design of medical, dental, and radiology equipment; (8) assesses and minimizes the clinical and physical risk of equipment use on patients and clinical staff through equipment maintenance, inspection, testing and quality assurance and risk management programs; (9) supports direct patient care programs by maintaining and certifying the operation and safety of all medical equipment; (10) provides specialized biomedical engineering equipment repair for all dental, medical, and radiology equipment; (11) coordinates and monitors complex medical and laboratory contracts Area-wide; (12) provides design and engineering of a Picture Archiving and Communication System for radiology functions and recommends telemedicine applications for the clinical need and mission of NAIHS; (13) specifies and designs telecommunications requirements for telemedicine to ensure sufficient bandwidth is available for the telemedicine programs.

Division of Occupational Health and Safety Management (GFJ4E)

(1) Performs industrial hygiene activities including compliance surveys of radiographic equipment; (2) assesses radiation exposure to patients; (3) provides quality assurance assessment of medical imaging processing; (4) provides surveys of occupational exposure to nitrous oxide, ethylene oxide, anesthetic gases, mercury and other chemical hazards; (5) evaluates ventilation systems in negative pressure isolation rooms, operating rooms and dental operations; (6) provides ergonomic analyses of workstations and high risk occupations; (7) provides safety and infection control program development and evaluation including training and consultative assistance for safety officers and infection control practitioners; (8) provides compliance reviews of existing policies and procedures; (9) develops model policies and procedures; (10) provides safety and infection control program accreditation compliance reviews; (11) provides

occupational safety and infection control training for Service Unit staff; (12) provides environmental sampling to include sample collection and analysis of suspected asbestos-containing materials, lead-based paint and quantification of indoor air contaminants; (13) performs environmental assessments which include surveys to determine Service Unit compliance with Federal, State and local environmental regulations; (14) coordinates facilities management to conduct life safety code (building fire safety component) surveys; (15) conducts construction plan reviews for new construction and renovation; (16) consults with and advocates for facility managers on life safety code compliance issues.

Division of Administrative Support (GFJ4G)

(1) Provides administrative direction and guidance to the operational Divisions within the NAIHS OEHE, including guidance provided to Area, District, and Field Offices located throughout the NAIHS; (2) performs accounting services for the OEHE Divisions, including planning and implementation of annual OEHE program budgets; (3) maintains annual OEHE budget commitment registers; (4) receives and approves vendor invoices; (5) provides certification of funds available within appropriate electronic financial management and government travel systems; (6) ensures proper obligation and expenditure of program and project funds; (7) provides overall internal coordination with the NAIHS Division of Financial Management and the Division of Acquisition Management and Contracts, ensures appropriate financial transactions, documentation and reporting; (8) advises the OEHE Director on NAIHS OEHE IT needs and requirements, including computer equipment, computer networking, electronic mail, internet connectivity, new technologies, information system security awareness and compliance, and information system continuity of operations plans; (9) provides technical consultation and direct assistance to OEHE staff stationed at Area, District, and Field Offices concerning hardware and software installation, configuration, maintenance and repair; (10) assesses and monitors OEHE professional staffing needs; (11) coordinates with Division Directors to develop strategies to meet the needs and increase the morale and retention of OEHE staff; (12) works with Human Resources to prepare vacancy announcements and process personnel orders for civil servants and Commissioned Corps Officers; (13) encourages full program support and compliance concerning Indian preference and EEO requirements in hiring and managing staff; (14) oversees the OEHE staff professional development program; (15) receives, reviews, and processes OEHE training authorization documents to support continuing education and improved competencies among OEHE staff; (16) supports staff individual development plans (IDPs) and ensures training requests are consistent with established IDPs; (17) provides program management of OEHE personal property in terms of accountability, utilization, control, and disposal; (18) provides guidance on OEHE property management procedures including property accounting and reporting instructions; (19) documents all transactions affecting OEHE personal property; (20) assists the OEHE Director with Public Law 93–638 issues; (21) participates in formal Public Law 93–638 negotiations with the Navajo Nation and Tribal Organizations authorized by Navajo Nation to contract pursuant to Public Law 93–638; (22) serves as members of the NAIHS Incident Response Team.

Office of Tribal Partnerships and Liaison (GFJ5)

In support of the IHS mission, the Office of Tribal Partnership and External Affairs: (1) Provides leadership and partnership efforts on Tribal and urban Indian health activities in implementation of Title I and Title V of the Indian Self-Determination and Education Assistance Act and Title V of the Indian Health Care Improvement Act; (2) responsible for the implementation of policies, procedures, and standards for Tribal and urban health programs; (3) serves as the liaison between Tribes and headquarters; (4) principal advisor to the Area Director and Area; (5) serves as primary source of technical and policy advice on Tribal matters.

Indian Self-Determination Staff (GFJ5A)

(1) Plans, coordinates, and implements all tasks relative to contracting/compacting activities pursuant to the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended; (2) advises the Area Director and leadership on the activities and issues related to the IHS' implementation of Title V of the Indian Health Care Improvement Act, as amended and assures that Urban Indian health programs and organizations are informed of pertinent health policies; (3) coordinates and effectuates respectful and positive relations with Tribal, State and Federal Governments and agencies, and intra/inter-agency departments at local and national offices; (4) develops supportive relationships with local Tribal Governments and Tribal organizations (contractors and compactors); (5) provides advice on the effect and impact of IHS policies, plans, programs and operations on Tribal operations and relationships; (6) advises and reports pertinent data/information to the Area Director, Executive Committee, Public Law 93–638 Negotiation Team, Service Unit Chief Executive Officers, Tribal Governments, and Tribal organizations relative to contracting activities; (7) compiles Area Director Report to Navajo Nation legislature on a quarterly basis; (8) in coordination with the Office of the General Counsel, provides technical support to Office of Environmental Health and Engineering, Area Offices and Federal Service Units on Public Law 93–638 issues; (9) oversees the negotiation of all self-determination contracts and self-governance compacts and funding agreements with participating Tribal governments and Tribal organizations; (10) advises on new methods and techniques for Indian community participation in, and management of their health programs; (11) provides technical assistance in such areas as financial resource management (inter/intra-agency); (12) organizes, collaborates, promotes and maintains effective Tribal consultation with Tribal Government programs, Tribal organizations and Tribal Leaders; (13) ensures that urban confer with Urban Indian health programs and organizations occurs during the development of IHS policy.

Urban Programs Staff

(1) Coordinates activities with IHS HQ and NAIHS on relevant Tribal and Urban activities; (2) coordinates, assists and monitors inter-governmental and legislative activity and functions; (3) monitors and provides liaison for the maintenance of an effective financial management system on all aspects of contract/compact funding; (4) participates in cross-cutting issues and processes including, but not limited to emergency preparedness/security, budget formulation, self-determination/self-governance issues, federal and Tribal workgroups, and resolution of audit findings as may be needed and appropriate.

Office of Public Health (GFJ6)

The NAIHS Office of Public Health promotes the health and wellness of the Navajo Nation. (1) Works together to

improve the health status of the Navajo Nation; (2) collaborates with the Navajo Nation, State, Tribal, Federal and Universities to maintain an active network of public health professionals; (3) utilizes data, surveillance, and statistics to monitor public health and eliminate health disparities; (4) focuses on prevention, epidemiology, disease surveillance, infectious disease control, chronic disease prevention, immunizations, and health promotion.

Division of Health Promotion and Disease Prevention (HPDP) (GFJ6A)

(1) Develops, implements, and evaluates HPDP Programs to create a healthier Navajo Nation; (2) The Navajo HPDP hosts, coordinates, implements, communicates wellness, and disseminates evidence based health promotion information to prevent chronic diseases; (3) The Navajo HPDP program collaborates with the community and stakeholders to promote health and wellness; (4) implements a wide range of preventive programs including Just Move It, Acudetox (Ocular Acupuncture), Navajo Wellness Model, Basic Tobacco Intervention Skills, Lifestyle Balance, School Health Prevention Programs, Physical Activities, Youth Mental Health First Aid, and Employee Wellness. Other Areas include: Chronic Disease Prevention, Community Health, Immunizations, Nicotine Prevention, Behavioral Health, and Health Promotion and Disease Prevention.

Diabetes Treatment and Prevention Staff (GFJ6B)

(1) Works with the Special Diabetes Programs for Indians grants to provide diabetes treatment and prevention services to IHS, Tribal and Urban Indian health programs.

Branch of Program Statistics (GFJ6C)

(1) Provides day-to-day technical and scientific planning, direction, management, and analyses of infections and/or acute or chronic illnesses, injuries, and occupational hazards; (2) serves as a technical expert and advisor in epidemiology in the design, conduct, and analysis of epidemiologic studies and associated risk factors and costs; (3) works closely with epidemiologic and surveillance team members in developing data coding, editing, and analysis plans for activities and epidemiologic studies; (4) selects and utilizes statistical techniques and computer software packages most appropriate to the problem at hand; (5) prepares and submits manuscripts for presentation at scientific meetings and for publication in scientific journals; (6) delivers presentations to public health, medical and other professional groups; (7) serves as technical officer for collaborative projects with State health departments and other governmental and non-governmental agencies and organizations; (8) interacts effectively with officials at all levels of Federal and state government, private and nonprofit institutions, international health agencies, and other health professionals; (9) cooperates with other organizational components within IHS to achieve overall objectives; (10) provides responses to requests from individuals within and outside IHS; (11) provides health care program work conducting and consulting on epidemiological studies/issues; (12) provides professional consulting services of various health care programs for epidemic/pandemic issues.

Office of Quality and Patient Safety (GFJ7)

(1) Advises the NAIHS Area Director on all aspects of assuring quality health care and develops and implements a strategic quality framework, integrating feedback and inputs from various levels of the organization and Tribal/Urban Indian organization partners; (2) oversees accreditation readiness activities and compliance with accreditation requirements; (3) conducts training and informational activities that promote skills development in quality improvement, quality assurance, and performance improvement; (4) assesses and reports on patient satisfaction and experience using standardized survey instruments and processes, and facilitates improvement activities; (5) coordinates and organizes participation of NAIHS facilities and staff in interagency quality improvement activities; (6) develops and monitors quality improvement and assurance metrics for health care delivery processes and outcomes, and advises Service Units on quality improvement methods to improve support and outcomes of NAIHS administrative functions and processes; (7) develops programs to assess, address, and continuously improve systems and processes to improve health care quality, promote sustained compliance with relevant Federal regulations and accreditation and professional standards, reduce and improve patient wait times and patient experience of care in all related health care settings; (8) consults on and provides guidance for standardization of health care delivery policies and protocols; (9) develops programs which promote patient safety management and reporting systems and processes, sentinel event investigations/root cause analysis, and clinical risk management; (10) supports patient-centered care processes, engagement of patients as partners in care, and patient activation through self-management support and involvement in delivery service improvements; (11) participates in cross-cutting issues and processes, including but not limited to, emergency preparedness/security, quality assurance, recruitment, budget formulation, self-determination issues, and resolution of audit findings as may be needed and appropriate.

Division of Patient Safety (GFJ7A)

(1) Develops and implements a quality program to promote patient safety; (2) promotes a culture of safety; (3) provides education; (4) establishes and monitors systems and metrics related to patient safety events; (5) establishes policy and guidelines to reduce adverse events; (6) reduces all types of hospital-acquired conditions, (7) reduces hospital readmissions; (8) improves communication with primary care and management of community-based resource delivery; (9) promotes sustained compliance with relevant federal regulations and accreditation and professional standards; (10) coordinates mock surveys; (11) promotes accreditation services coordination; (12) provides accreditation resource management; (13) provides survey corrective action plan development assistance and coordination; (14) maintains accreditation and certification survey reports; (15) promotes multidisciplinary integration of survey readiness support activities; (16) promotes patient safety program; (17) promotes unification of Service Unit Quality Managers; (18) promotes quality management practice; (19) promotes and embraces new models of care delivery; (20) enhances the efficiency of the care delivery process; (21) develops and implements a program to support the patient-centered medical home model; (22) promotes a competent quality management staff; (23) coordinates training and support resources for health care staff; (24) standardizes quality management tools and resources; (25) provides leadership development and skill building; (26) supports quality assurance and quality improvement programs.

Quality Assurance Staff (GFJ7B)

(1) Optimizes use of health IT and data to enhance health care system compliance; (2) assess if patient safety meets standards of care; (3) reports quality management data related to

clinical outcomes; (4) develops quality assurance and control activities related to protocols monitoring, data collection, abstraction, and data analysis; (4) develops improvement strategies to supply data to staff to meet accreditation standards; (5) implements quality improvement resources that include Model of Improvement, Six Sigma, and evidence-based quality improvement practices; (6) implements policies and procedures and staff education based on quality management data information.

Branch of Informatics (GFJ7C)

(1) Provides technical support to the Service Units in the area of clinical informatics and maintains expertise in IHS-specific patient management software; (2) assists Service Units with efforts to enhance services and maintain compliance with interoperability standards; (3) communicates informatics needs to IHS Headquarters; (4) informs Service Units of service enhancements planned by the IHS Office of IT; (5) supports Service Units in data retrieval to meet quality standards.

Navajo Area Service Units

The NAIHS continues to be the primary health care provider for the Navajo Nation and San Juan Southern Paiute Tribe. Comprehensive health care is provided through inpatient, outpatient and community health (preventive) programs. The goal is to provide high quality, comprehensive preventive health care to the Navajo Nation, San Juan Southern Paiutes and all IHS beneficiaries served at NAIHS facilities, including prenatal care, immunizations, well-baby clinics, family planning, health education, and chronic disease follow-up. Service Units in the NAIHS are as follows:

- Chinle Service Unit (GFJA)
- Crownpoint Service Unit (GFJB)
- Gallup Service Unit (GFJD)
- Kayenta Service Unit (GFJE)
- Shiprock Service Unit (GFJJ)

Section GA–40, Indian Health Service—Delegations of Authority

All delegations of authority and re-delegations of authority made to IHS officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

(Authority: 44 U.S.C. 3101)

This reorganization shall be effective on May 9, 2022.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

[FR Doc. 2022–10312 Filed 5–12–22; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Public Health Nursing Case Management: Reducing Sexually Transmitted Infections

Announcement Type: New.

Funding Announcement Number: HHS–2022–IHS–PHN–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.383.

Key Dates

Application Deadline Date: August 11, 2022.

Earliest Anticipated Start Date: September 26, 2022.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for a cooperative agreement for Public Health Nursing Case Management: Reducing Sexually Transmitted Infections. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Indian Health Care Improvement Act, 25 U.S.C. 1621q, 1660e. This program is described in the Assistance Listings located at *https://sam.gov/content/home* (formerly known as the CFDA) under 93.383.

Background

The IHS Public Health Nursing (PHN) program is a community health nursing program that focuses on the goals of promoting health and quality of life, and preventing disease and disability. The PHN program provides quality, culturally sensitive health promotion and disease prevention nursing care services through primary, secondary, and tertiary prevention services to individuals, families, and community groups. Program funds provide critical support for direct health care services in the community, which improve Americans' access to health care. The PHN program supports population-focused services to promote healthier communities through community based nursing services, community development, and health promotion and/or disease prevention activities. The PHN program promotes the establishment of program plans based on community assessments and evaluations to prevent disease, promote health, and implement community based programs. There is an emphasis on screening, home visits, immunizations, maternal-child health care, elder care, chronic disease, school services, health promotion and disease prevention, case management, population based services, and community disease surveillance. The PHN program is available to support transitions of care from the clinical setting into the community with an emphasis on the clinical, preventive, and public health needs of American Indian/Alaska Native (AI/AN) communities.

PHN patient care coordination activities aim to serve the patient and family in the home and in the community. Preventive health care informs populations, promotes healthy lifestyles, and provides early treatment for illnesses. The PHN's expertise in communicable disease assessment, outreach, investigation, and surveillance aids in the management and prevention of the spread of communicable diseases. PHNs conduct nurse home visiting services via referral for communicable disease investigation and treatment, which includes such services as health education/behavioral counseling for health promotion, risk reduction, and immunizations to prevent illnesses with a goal to detect and treat problems in their early stages. The PHN's unique scope of service supports the goal of decreasing sexually transmitted diseases.

Purpose

The purpose of this IHS program is to mitigate the prevalence of sexually transmitted infections (STI) within Indian Country through a case management model that utilizes the PHN as a case manager. The emphasis is on raising awareness of STIs as a high-priority health issue among AI/AN communities and to support prevention and control activities of comorbid conditions. Case management involves the client, family, and other members of the health care team. Quality of care, continuity, and assurance of appropriate and timely interventions are also crucial. In addition to reducing the cost of health care, case management has proven its worth in terms of improving rehabilitation, improving quality of life, and increasing client satisfaction and compliance by promoting client self-determination. The goals and outcomes of the PHN case management model are early detection, diagnosis, treatment, and evaluation that will improve health

outcomes in a cost effective manner. This model uses all prevention components of primary, secondary, and tertiary prevention in the home and community with patient and family.

The PHN Case Management program supports raising awareness of rising STI rates, increasing access to care, strengthening surveillance, and decreasing serious health consequences of undiagnosed STIs. This also supports timely linkage to care in follow-up and treatment to reduce the spread of STIs. The IHS goal is to support and strengthen surveillance systems to monitor STI trends, promote awareness, and identify effective interventions for reducing morbidity and improving outbreak response efforts. Currently, AI/AN men and women are disproportionately affected by STIs compared to other populations within the United States. Chlamydia and gonorrhea rates are four to five times higher in AI/AN populations than non-Hispanic whites. Syphilis and human immunodeficiency virus (HIV) also have disproportionately higher impact on AI/AN people. In 2019, AI/AN women had the highest syphilis rate at seven times the rate among non-Hispanic white females. Effective diagnosis, management, and prevention of STIs requires a combination of clinical and public health activities.

Required, Optional, and Allowable Activities

The community based case management model addresses the PHN scope of practice of working with individuals and families in a population-based practice. The project will be applied in a phased approach, using the nursing process—assessment, planning, implementation, and evaluation.

First Phase: Assessment—Complete a community assessment within the first six months after the project start date (most PHN programs have this readily available as a part of their annual program plans). Include, if available, data from local community assessments and STI data in the assessment. In addition, obtain input from key stake-holders such as community members, Tribal leaders, health care administration, local social hygiene staff as subject matter experts, and community health groups to determine the STI health care priorities. Obtain approval for the establishment of the PHN case management program from health care administration, governing boards, and medical executive committees as needed.

Second Phase: Planning—Based on the community assessment, the population of need related to STIs is identified and the planning of the case management project begins. Develop case management services no later than 10 months after the project start date, which addresses the priority STIs identified from the community assessment. Collaborate with local social hygiene and health care programs on planning in this phase. Plan specific guidelines for the case management services of the high-risk group of patients such as admission criteria, caseload size, policies and procedures, electronic health record reminders for providers and patients, and an evaluation plan to include data tracking for outcomes generated. Establish short and long term program goals. Identify if there is a best practice case management model available to replicate to target the identified high risk population. Obtain additional staff training needed for the community based nurse case management model such as evidence based practices, motivational interviewing, nurse competencies, quality improvement, and any other educational training that would be applicable to the health issues identified in the case management model. Identify or develop patient education materials and community education materials for the program. Develop plans for project sustainability.

Third Phase: Implementation—The case management program includes admission criteria of the high risk population, caseload size, and appropriate health care standards. Establish patient caseload no later than 12 months after the project start date. Monitor progress and make adjustments as needed. Track patient data outcomes. Continue to plan ongoing sustainability of the program after the period of performance ends.

Fourth Phase: Patient Satisfaction—In order to evaluate program services, initiate a patient satisfaction program no later than the start of the second year of the period of performance, such as one that provides patients with an opportunity to provide feedback on their experiences to assess the satisfaction of the services. Analyze findings so a concentrated effort is made to relate the customer satisfaction results to internal process metrics, and examine trends over time in order to take action on a timely basis. Evaluate and revise the case management program if needed, review policies and procedures, education materials, and staff competencies semi-annually. To the extent permitted by law, report back to key stake-holders progress of the project, especially to inform clients about changes brought about as a direct result of listening to their needs. Each site will share program material with the IHS Headquarters PHN program. This information will be shared IHS-wide for replication of the project across the IHS with credit given to the organization that developed the material. Poster or oral presentation will be given at national meetings and/or webinars.

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for fiscal year (FY) 2022 is approximately $1,500,000. Individual award amounts for the first budget year are anticipated to be between $145,000 and $150,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately 10 awards will be issued under this program announcement.

Period of Performance

The period of performance is 5 years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as grants. However, the funding agency, IHS, is anticipated to have substantial programmatic involvement in the project during the entire period of performance. Below is a detailed description of the level of involvement required of the IHS.

Substantial Agency Involvement Description for Cooperative Agreement

Provide funded organizations with ongoing consultation and technical assistance to plan, implement, and evaluate each component of the comprehensive program as described under Recipient Activities below. Consultation and technical assistance will include, but not be limited to, the following areas:

1. Interpretation of current literature related to epidemiology, statistics, surveillance, Healthy People 2030 Objectives, the Goals of the IHS National STD program, Centers for Disease Control and Prevention Sexually Transmitted Infections

Treatment Guidelines, 2021, Department of Health and Human Services STI Strategic Plan, and previous best practices of PHN Case Management recipient activities;

2. Identify sources for additional staff training for the community based case management model and additional training needed such as evidence based practices, motivational interviewing, performance improvement and any other training that would be applicable to the STI issues addressed in the case management program;

3. Design and implementation of program components (including, but not limited to, program implementation methods, recommendation of a community assessment tool, surveillance, analysis, development of programmatic evaluation, and coordination of activities);

4. Identify, if available, previously established program management plans of PHN Case Management best practices (to replicate from previous demonstration PHN program awards);

5. Conduct visits to assess program progress and mutually resolved problems, if travel funds are available; and,

6. Coordinate these activities with all IHS PHN activities on a national basis.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity an applicant must be one of the following as defined by 25 U.S.C. 1603:

• A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

• A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(1)): ''Tribal organization'' means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.

• An Urban Indian organization, as defined by 25 U.S.C. 1603(29). The term ''Urban Indian organization'' means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of nonprofit status with the application, *e.g.,* 501(c)(3).

The program office will notify any applicants deemed ineligible.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

Additional Required Documentation

Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any Tribe or Tribal organization selected for funding. An applicant that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official signed Tribal Resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Tribes organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization.

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

Mandatory documents for all applicants include:

• Application forms:

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs.

3. SF–424B, Assurances—Non-Construction Programs.

4. Project Abstract Summary form.

• Project Narrative (not to exceed 10 pages). See Section IV.2.A, Project Narrative for instructions.

• Budget Narrative (not to exceed four pages). See Section IV.2.B, Budget Narrative for instructions.

• One-page Timeframe Chart.

• Tribal Resolution(s) as described in Section III, Eligibility (if applicable).

• 501(c)(3) Certificate as described in Section III, Eligibility (if applicable).

• Biographical sketches for all Key Personnel.

• Contractor/Consultant resumes or qualifications and scope of work.

• Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.
• Certification Regarding Lobbying (GG-Lobbying Form).
• Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
• Organizational Chart (optional).
• Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/*.

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 10 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger (tables may be done in 10 point font); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches). Do not combine this document with any others.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the overall page limit, the application will be considered not responsive and will not be reviewed. The 10-page limit for the project narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget narratives, and/or other items. Page limits for each section within the project narrative are guidelines, not hard limits.

There are three parts to the project narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

Part 1: Program Information (Limit—4 Pages)

Section 1: Needs

Describe the Urban Program or Tribe's current social hygiene or STI program activities, how long it has been operating, and what programs or services are currently being provided. Describe how the applicant has determined it has the administrative infrastructure to support the activities to implement a Public Health Nursing Case Management Program and evaluate and sustain it. Explain previous planning activities the applicant has completed relevant to this or similar goals. Describe any internal relationships or collaborative relationships with social hygiene/STI subject matter experts to support this activity.

Part 2: Program Planning and Evaluation (Limit—4 Pages)

Section 1: Program Plans

Describe fully and clearly the direction the applicant plans to take in the PHN Case Management Program, including plans to demonstrate improved sexual health outcomes of the identified group of patients and services to the community it serves. Include proposed timelines.

Section 2: Program Evaluation

Describe fully and clearly the improvements that will be made by the applicant to manage the PHN Case Management Program and identify the anticipated or expected benefits for the Tribe and AI/AN people served.

Part 3: Program Report (Limit—2 Pages)

Section 1: Identify and describe significant program achievements associated with the delivery of quality health care services in the past 24 months as a part of implementing previous grant awards, cooperative agreements, or other related activities. Provide a comparison of the actual accomplishments to the goals established for the period of performance or, if applicable, provide justification for the lack of progress.

B. Budget Narrative (Limit—4 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs). The applicant can submit with the budget narrative a more detailed spreadsheet than is provided by the SF–424A (the spreadsheet will not be considered part of the budget narrative). The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. For subsequent budget years (see Multi-Year Project Requirements in Section V.1, Application Review Information, Evaluation Criteria), the narrative should highlight the changes from the first year or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), Deputy Director, DGM, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

• Pre-award costs are not allowable.
• The available funds are inclusive of direct and indirect costs.
• Only one cooperative agreement may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If you cannot submit an application through *Grants.gov,* you must request a

waiver prior to the application due date. This contact must be initiated prior to the application due date or your waiver request will be denied. Prior approval must be requested and obtained from Mr. Paul Gettys, Deputy Director, DGM. You must send a written waiver request to *GrantsPolicy@ihs.gov* with a copy to *Paul.Gettys@ihs.gov*. The waiver request must be documented in writing (emails are acceptable) before submitting an application by some other method, and must include clear justification for the need to deviate from the required application submission process.

If the DGM approves your waiver request, you will receive a confirmation of approval email containing submission instructions. You must include a copy of the written approval with the application submitted to the DGM. Applications that do not include a copy of the signed waiver from the Deputy Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov,* obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify you that the application has been received.

System for Award Management (SAM)

Organizations that are not registered with SAM must access the SAM online registration through the SAM home page at *https://sam.gov.* United States (U.S.) organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active. Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Unique Entity Identifier

Your *SAM.gov* registration now includes a Unique Entity Identifier (UEI), generated by *SAM.gov,* which replaces the DUNS number obtained from Dun and Bradstreet. *SAM.gov* registration no longer requires a DUNS number.

Check your organization's *SAM.gov* registration as soon as you decide to apply for this program. If your *SAM.gov* registration is expired, you will not be able to submit an application. It can take several weeks to renew it or resolve any issues with your registration, so do not wait.

Check your *Grants.gov* registration. Registration and role assignments in *Grants.gov* are self-serve functions. One user for your organization will have the authority to approve role assignments, and these must be approved for active users in order to ensure someone in your organization has the necessary access to submit an application.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS awardees to report information on sub-awards. Accordingly, all IHS awardees must notify potential first-tier sub-awardees that no entity may receive a first-tier sub-award unless the entity has provided its UEI number to the prime awardee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Additional information on implementing the Transparency Act, including the specific requirements for SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include only the first year of activities; information for multi-year projects should be included as a separate document. See ''Multi-year Project Requirements'' at the end of this section for more information. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Introduction and Need for Assistance (5 Points)

a. Provide demographic information, prevalence rates of sexually transmitted infections, and baseline data to support the case management for the high risk group of patients.

b. Describe how data collection will support the project objectives and how it will support the project evaluation in order to determine the impact of the project. Address how the proposed project will result in health improvements.

B. Project Objective(s), Work Plan, and Approach (35 Points)

a. Goals and Objectives (15 Points)

Identify two to three measurable objectives of the program that will demonstrate outcome. Goals/Objectives should be specific with a realistic timeline.

b. Methodology/Activities (20 Points)

Describe the activities that will be implemented in the program to meet the objectives. This work plan should be directly related to the objectives.

i. Describe how you will monitor the objectives (chart reviews, patient comments/feedback, data collection tools).

ii. Describe any collaborative efforts with other programs or the local social hygiene program.

C. Program Evaluation (20 Points)

Describe the methods for evaluating the project activities. Each proposed

project objective should have an evaluation component and the evaluation activities should appear on the program plan. At a minimum, projects should describe plans to collect or summarize evaluation information about all project activities. Please address the following for each of the proposed objectives:

(1) Describe the community assessment results and what data will be selected to evaluate the success of the objective(s).

(2) Describe how the data and patient satisfaction information will be collected to assess the programs objective(s) (*e.g.,* methods used such as, but not limited to, providing mechanisms for patients to provide feedback on their experiences).

(3) Identify when the data will be collected and the data analysis completed.

(4) Describe the extent to which there are specific datasets, databases, or registries already in place to measure/monitor meeting objective.

(5) Describe who will collect the data and any cost of the evaluation (whether internal or external).

(6) Describe where, when, and to whom the data will be presented (only to the extent permitted by law, the data to be reported back to key stake-holders on the progress of the project, especially to inform clients about changes brought about as a direct result of listening to their needs).

(7) Address anticipated obstacles to the success of the proposal such as underlying causes and the nature of their influence on accomplishing the objectives.

(8) Describe how the community assessment will be used to identify a high risk group of patients.

(9) Describe the process that will be used to follow-up on the PHN Case Management Project findings/conclusions.

D. Organizational Capabilities, Key Personnel, and Qualifications (25 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plan.

(1) Describe the organizational structure.

(2) Describe what equipment and facility space (*i.e.,* office space) will be available for use during the proposed program. Include information about any equipment not currently available that will be purchased throughout the agreement.

(3) List key personnel who will work on the project.

i. Identify staffing plan, existing personnel, and new program staff to be hired.

ii. Include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised.

iii. If the project requires additional personnel beyond those covered by the grant award (*i.e.,* information technology support, volunteers, interviewers, etc.), note these and address how these positions will be filled and, if funds are required, the source of these funds.

iv. If personnel are to be only partially funded by this grant, indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary.

(4) Capability.

i. Briefly describe the facility and user population.

ii. Describe the organization's ability to conduct this initiative through linkages to community resources: Partnerships established to provide referrals for additional services as needed for specialized treatment, care, and counseling services.

E. Categorical Budget and Budget Justification (15 Points)

Provide a clear estimate of the program costs and justification for expenses. The budget and budget justification should be consistent with the tasks identified in the work plan. The budget focus should be on developing and sustaining PHN case management services.

(1) Provide a budget narrative that serves as justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of allowable costs.

(2) Provide a succinct description of specific roles and activities of each person involved in the proposed project budget.

(3) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget.

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional documents can be uploaded as Other Attachments in *Grants.gov*.

These can include:

- Work plan, logic model, and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, period of performance limit) will not be referred to the ORC and will not be funded. The program office will notify the applicant of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Public Health Nursing program within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, the budget period, and period of performance. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. *Administrative Regulations for Grants:*

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2020-title45-vol1/pdf/CFR-2020-title45-vol1-part75.pdf.*
- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at *https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75_1372#se45.1.75_1372.*

C. *Grants Policy:*

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. *Cost Principles:*

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' at 45 CFR part 75 subpart E.

E. *Audit Requirements:*

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' at 45 CFR part 75 subpart F.

F. As of August 13, 2020, 2 CFR 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all awardees that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs, ''any non-Federal entity (NFE) [*i.e.,* applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.''

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS recipients are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

3. Reporting Requirements

The awardee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in Section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Reports are due 30 days after the end of each budget period, and a final report is due 90 days after the end of the period of performance.

Awardees are responsible and accountable for reporting accurate information on all required reports: The Progress Reports and the Federal Financial Report.

C. Data Collection and Reporting

The recipient must submit required reports consistent with the applicable deadlines. The recipient is required to identify two to three measurable objectives of the program to demonstrate and trend outcome. The objectives correspond to the work plan should be directly related to the targeted outcome.

The recipient is to describe and report this information on a semi-annual timeline and in annual reports.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

E. Non-Discrimination Legal Requirements for Recipients of Federal Financial Assistance

Should you successfully compete for an award, recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex (including gender identity, sexual orientation, and pregnancy). This includes ensuring programs are accessible to persons with limited English proficiency and persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html.*

• Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.*

• For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/civil-rights/for-individuals/disability/index.html.*

• HHS funded health and education programs must be administered in an environment free of sexual harassment. See *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html.*

• For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.*

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://www.fapiis.gov/fapiis/#/home,* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Paul Gettys, Deputy Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857 (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *Paul.Gettys@ihs.gov*

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/* (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR parts 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Ms. Jolene Tom, RN/BSN Project Officer, Indian Health Service, 5600 Fishers Lane, Mail Stop: 08N40C, Rockville, MD 20857, Phone: (301) 945–3215, Fax: (301) 594–6213, Email: *jolene.tom@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Sheila Miller, Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (240) 535–9308, Email: *sheila.miller@ihs.gov.*

3. Questions on systems matters may be directed to: Paul Gettys, Deputy Director, Division of Grants Management, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Email: *Paul.Gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

[FR Doc. 2022–10241 Filed 5–12–22; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on June 16, 2022. The topic for this meeting will be ''National Clinical Care Commission Report Perspectives from Federal Partners to Prevent and Control Diabetes and its Complications''. The meeting is open to the public.

DATES: The meeting will be held on June, 16 2022 from 12:00 p.m. to 4:00 p.m. EDT.

ADDRESSES: The meeting will be held in person at NIH Campus, Building 31, floor 6C conference room F & G and via the Zoom online video conferencing platform. For details, and to register, please contact *dmicc@mail.nih.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, including a draft agenda, which will be posted when available, see the DMICC website, *www.diabetescommittee.gov,* or contact Dr. William Cefalu, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Democracy 2, Room 6037, Bethesda, MD 20892, telephone: 301–435–1011; email: *dmicc@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S. Code 285c–3, the DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The June 16, 2022 DMICC meeting will focus on ''National Clinical Care Commission Report Perspectives from Federal Partners to Prevent and Control Diabetes and its Complications.''

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC website, *www.diabetescommittee.gov.*

William T. Cefalu,

Director Division of Diabetes, Endocrinology, and Metabolic Diseases, National Institute of Diabetes and Digestive and Kidney Diseases, and Metabolic Diseases, National Institutes of Health.

[FR Doc. 2022–10398 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

These meetings will be held as virtual meetings and are open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meetings will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Advisory Committee to the Director; National Institutes of Health.

Date: June 9, 2022.

Time: 10:00 a.m. to 4:45 p.m.

Agenda: NIH Acting Director's Report, Updates on ARPA–H and COVID–19, ACD Working Group Updates, Other Business of the Committee.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Name of Committee: Advisory Committee to the Director; National Institutes of Health.

Date: June 10, 2022.

Time: 10:00 a.m. to 2:45 p.m.

Agenda: Diversity, Equity, Inclusion and Accessibility (DEIA) Strategic Plan, UNITE, Other Business of the Committee.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cyndi Burrus-Shaw, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301–496–2433, *shawcy@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://acd.od.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 10, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10360 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Informatics and Digital Health Study Section.

Date: June 8–9, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paul Hewett-Marx, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room, Bethesda, MD 20892, (240) 672–8946, *hewettmarxpn@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Prokaryotic Cell and Molecular Biology Study Section.

Date: June 14–15, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebecca C. Burgess, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–8034, *rebecca.burgess@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: International and Cooperative Projects.

Date: June 15, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Training in Veterinary and Comparative Medicine.

Date: June 15, 2022.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 6188, MSC 7804, Bethesda, MD 20892, (301) 435–1267, *belangerm@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Kidney and Urological Systems Function and Dysfunction Study Section.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ganesan Ramesh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 827–5467, *ganesan.ramesh@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Learning, Memory and Decision Neuroscience Study Section.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Roger Janz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8515, *janzr2@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical Integrative Cardiovascular and Hematological Sciences Study Section.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Biotherapeutics Development (CBD).

Date: June 16–17, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Laurie Ann Shuman Moss, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *laurie.shumanmoss@nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Translational Imaging Science Study Section.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eleni Apostolos Liapi, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 867–5309, *eleni.liapi@nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Progression and Metastasis Study Section.

Date: June 16–17, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301–495–1718, *jakobir@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 10, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10394 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Research Education Program to Enhance Diversity in Health Related Research.

Date: June 24, 2022.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Shelley Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 208–T, Bethesda, MD 20817, (301) 827–7984, *ssehnert@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 10, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10355 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: June 14–15, 2022.

Open Session: June 14, 2022, 12:00 p.m. to 5:00 p.m.

Agenda: Opening Remarks, Administrative Matters, NICHD Directors' Report, Proposed Organizational Change to Division of Extramural Activities and Division of Extramural Research, Grant Applications and/or Proposals. This meeting will include a public discussion of the Institute's proposal to reorganize its Division of Extramural Activities and Division of Extramural Research. The proposal would simplify the organizational structure of the NICHD, create new organizational components to reduce 'siloing', increase administrative efficiencies, facilitate transdisciplinary research and idea exchange, and benefit the institute's internal and external communities.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Video Assisted Meeting).

Open Session: June 15, 2022, 12:00 p.m. to 1:30 p.m.

Agenda: Open Session Continue.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Video Assisted Meeting).

Closed Session: June 15, 2022, 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Ms. Lisa Neal, Committee Management Officer, Committee Management Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6701B Rockledge Drive, Room 2208, Bethesda, MD 20892, (301) 204–1830, *lisa.neal@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Individuals will be able to view the meeting via NIH Videocast. Select the following link for Videocast access instructions: *http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx.*

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/advisory/council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 10, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10363 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Lasker Research Scholars Transition Award.

Date: June 16, 2022.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W530, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Shamala K. Srinivas, Ph.D., Associate Director, Office of Referral, Review, and Program Coordination, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W530, Rockville, Maryland 20850, 240–276–6442, *ss537t@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–6: NCI Clinical and Translational Cancer Research.

Date: June 16, 2022.

Time: 9:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850, 240–276–5122, *hasan.siddiqui@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Cell Lung Cancer Consortium (U01).

Date: June 16, 2022.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W124, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W124, Rockville, Maryland 20850, 240–276–6342, *choe@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Career Development Study Section (J).

Date: June 23–24, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850, 240–276–6132, *tushar.deb@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Stimulating Access to Research in Residency.

Date: June 23, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W116, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W116, Rockville, Maryland 20850, 240–276–5413, *klaus.piontek@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Research Specialist (Clinical Scientist) Award.

Date: June 24, 2022.

Time: 9:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W112, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Shari Williams Campbell, DPM, MSHS Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W112, Rockville, Maryland 20850, 240–276–7381, *shari.campbell@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Data, Evaluation and Coordinating Center for CUSP2CT.

Date: June 30, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850, 240–276–6457, *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Core Infrastructure Support for Cancer Epidemiology Cohorts (U01).

Date: July 7, 2022.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850, 240–276–6132, *tushar.deb@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: July 12, 2022.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W552, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jeanette Irene Marketon, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W552, Rockville, Maryland 20850, 240–276–6780, *jeanette.marketon@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 10, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10399 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: June 8, 2022.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of

Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Margaret A. Morris Fears, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20852, (301) 761–5444, *maggie.morrisfears@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 10, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10395 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID 2022 DMID Omnibus BAA (HHS–NIH–NIAID–BAA2022–1) Research Area 3—The Antiviral Program for Pandemics (APP): Development of Antivirals for Specific RNA Viral Families of Pandemic Potential.

Date: June 9–10, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20852, (240) 669–5931, *jakesse@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 10, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10400 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: SBIR/STTR Commercialization Readiness Pilot (CRP) Program, May 17, 2022, 2:00 p.m. to 3:00 p.m. at the National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on May 05, 2022, FR Doc. 2022–09591, 87 FR 26768.

This meeting is being amended to change the format and time from Telephone Conference Call 2:00 p.m.–3:00 p.m. to a Virtual Meeting 2:00 p.m.–5:00 p.m. The meeting is closed to the public.

Dated: May 10, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10397 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Learning, Memory, Language, Communication and Related Neuroscience.

Date: June 16–17, 2022.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jyothi Arikkath, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, Bethesda, MD 20892, (301) 435–1042, *arikkathj2@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mei Qin, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–875–2215, *qinmei@csr.nih.gov*.

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Vaccines Against Microbial Diseases Study Section.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics and Biosensors.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301–480–9069, *cbackman@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biophysical, Physiological, Pharmacological and Bioengineering Neuroscience.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jennifer Kielczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *jennifer.kielczewski@nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Interventions to Prevent and Treat Addictions Study Section.
Date: June 16–17, 2022.
Time: 9:30 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sarah Vidal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710Q, Bethesda, MD 20892, (301) 480–5359, *sarah.vidal@nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Lifestyle Change and Behavioral Health Study Section.
Date: June 16–17, 2022.
Time: 9:30 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Pamela Jeter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 10J08, Bethesda, MD 20892, (301) 827–6401, *pamela.jeter@nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.
Date: June 16–17, 2022.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.
Date: June 16–17, 2022.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Xinrui Li, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2084, *xinrui.li@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Drug Development and Therapeutics (CDDT).
Date: June 20–21, 2022.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 10, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10362 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Clinical Trials to Test the Effectiveness of Treatment, Preventive, and Services Interventions (R01, Collaborative R01, R34).
Date: June 9, 2022.
Time: 9:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 10, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10401 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Neurological, Aging and Musculoskeletal Epidemiology Study Section.
Date: June 8–9, 2022.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Pathophysiology of Eye Disease—1 Study Section.
Date: June 9–10, 2022.
Time: 8:30 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Afia Sultana, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827–7083, *sultanaa@mail.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: June 9–10, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genomics, Computational Biology and Technology Study Section.

Date: June 9–10, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301–827–7088, *methode.bacanamwo@nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: June 13–14, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brittany L. Mason-Mah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000A, Bethesda, MD 20892, (301) 594–3163, *masonmahbl@mail.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: June 14–15, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1781 *liuyh@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

Date: June 15–16, 2022.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jordan M. Moore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 451–0293, *jordan.moore@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: June 15–17, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

Date: June 15–16, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jacek Topczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 594–7574, *topczewskij2@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Digestive and Nutrient Physiology and Diseases Study Section.

Date: June 16–17, 2022.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aster Juan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–435–5000, *juana2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 10, 2022.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10392 Filed 5–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0274]

Certificate of Alternative Compliance for the CGMA CGM DAKA

AGENCY: Coast Guard, DHS.

ACTION: Notification of issuance of a certificate of alternative compliance.

SUMMARY: The Coast Guard announces that the U.S. Coast Guard Fourteenth District Prevention Division has issued a certificate of alternative compliance from the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), for the CGMA CGM DAKA (IMO 9436070). We are issuing this notice because its publication is required by statute. Due to the construction and placement of the forward cargo crane creating a blind sector 1,000 meters immediately ahead of the bow of the vessel over a range of approximately 1–2 degrees, CGMA CGM DAKA cannot fully comply with the light, shape, or sound signal provisions of the 72 COLREGS without interfering with the vessel's design and construction. This notification of issuance of a certificate of alternative compliance promotes the Coast Guard's marine safety mission.

DATES: The Certificate of Alternative Compliance was issued on 14 February 2022.

FOR FURTHER INFORMATION CONTACT: For information or questions about this notice call or email Mr. George Butler, District Fourteen (dpi), U.S. Coast Guard; (808) 535–3415, *George.E.Butler@USCG.mil.*

SUPPLEMENTARY INFORMATION: The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, or sound signal provisions of the 72 COLREGS. Under statutory law [1] and Coast Guard regulation,[2] a vessel's owner, builder, operator, or agent may

[1] 33 U.S.C. 1605(c).

[2] 33 CFR 81.3.

apply for a certificate of alternative compliance (COAC) and may instead meet alternative requirements.[3]

For vessels of special construction or purpose, the cognizant Coast Guard District Office in which the vessel is being built or operated determines whether the vessel for which the COAC is sought complies as closely as possible with the 72 COLREGS, and the Chief of the Prevention Division decides whether to issue the COAC which must specify the required alternative installation. If the Coast Guard issues a COAC, under the governing statute[4] and regulations,[5] the Coast Guard must publish notice of this action. Once issued, a COAC remains valid until information supplied in the COAC application or the COAC terms become inapplicable to the vessel.

The Fourteenth District Prevention Division, U.S. Coast Guard, certifies that the CGMA CGM DAKA (IMO 9436070) is a vessel of special construction or purpose, and that, with respect to the position of the forward cargo crane creating a blind sector 1,000 meters immediately ahead of the bow of the vessel over a range of approximately 1–2 degrees, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the normal operation, construction, or design of the vessel. The U.S. Coast Guard Fourteenth District Prevention Division further finds and certifies that the construction and placement of the forward cargo crane creating a blind sector 1,000 meters immediately ahead of the bow of the vessel over a range of approximately 1–2 degrees, are in the closet possible compliance with the applicable provisions of the 72 COLREGS.[6]

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.18.

Dated: April 25, 2022.

Ulysses S. Mullins,

Captain, U.S. Coast Guard, Chief, Prevention Division, Fourteenth Coast Guard District.

[FR Doc. 2022–10246 Filed 5–12–22; 8:45 am]

BILLING CODE 9110–04–P

[3] 33 CFR 81.5.

[4] 33 U.S.C. 1605(c).

[5] 33 CFR 81.18.

[6] 33 U.S.C. 1605(a); 33 CFR 81.9.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R1–ES–2020–0101; FXES11140100000–223–FF01E0000]

Final Environmental Impact Statement and Habitat Conservation Plan for Thurston County, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final environmental impact statement (FEIS), which analyzes a proposed habitat conservation plan (HCP) developed by Thurston County, Washington (applicant, or the County). This FEIS was prepared jointly by the Service and Thurston County to satisfy both the National Environmental Policy Act and the Washington State Environmental Policy Act. The HCP was submitted by the applicant in support of an application for an incidental take permit (ITP) under the Endangered Species Act. The applicant is seeking authorization for the incidental take of six species, which is expected to result from various County-permitted development activities, as well as construction and maintenance of County-owned or County-managed infrastructure, over the next 30 years.

DATES: The Service's ITP decision will occur no sooner than 30 days after publication of the U.S. Environmental Protection Agency's notice of availability of the FEIS in the **Federal Register**, and will be documented in a record of decision.

ADDRESSES: You may obtain copies of the documents by any of the following methods:

- *Internet: https://www.regulations.gov* (Docket No. FWS–R1–ES–2020–0101) or at *https://www.fws.gov/wafwo/.*
- *Phone:* You may call Kevin Connally, at 360–753–9440, to request alternative formats of the documents.

FOR FURTHER INFORMATION CONTACT: Kevin Connally, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **ADDRESSES**); telephone: 360–753–9440; email: *Kevin_Connally@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final environmental impact statement (FEIS) addressing Thurston County's (applicant or County) proposed habitat conservation plan (HCP). In accordance with the requirements of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the applicant is seeking an incidental take permit (ITP) authorizing take of the threatened Yelm pocket gopher (*Thomomys mazama yelmensis*), Olympia pocket gopher (*T. mazama pugetensis*), Tenino pocket gopher (*T. mazama tumuli*), and Oregon spotted frog (*Rana pretiosa*); the endangered Taylor's checkerspot butterfly (*Euphydryas editha taylori*); and the Oregon vesper sparrow (*Pooecetes gramineus affinis*), which is under review to determine if Federal listing under the ESA is warranted (hereafter, ''covered species'').

If issued, the ITP would authorize take of the covered species that may occur incidental to various County-permitted development activities, as well as construction and maintenance of County-owned or County-managed infrastructure, for a period of 30 years. The applicant would avoid, minimize, and mitigate impacts to covered species, and would fully offset the impact of taking. In support of the ITP application, the applicant prepared the HCP, which describes the steps the applicant would take to avoid, minimize, and mitigate impacts to covered species associated with the above activities in accordance with HCP and ITP requirements. Mitigation would be achieved through the permanent conservation and maintenance of covered species habitat. The HCP also describes, without limitation, the life history and ecology of the covered species, the impact of the anticipated taking on covered species, adaptive management procedures, monitoring procedures, changed circumstances, and funding assurances for HCP implementation.

This Final EIS provides updates, as needed, to information presented in the draft EIS, including revisions in response to issues raised in comments received during the public review period for that document. No substantial changes to the proposed action or other alternatives were made that are relevant to environmental concerns, and no significant new circumstances or information relevant to the impacts of the alternatives analyzed in the draft EIS were found.

This FEIS was prepared consistent with the Department of the Interior

NEPA regulations (43 CFR part 46); longstanding Federal judicial and regulatory interpretations; and Administration priorities and policies, including Secretary's Order No. 3399 requiring bureaus and offices to use ''the same application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect.''

The FEIS will also be used by Thurston County to satisfy the requirements of the Washington State Environmental Policy Act (SEPA), as provided in Revised Code of Washington 43.21C, and SEPA implementing regulations found at Washington Administrative Code 197–11.

Background

Thurston County is seeking an ITP to cover a variety of activities for which the County issues permits or approvals, and activities the County otherwise carries out under its jurisdiction. The covered activities include:

- Residential development;
- Development of accessory structures;
- Installation, repair, or alteration of septic systems;
- Commercial and industrial development;
- Public service facility construction;
- Transportation projects;
- Transportation maintenance and other work within County-owned road rights-of-way;
- Landfill and solid waste management;
- Water resources management;
- Management of mitigation sites; and
- County parks, trails, and land management.

The covered activities would not include mining or forestry. The proposed covered activities are described further in the FEIS and in the HCP.

The HCP includes measures to avoid, minimize, and mitigate impacts to covered species, along with an analysis of projected impacts to covered species. It is not practical to express the anticipated take (or to monitor take-related impacts) in terms of number of individuals of each species; therefore, the HCP uses habitat, measured as habitat area or as ''functional-acre'' values, as a surrogate for quantifying impacts to each covered species and related conservation outcomes. The functional-acre approach weights habitat acreage with values for the covered species' distribution, habitat condition, and landscape. This approach provides greater weight to both impacts and mitigation occurring in or near areas that are a priority for conservation of the covered species.

Through the HCP, the county would permit or conduct covered activities that cause take of covered species, monitor the amount and extent of take, and establish mitigation on permanently protected sites to fully offset impacts of the taking on covered species. The HCP conservation program includes performance standards for conservation lands and measures to minimize the impacts of the activities on each species.

Development and maintenance activities covered by the HCP will impact Mazama pocket gopher subspecies, when the activities occur within habitat in the ranges of the covered species. Fewer HCP-covered development and maintenance activities will impact the Oregon spotted frog, the Taylor's checkerspot butterfly, and the Oregon vesper sparrow, because they have relatively localized ranges in Thurston County and, as a consequence, they are likely to be exposed to fewer instances of the covered activities.

Measures to minimize impacts of the taking on covered species include reducing the extent of habitat impacts through within-site project design, along with additional species-specific measures for each group of covered activities, as described in the HCP. To mitigate for unavoidable impacts to covered species, Thurston County proposes to permanently protect and manage habitat occupied by covered species by establishing new permanent habitat reserves, acquiring permanent conservation easements on working lands, and enhancing and permanently maintaining habitat quality on existing reserves (collectively ''conservation lands''). The addition of conservation lands to the HCP conservation lands network would occur incrementally during HCP implementation at a pace that meets or exceeds the impacts to each covered species.

The HCP includes funding assurances, monitoring, an adaptive management process, and changed circumstance provisions to help ensure that the conservation program achieves the biological goals for the covered species. Annual reports would confirm the amount, type, and location of impacts and mitigation, as well as the status of monitoring, adaptive management, changed circumstances, and funding. The proposed conservation program and expected effects of HCP implementation on the covered species and their habitats are described in greater detail in the HCP and in the FEIS. If the ITP is approved, the HCP is expected to be implemented for 30 years, and lands conserved in accordance with the HCP would be permanently maintained for the covered species.

Endangered Species Act

Section 9 of the ESA prohibits ''take'' of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term ''take'' means to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct'' (16 U.S.C. 1532(19)). The term ''harm'' is defined by regulation as ''an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering'' (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will ensure that adequate funding for the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Anticipated Permits and Authorizations

In addition to the requested ITP, Thurston County will manage covered activities to comply with all other applicable laws, including, without limitation, Washington State endangered and protected species regulations; the Washington State Growth Management Act, which includes State and local protection of historic and cultural resources implemented through the County's comprehensive plan; the Washington State Shoreline Management Act; the Washington State Hydraulic Code;

Thurston County critical area ordinances; State and local requirements for administrative procedures; and other regulations. Individual projects conducted under the HCP will undergo individual review by the County for compliance with local codes, and further public review, as appropriate, through the Washington SEPA.

National Environmental Policy Act

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), the Service prepared a FEIS, in which we analyze the effects of the proposed action and a reasonable range of alternatives to the proposed action. The environmental consequences of each alternative, including the effects of those alternatives when combined with reasonably foreseeable future actions and environmental trends, were analyzed to determine if significant impacts to the human environment would occur. Three alternatives are analyzed in detail in the FEIS.

Alternative 1—No-Action Alternative: The Service would not issue incidental take authorization to the County, and the County would not implement the HCP. The County would continue to conduct, permit, and approve activities on a case-by-case basis in compliance with Federal, State, and local requirements, including the Thurston County Critical Areas code. The County and individual project proponents would continue to evaluate each project to ensure avoidance of unauthorized take of listed species. The County would not implement a coordinated, County-wide conservation program for ESA-listed species. This alternative is the current situation in Thurston County.

Alternative 2—Proposed Action: The Service would, in accordance with applicable law, issue the requested ITP to Thurston County for the incidental take of covered species by the covered activities. The County would implement the Thurston County HCP and its conservation program, including, without limitation, implementation of measures to minimize effects of covered activities, mitigation measures to fully offset the impacts of the taking on covered species, and monitoring and reporting. The County would also ensure funding for HCP implementation. Under the proposed action, the County would mitigate for the impacts of the taking on covered species, in part, through the execution of conservation easements on working agricultural lands, the enhancement of existing conservation reserves, and the establishment and management of new conservation reserves. The proposed action is the Service's agency-preferred alternative because it provides a practical approach for durable conservation outcomes in the permit area.

Alternative 3—Modified HCP: The Service would, in accordance with applicable law, issue an ITP to Thurston County with the same permit area, permit term, covered species, and covered activities, and many of the HCP elements described in the proposed action. This alternative explores whether the HCP could be modified to provide higher conservation value to covered species by acquiring new habitat reserves and managing them to achieve the highest habitat quality. Under this alternative, the County would mitigate for the impacts of the taking on covered species solely through the establishment and management of new conservation reserves. The County would not execute conservation easements on working agricultural lands, or include the enhancement of existing conservation reserves in the mitigation strategy. Under this alternative, fewer acres of new conserved habitat may be needed to fully offset the impacts of the taking to covered species.

Public Involvement

The Service published a notice of intent to prepare an EIS, opening public scoping periods on March 20, 2013 (78 FR 17224), and on October 16, 2020 (85 FR 65861). A public meeting was held during the 2013 public scoping period, and two public meetings were held during the 2020 public scoping period. Additionally, Thurston County conducted numerous stakeholder meetings during development of the HCP between 2013 and 2021. In consideration of comments, information, alternatives, and analyses received through public scoping, the Service and the County jointly prepared a DEIS and opened concurrent 45-day public comment periods on the DEIS and draft HCP on September 24, 2021 (86 FR 53111; Washington Department of Ecology SEPA# 202105300), under NEPA, ESA section 10(c), and SEPA, as applicable. Two virtual public meetings were held during the comment period. The comment period ended on November 8, 2021. Considering all comments received by the Service and County together, a total of 33 public comments were received during the DEIS comment period, including duplicates.

In preparation of the FEIS, the Service and the County considered all of the public comments on the DEIS together, in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*) and pursuant to the Council on Environmental Quality's implementing NEPA regulations at 40 CFR parts 1500–1508.

EPA's Role in the EIS Process

The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions. Therefore, EPA is publishing a notice in the **Federal Register** announcing this FEIS, as required under section 309 of the Clean Air Act. EPA's notices are published on Fridays. EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

Public Review

We are not requesting public comments on the FEIS and HCP, but any written comments received will become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

The Service will evaluate the permit application, associated documents, and public comments in reaching a final decision on whether the application meets the requirements of an ITP (16 U.S.C. 1539(a)(2)(B)). We will evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service consultation (16 U.S.C. 1536). We will complete the required procedures under section 106 of the National Historic Preservation Act (54 U.S.C. 306108). We will issue a record of decision and issue or deny the ITP no sooner than 30 days after publication of the EPA's notice of availability of the FEIS in the **Federal Register**, in accordance with applicable timeframes established in 40 CFR 1506.11.

Authority

We provide this notice in accordance with the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–09596 Filed 5–12–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2022–N002; FXES11130900000C2–201–FF09E32000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 35 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews for 35 species under the Endangered Species Act of 1973, as amended. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review. We are requesting submission of any such information that has become available since the previous status review for each species.

DATES: To consider the information in our reviews, we must receive your comments or information on or before July 12, 2022. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how and where to request or submit information, see Request for New Information under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *General Information:* Aaron Valenta, via phone at (404) 679–4144, via email at *aaron_valenta@fws.gov,* or via U.S. mail at U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345.

Species-Specific Information and Submission of Comments: Please refer to Request for New Information under **SUPPLEMENTARY INFORMATION**.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act (ESA) for 15 animal species and 20 plant species. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species, particularly information on the status, threats, and recovery of the species that may have become available.

Why do we conduct 5-year reviews?

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) (for wildlife) and 50 CFR 17.12(h) (for plants). Listed wildlife and plants can also be found at: *http://ecos.fws.gov/tess_public/pub/listedAnimals.jsp* and *http://ecos.fws.gov/tess_public/pub/listedPlants.jsp,* respectively. Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species under active review; however, we may review the status of any species at any time based upon a petition or other information available to us. For additional information about 5-year reviews, refer to our fact sheet at: *https://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

Which species are under review?

This notice announces 5-year status reviews for the species listed in the table below.

Common name/scientific name	Contact person, email, phone	Status (endangered or threatened)	States where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Contact's mailing address
ANIMALS					
Amphibians					
Waterdog, Black Warrior (=Sipsey Fork) (*Necturus alabamensis*).	Evan Collins, *alabama@fws.gov*, 251–441–5181.	Endangered	Alabama	83 FR 257; 1/3/2018.	USFWS, 1208B Main Street, Daphne, AL 36526.
Birds					
Blackbird, yellow-shouldered (*Agelaius xanthomus*).	José Cruz-Burgos, *caribbean_es@fws.gov*, 787–510–5206.	Endangered	Puerto Rico	41 FR 51019; 11/19/1976.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Hawk, Puerto Rican sharp-shinned (*Accipiter striatus venator*).	Iván Llerandi-Román, *caribbean_es@fws.gov*, 787–510–5206.	Endangered	Puerto Rico	59 FR 46710; 9/9/1994.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Nightjar, Puerto Rican (*Caprimulgus noctitherus*).	José Cruz-Burgos, *caribbean_es@fws.gov*, 787–510–5206.	Endangered	Puerto Rico	38 FR 14678; 6/4/1973.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Fishes					
Darter, boulder (*Etheostoma wapiti*).	Todd Shaw, *cookeville@fws.gov*, 931–528–6481.	Endangered	Alabama, Tennessee	53 FR 33996; 9/1/1988.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Darter, pearl (*Percina aurora*)	Matt Wagner, *mississippi_field_office@fws.gov*, 601–321–1130.	Threatened	Mississippi	82 FR 43885; 9/20/2017.	USFWS, 6578 Dogwood View Pkwy., Jackson, MS 39213.
Madtom, pygmy (*Noturus stanauli*).	Kerri Dikun, *cookeville@fws.gov*, 931–528–6481.	Endangered	Tennessee	58 FR 25758; 4/27/1993.	USFWS, 446 Neal Street, Cookeville, TN 38501.

Common name/scientific name	Contact person, email, phone	Status (endangered or threatened)	States where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Contact's mailing address
			Mammals		
Wolf, red (*Canis rufus*)	Emily Weller, *redwolf_5yr@fws.gov*, 337–291–3090.	Endangered	Florida, North Carolina	32 FR 4001; 3/11/1967.	USFWS, Red Wolf Recovery, 200 Dulles Drive, Lafayette, LA 70506.
Woodrat, Key Largo (*Neotoma floridana smalli*).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Endangered	Florida	49 FR 34504; 8/31/1984.	USFWS, 1339 20th St., Vero Beach, FL 32960.
			Reptiles		
Pinesnake, Louisiana (*Pituophis ruthveni*).	David Castellanos, *lafayette@fws.gov*, 337–291–3112.	Threatened	Louisiana, Texas	83 FR 14958; 4/6/2018.	USFWS, 200 Dulles Drive, Lafayette, LA 70506.
Turtle, yellow-blotched (*Graptemys flavimaculata*).	Luke Pearson, *mississippi_field_office@fws.gov*, 601–965–4900.	Threatened	Mississippi	56 FR 1459; 1/14/1991.	USFWS, 6578 Dogwood View Pkwy., Jackson, MS 39213.
			Clams		
Heelsplitter, inflated (*Potamilus inflatus*).	Jennifer Grunewald, *alabama@fws.gov*, 251–441–5181.	Threatened	Alabama, Louisiana, Mississippi.	55 FR 39868; 9/28/1990.	USFWS, 1208B Main Street, Daphne, AL 36526.
Lance, yellow (*Elliptio lanceolata*).	Jennifer Archambault, *Raleigh_ES@fws.gov*, 919–856–4520 ext. 30.	Threatened	Maryland, Virginia, North Carolina.	83 FR 14189; 4/3/2018.	USFWS, P.O. Box 33726, Raleigh, NC 27636–3726.
Pimpleback, orangefoot (pearlymussel) (*Plethobasus cooperianus*).	Michael Floyd, *kentuckyes@fws.gov*, 502–695–0468.	Endangered	Alabama, Illinois, Kentucky, Tennessee.	41 FR 24062; 6/14/1976.	USFWS, 330 W Broadway, Ste. 265, Frankfort, KY 40601.
			Snails		
Riversnail, Anthony's (*Athearnia anthonyi*).	Santiago Martin, *cookeville@fws.gov*, 931–528–6481.	Endangered	Alabama, Georgia, North Carolina, Tennessee.	59 FR 17994; 4/15/1994.	USFWS, 446 Neal Street, Cookeville, TN 38501.
			PLANTS		
			Flowering Plants		
Amaranthus pumilus (seabeach amaranth).	Dale Suiter, *Raleigh_ES@fws.gov*, 919–856–4520, ext. 18.	Threatened	Delaware, Maryland, Massachusetts, New Jersey, New York, North Carolina, South Carolina, Virginia.	58 FR 18035; 4/7/1993.	USFWS, P.O. Box 33726, Raleigh, NC 27636–3726.
Arabis (=Boechera) perstellata (Braun's rock cress).	Michael Floyd, *kentuckyes@fws.gov*, 502–695–0468.	Endangered	Kentucky, Tennessee	60 FR 56; 1/3/1995	USFWS, 330 W Broadway, Ste. 265, Frankfort, KY 40601.
Bonamia grandiflora (Florida bonamia).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Threatened	Florida	52 FR 42068; 11/2/1987.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Catesbaea melanocarpa (no common name).	Jaime Yrigoyen, *caribbean_es@fws.gov*, 787–510–5206.	Endangered	Puerto Rico, Virgin Islands ...	64 FR 13116; 3/17/1999.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Chamaesyce deltoidea ssp. *pinetorum* (pineland sandmat).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Threatened	Florida	82 FR 46691; 10/6/2017.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Conradina verticillata (Cumberland rosemary).	Warren Stiles, *cookeville@fws.gov*, 931–528–6481.	Threatened	Kentucky, Tennessee	56 FR 60937; 11/29/1991.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Dalea carthagenensis var. *floridana* (Florida prairie-clover).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Endangered	Florida	82 FR 46691; 10/6/2017.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Deeringothamnus rugelii (Rugel's pawpaw).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Endangered	Florida	51 FR 34415; 9/26/1986.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Dicerandra cornutissima (longspurred mint).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Endangered	Florida	50 FR 45621; 11/1/1985.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Digitaria pauciflora (Florida crabgrass).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Threatened	Florida	82 FR 46691; 10/6/2017.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Eriogonum longifolium var. *gnaphalifolium* (scrub buckwheat).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Threatened	Florida	58 FR 25746; 4/27/1993.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Harrisia portoricensis (higo chumbo).	Marielle Peschiera, *caribbean_es@fws.gov*, 787–510–5206.	Threatened	Puerto Rico	55 FR 32252; 8/8/1990..	USFWS, P.O. Box 491, Boquerón, PR 00622.
Mitracarpus maxwelliae (no common name).	Carlos Pacheco, *caribbean_es@fws.gov*, 787–510–5206.	Endangered	Puerto Rico	59 FR 46715; 9/9/1994.	USFWS, P.O. Box 491, Boquerón, PR 00622.
Pinguicula ionantha (Godfrey's butterwort).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Threatened	Florida	58 FR 37432; 7/12/1993.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.

Common name/scientific name	Contact person, email, phone	Status (endangered or threatened)	States where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Contact's mailing address
Pityopsis ruthii (Ruth's golden aster).	Geoff Call, *cookeville@fws.gov*, 931–528–6481.	Endangered	Tennessee	50 FR 29341; 7/18/1985.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Prunus geniculata (scrub plum).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Endangered	Florida	52 FR 2227; 1/21/1987.	USFWS, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
Sarracenia rubra ssp. *alabamensis* (Alabama canebrake pitcher-plant).	Scott Wiggers, *mississippi_field_office@fws.gov*, 228–475–0765.	Endangered	Alabama	54 FR 10150; 3/10/1989.	USFWS, 6578 Dogwood View Pkwy., Jackson, MS 39213.
Sideroxylon reclinatum ssp. *austrofloridense* (Everglades bully).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Threatened	Florida	82 FR 46691; 10/6/2017.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Solidago shortii (Short's goldenrod).	Michael Floyd, *kentuckyes@fws.gov*, 502–695–0468.	Endangered	Indiana, Kentucky	50 FR 36085; 9/5/1985.	USFWS, 330 W Broadway, Ste. 265, Frankfort, KY 40601.
Spigelia gentianoides (gentian pinkroot).	Lourdes Mena, *Florida_5YR@fws.gov*, 904–731–3134.	Endangered	Alabama, Florida	55 FR 49046; 11/26/1990.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.

What information do we consider in our 5-year reviews?

A 5-year review considers all new information available at the time of the review. In conducting the review, we consider the best scientific and commercial data that have become available since the most recent status review. Specifically, we are seeking new information regarding:

1. Species biology, including but not limited to life history and habitat requirements and impact tolerance thresholds;
2. Historical and current population conditions, including but not limited to population abundance, trends, distribution, demographics, and genetics;
3. Historical and current habitat conditions, including but not limited to amount, distribution, and suitability;
4. Historical and current threats, threat trends, and threat projections in relation to the five listing factors (as defined in section 4(a)(1) of the ESA);
5. Conservation measures for the species that have been implemented or are planned; and
6. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information received will be considered during the 5-year review and may be useful in evaluating ongoing recovery programs for the species.

Request for New Information

To ensure that 5-year reviews are based on the best available scientific and commercial information, we request new information from all sources. Please use the contact information listed in the table above that is associated with the species for which you are submitting information. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in the table above. 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.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your submission, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. Although you can request that personal information be withheld from public review, we cannot guarantee that we will be able to do so.

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Leopoldo Miranda-Castro,

Regional Director, South Atlantic-Gulf and Mississippi Basin Regions.

[FR Doc. 2022–10342 Filed 5–12–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[22X.LLAZ921000.L14400000.BJ0000.LXSSA2250000.241A]

Notice of Filing of Plat of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described land was officially filed in the Bureau of Land Management (BLM), Arizona State Office, Phoenix, Arizona on the date indicated. The survey announced in this notice is necessary for the management of lands administered by the agency indicated.

ADDRESSES: This plat will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427. Protests of the survey should be sent to the Arizona State Director at the above address.

FOR FURTHER INFORMATION CONTACT: Geoffrey Graham, Chief Cadastral Surveyor of Arizona; (623) 580–5579; *ggraham@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 7–1–1 to leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona: The plat, in one sheet, representing the dependent resurvey of a portion of the Hopi Indian Reservation Boundary and a portion of the Third Guide Meridian East through Township

30 North (east boundary), the survey of the south, west and north boundaries, the subdivisional lines and the subdivision of certain sections, partially surveyed Township 30 North, Range 12 ½ East, accepted May 3, 2022, and officially filed May 5, 2022, for Group 1214, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

A person or party who wishes to protest against this survey must file a written notice of protest within 30 calendar days from the date of this publication with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within 30 days after the protest is filed. Before including your address, or other personal information in your protest, please be aware that your entire protest, 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.

Authority: 43 U.S.C. chap. 3.

Geoffrey Graham,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2022–10319 Filed 5–12–22; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033900; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology, Harvard University has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by June 13, 2022.

FOR FURTHER INFORMATION CONTACT: Patricia Capone, Curator and NAGPRA Director, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from an unknown location.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of The Chickasaw Nation.

History and Description of the Remains

At an unknown time, human remains representing, at minimum, one individual were removed from an unknown location. These human remains were originally part of the American Institute of Phrenology (formerly the American Craniological Museum). The collection of the American Institute of Phrenology was donated to the American Museum of Natural History in the late 1920s by Jessie Y. Loomis in the name of Ernest Yates Loomis. In 1932, these human remains were transferred to the Peabody Museum of Archaeology and Ethnology as part of an exchange with the American Museum of Natural History. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that, more likely than not, these human remains are Native American. Furthermore, museum documentation describes the human remains as a ''Chickasaw Indian.'' This specific cultural attribution suggests that these human remains likely date to the Contact period. Consequently, a preponderance of the evidence shows that a relationship of shared group identity exists between The Chickasaw Nation and the earlier group to which these Native American human remains belong.

Determinations Made by the Peabody Museum of Archaeology and Ethnology, Harvard University

Officials of the Peabody Museum of Archaeology and Ethnology, Harvard University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Chickasaw Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Curator and NAGPRA Director, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by June 13, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Chickasaw Nation may proceed.

The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for notifying The Chickasaw Nation that this notice has been published.

Dated: May 4, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–10265 Filed 5–12–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033902; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Reclamation, Oklahoma-Texas Area Office, Oklahoma City, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation, Oklahoma-Texas Area Office (Reclamation), 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 Reclamation. 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 Reclamation at the address in this notice by June 13, 2022.

FOR FURTHER INFORMATION CONTACT: Kate Ellison, Bureau of Reclamation, Oklahoma-Texas Area Office, 5924 NW 2nd Street, Suite 200, Oklahoma City, OK 73127, telephone (405) 470–4816, email *kellison@usbr.gov.*

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 U.S. Department of the Interior, Bureau of Reclamation, Oklahoma City, OK. The human remains and associated funerary objects were removed from Caddo, Custer, Greer, and Kiowa Counties, OK.

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 Reclamation professional staff in consultation with representatives of the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma. The Cheyenne and Arapaho Tribes, Oklahoma [*previously* listed as Cheyenne-Arapaho Tribes of Oklahoma] were contacted but deferred to the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma based on the radiocarbon dates at the sites. Representatives of the Absentee-Shawnee Tribe of Oklahoma were also contacted but declined to consult on these human remains, based on the provenience of the remains being outside of their traditional territory.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from site 34GR4 in Greer County, OK. The human remains were housed at the Sam Noble Oklahoma Museum of Natural History, in Norman, OK, before being moved to the Museum of the Great Plains. The human remains consist of a single tooth, from an individual no younger than 7 years old. No known individual was identified. No associated funerary objects are present.

On March 9, 1971, human remains representing, at minimum, one individual were removed from the Edwards I site (34CU11) in Custer County, OK. The human remains were housed at the Stovall Museum, in Norman, OK, before being moved to the Museum of the Great Plains. The human remains belong to a male 20–25 years old. No known individual was identified. No associated funerary objects are present.

In October of 1989, human remains representing, at minimum, one individual were removed from the Edwards II site (34CU15) in Custer County, OK. The human remains were donated to the Stovall Museum in October 1989 and were later brought to the Museum of the Great Plains. The human remains belong to a male 40–50 years old. No known individual was identified. No associated funerary objects are present.

On April 5, 1955, human remains representing, at minimum, one individual were removed from the Mouse I site (34CU25) in Custer County, OK. The human remains were encountered during the initial recording of the site and were housed at the Stovall Museum from the time they were excavated until sometime before 2005, when they were transferred to the Museum of the Great Plains. The human remains belong to a child 1.5–2.5 years old. No known individual was identified. The 45 associated funerary objects are 31 bone beads, seven faunal fragments, six shell fragments, and one ceramic sherd.

On October 4, 1966, human remains representing, at minimum, one individual were removed from the Mouse I site (34CU25) in Custer County, OK, by a student from the University of Oklahoma. The human remains were kept at the Stovall Museum until 2012, when they were moved to the Museum of the Great Plains. The human remains belong to a female 20–30 years old. No known individual was identified. The 66 associated funerary objects are 54 faunal fragments, two shell fragments, two flaked stones, two hammerstones, one metate, and five pottery fragments.

In May of 1984, human remains representing, at minimum, one individual were removed from the Mouse I site (34CU25) in Custer County, OK, by a fisherman. Initially, the human remains were transferred by the County to the Oklahoma Medical Examiner's Office in Oklahoma City. Subsequently, the human remains were transferred to the Bureau of Reclamation (also in 1984) and taken to the Museum of the Great Plains. The human remains belong to a female 30–40 years old. No known individual was identified. The 19 associated funerary objects are faunal fragments.

In 1986, human remains representing, at minimum, one individual were removed from the Mouse I site (34CU25) in Custer County, OK. In 1987, the human remains were brought to the Oklahoma Archeological Survey. Sometime between 1987 and 1995, the human remains were moved to the Oklahoma Museum of Natural History. They are currently at the Museum of the Great Plains. The human remains belong to a male 60+ years old. No known individual was identified. No associated funerary objects are present.

The Mouse I site (34CU25) was radiocarbon dated and determined to be A.D. 950 +/- 100. It was consistent with the site representing an early post-Woodland occupation. The Phillips site

(34CU11) and the Mouse I site (34CU25) are Custer Focus sites and the dates cluster around A.D. 930 +/- 30 and have a range from A.D. 740 to 1040.

On March 2, 1968, human remains representing, at minimum, one individual were removed from site 34GR3 in Greer County, OK, by local collectors. At an unknown date, the human remains were turned over to the Oklahoma Archeological Survey, and in 1995, they were taken to the Museum of the Great Plains. The human remains belong to a child 9–14 years old. No known individual was identified. The two associated funerary objects are faunal fragments.

On September 14, 1978 and August 28, 1984, human remains representing, at minimum, one individual were removed from site 34GR3 in Greer County, OK. On September 14, 1978 a local collector found human remains eroding from the shoreline, and on August 28, 1984, additional human remains were found eroding out of the shoreline and were excavated. The human remains were examined on October 3, 1984 and taken to the Museum of the Great Plains. The human remains belong to a male 24–29 years old. No known individual was identified. No associated funerary objects are present.

Sometime prior to 1984, human remains representing, at minimum, one individual were removed from site 34GR3 in Greer County, OK. In 1995, the human remains were taken to the Museum of the Great Plains. The human remains belong to an adult of unknown sex and age. No known individual was identified. No associated funerary objects are present.

On March 14, 1964, human remains representing, at minimum, two individuals were removed from the Rattlesnake Slough site (34GR4) in Greer County, OK. The human remains were found within the collection of the Museum of the Great Plains. No other information is available except for an accompanying piece of paper noting the excavation date. The human remains belong to two adults of unknown sex and age. No known individuals were identified. No associated funerary objects are present.

Sometime between 1964 and1995, human remains representing, at minimum, four individuals were removed from the Rattlesnake Slough site (34GR4) in Greer County, OK, and taken to the Wichita State University for analysis. Currently, the human remains are at the Museum of the Great Plains. The human remains belong to two adults of unknown sex and age, a subadult of unknown sex, and a child 1–3 years old. No known individuals were identified. No associated funerary objects are present.

On September 5, 1966, human remains representing, at minimum, one individual were removed from the Rattlesnake Slough site (34GR4) in Greer County, OK. The human remains were found exposed along a roadway and salvaged by local collectors. The human remains belong to an adult male 20–24 years old. The ulna has a projectile point embedded in it and is surrounded by bone-growth, indicating that the wound was not fatal. On September 6, 1966, the human remains, minus the ulna, were turned over to the Stovall Museum, and in 2017, the ulna was transferred to the Museum of the Great Plains. No known individual was identified. The 21 associated funerary objects are one quartzite knife, one hammerstone, 13 flakes, one core, one projectile point, two mussel shell fragments, one turtle shell fragment, and one tool fragment.

On February 16, 1967, human remains representing, at minimum, one individual were removed from the Rattlesnake Slough site (34GR4) in Greer County, OK, by local collectors. One local collector reported the discovery to a University of Oklahoma professor. Initially, the human remains were taken to the Oklahoma Museum of Natural History. Currently, they are at the Museum of the Great Plains. The human remains belong to a subadult 15–18 years old of unknown sex. No known individual was identified. The eight associated funerary objects are one shell bead, four flakes, one hammerstone, and two faunal fragments.

On January 4, 1968, human remains representing, at minimum, one individual were removed from the Rattlesnake Slough site (34GR4) in Greer County, OK. The human remains were recovered and stored at the Stovall Museum. Currently, they are housed at the Museum of the Great Plains. The human remains belong to an adult of unknown sex and age. No known individual was identified. No associated funerary objects are present.

On May 29, 1979, human remains representing, at minimum, one individual were removed from the Rattlesnake Slough site (34GR4) in Greer County, OK. After the human remains were located on a roadway, they were removed and taken to the Stovall Museum. In 1996, the human remains were loaned to Wichita State University. Currently, the human remains are at the Museum of the Great Plains. The human remains belong to a subadult of unknown sex. No known individual was identified. No associated funerary objects are present.

In 1982, human remains representing, at minimum, one individual were removed from the Rattlesnake Slough site (34GR4) in Greer County, OK, by local collectors and brought to the Oklahoma Museum of Natural History. Currently, the human remains are at the Museum of the Great Plains. The human remains belong to an adult of unknown sex and age. No known individual was identified. The seven associated funerary objects are one shell fragment, three flakes, and three faunal fragments.

Between May and August of 1984, human remains representing, at minimum, one individual were removed from the Rattlesnake Slough site (34GR4) in Greer County, OK. The human remains were initially stored at Reclamation's Southwest Regional Office in Amarillo, TX. On September 19, 1985, they were taken to the Oklahoma Archeological Survey for analysis and then transferred to the Oklahoma Museum of Natural History. Currently, the human remains are at the Museum of the Great Plains. The human remains belong to an adult of unknown sex and age. No known individual was identified. No associated funerary objects are present.

In May of 1985, human remains representing, at minimum, one individual were removed from the Rattlesnake Slough site (34GR4) in Greer County, OK, by an unknown person. Currently, the human remains are at the Museum of the Great Plains. The human remains belong to an adult of unknown sex and age. No known individual was identified. No associated funerary objects are present.

On October 4, 1964, human remains representing, at minimum, one individual were removed from the Hotel site (34GR5) in Greer County, OK. Currently, the human remains are at the Museum of the Great Plains. The human remains belong to a child 2–2.5 years old of unknown sex. No known individual was identified. No associated funerary objects are present.

Sometime between 1964 and1995, human remains representing, at minimum, two individuals were removed from the Hotel site (34GR5) in Greer County, OK. Currently, the human remains are at the Museum of the Great Plains. The human remains belong to two adults of unknown sex and age. No known individuals were identified. No associated funerary objects are present.

On August 31, 1967, human remains representing, at minimum, one individual were removed from the Hotel site (34GR5) in Greer County, OK. The human remains were found partially

exposed on the Lake Altus shore and were excavated by local collectors. Initially, the human remains were taken to the Stovall Museum. Currently, they are housed at the Museum of the Great Plains. The human remains belong to an adult male 50–60 years old. No known individual was identified. The five associated funerary objects are faunal fragments.

On October 15, 1967, human remains representing, at minimum, one individual were removed from the Hotel site (34GR5) in Greer County, OK, by local collectors. The human remains are located at the Museum of the Great Plains. The human remains belong to an adult male 30–40 years old. No known individual was identified. The three associated funerary objects are two faunal fragments and one Scallorn projectile point.

On February 27, 1968, human remains representing, at minimum, two individuals were removed from the Hotel site (34GR5) in Greer County, OK, by local collectors. The human remains are located at the Museum of the Great Plains. The human remains belong to an adult female believed to be 30–35 years old and an adult of unknown sex and age. No known individuals were identified. The 11 associated funerary objects are one flake and 10 faunal fragments.

On August 12, 1971, human remains representing, at minimum, one individual were removed from the Hotel site (34GR5) in Greer County, OK. After the human remains were found exposed on the surface by local collectors, they were excavated and taken to the Stovall Museum. Currently, they are housed at the Museum of the Great Plains. The human remains belong to an adult of unknown sex and age. No known individual was identified. No associated funerary objects are present.

On October 5, 1985, human remains representing, at minimum, 11 individuals were removed from the Hotel site (34GR5) in Greer County, OK. After human remains were found on the shore of Lake Altus by local collectors, salvage excavations were conducted by Reclamation archeologists. The human remains were briefly stored at the Reclamation office in Amarillo, TX, and Eastern New Mexico University, Portales, NM, while undergoing analysis. From there they were moved to the Sam Noble Oklahoma Museum of Natural History. In 2011, they were moved to the Museum of the Great Plains. The human remains belong to five adults of unknown sex and age; one female believed to be 40–45 years old; one male believed to be 55–60 years old; and four children of unknown sex believed to be, respectively, 1.5–2.0 years old, 1.5–2.5 years old, 4.0–4.5 years old, and 5–7 years old). No known individuals were identified. The 53 associated funerary objects are 42 faunal fragments, nine flakes, one biface fragment, and one shell fragment.

In 1956, human remains representing, at minimum, two individuals were removed from site 34GR6 in Greer County, OK. According to accompanying documentation, the human remains were salvaged by a local collector. The human remains are located at the Museum of the Great Plains. They belong to two adult females believed to be, respectively, 40–45 years old and 50–55 years old. No known individuals were identified. The three associated funerary objects are flakes.

In January of 1964, human remains representing, at minimum, six individuals were removed from site (34GR6) in Greer County, OK. They were removed by a local collector and stored at his home in Altus, OK. In October of 1965, he donated the human remains to the Panhandle-Plains Historical Museum in Canyon, TX. On May 24, 1995, Reclamation transferred the human remains to the Museum of the Great Plains. The human remains belong to two adult females believed to be, respectively, 45–55 years old and 50–60 years old, and four adults of unknown sex or age. No known individuals were identified. No associated funerary objects are present.

On October 4, 1964, human remains representing, at minimum, two individuals were removed from site 34GR6 in Greer County, OK. The human remains were excavated as part of the Wichita Mountain Survey and loaned to the University of Colorado at Boulder. Currently, the human remains are housed at the Museum of the Great Plains. The human remains belong to an adult female believed to be 30–35 years old and an adult of unknown sex or age. No known individuals were identified. The 189 associated funerary objects are 187 faunal fragments and two wood fragments.

Sometime between 1964 and1995, human remains representing, at minimum, five individuals were removed from site 34GR6 in Greer County, OK. The human remains were surface collected by local collectors. Reclamation obtained the human remains in May of 1995 and brought them to Wichita State University for inventorying. The human remains are currently housed at Museum of the Great Plains. They belong to one adult of unknown sex or age, one adult of unknown sex believed to be 30+ years old), one child believed to be 0.5–1.0 years old, one child believed to be 7–9 years old, and one child believed to be 8–12 years old. No known individuals were identified. No associated funerary objects are present.

On October 23, 1966, human remains representing, at minimum, one individual were removed from site 34GR6 in Greer County, OK, by local collectors. On June 28, 1968, the collectors donated the human remains to the Museum of the Great Plains. The human remains belong to an adult male believed to be 35–40 years old. No known individual was identified. No associated funerary objects are present.

On June 23, 1967, human remains representing, at minimum, one individual were removed from site 34GR6 in Greer County, OK, by local collectors. The human remains belong to a child believed to be 0.5–1.5 years old of unknown sex. No known individual was identified. No associated funerary objects are present.

On November 14, 1970, human remains representing, at minimum, one individual were removed from site 34GR6 in Greer County, OK, during excavations conducted by the Oklahoma Anthropological Society. The human remains were taken to the Museum of the Great Plains. They belong to a child believed to be 3.5 years old of unknown sex. No known individual was identified. The 55 associated funerary objects are one shell fragment, 20 faunal fragments, and 34 flakes.

On March 21, 1971, human remains representing, at minimum, one individual were removed from site 34GR6 in Greer County, OK, by local collectors. The human remains belong to an adult male believed to be 55–60 years old. No known individual was identified. No associated funerary objects are present.

On December 28, 1980, human remains representing, at minimum, one individual were removed from site 34GR6 in Greer County, OK, by local collectors. The human remains belong to a child believed to be 1.5–2.5 years old of unknown sex. No known individual was identified. The 11 associated funerary objects are bone beads.

On May 1, 1981, human remains representing, at minimum, one individual were removed from site 34GR6 in Greer County, OK. The human remains were excavated by Reclamation and taken to the Stovall Museum. On March 5, 1987, the human remains were accessioned into the collection at the Museum of the Great Plains. The human remains belong to an adult of unknown sex or age. No known individual was identified. The two associated funerary

objects are one flake and one faunal fragment.

On February 26, 1982, human remains representing, at minimum, two individuals were removed from site 34GR6 in Greer County, OK. The human remains were discovered by local collectors. The collectors contacted the Oklahoma Archeological Survey, who informed Reclamation. The human remains were excavated by Reclamation archeologists and Quartz Mountain State Park personnel. In 1982, the human remains were evaluated and taken to the Museum of the Great Plains. The human remains belong to two adult females believed to be, respectively, 40–50 years old and 50–55 years old. No known individuals were identified. The one associated funerary object is an unmodified stone.

On March 16, 1982, human remains representing, at minimum, one individual were removed from site 34GR6 in Greer County, OK, by Reclamation archeologists. In 1982, the human remains were assessed, and on March 5, 1987, they were accessioned into the collection of the Museum of the Great Plains. The human remains belong to an adult of unknown sex believed to 30–40 years old. No known individual was identified. The 17 associated funerary objects are 14 sherds and three flakes.

On October 29, 1984, human remains representing, at minimum, one individual were removed from site 34GR6 in Greer County, OK, by Reclamation archeologists. In 1986, the human remains underwent a formal osteological analysis at the Eastern New Mexico University. Thereafter, the human remains were taken to the Oklahoma Museum of Natural History, and then to the Museum of the Great Plains. The human remains belong to a child believed to be 5–10 years old of unknown sex. No known individual was identified. The 11 associated funerary objects are three faunal fragments and eight flakes.

On October 5, 1985, human remains representing, at minimum, six individuals were removed from site 34GR6 in Greer County, OK, by Reclamation archeologists after local collectors informed Reclamation that human remains were eroding at the shoreline. The human remains were briefly stored at the Reclamation office in Amarillo, TX, and Eastern New Mexico University while undergoing initial analysis. From there, the human remains were moved to the Oklahoma Museum of Natural History, and then to the Museum of the Great Plains. The human remains belong to four adults of unknown sex or age and two adults believed to be, respectively, 30–35 years old and 50+ years old of unknown sex. No known individuals were identified. No associated funerary objects are present.

Archeological sites 34GR5 and 34GR6 are located adjacent to one another. Radiocarbon dating performed in 1985 demonstrate that sites 34GR5 and 34GR6 were occupied during the two periods—1,270 +/− 90 B.P. and 1,390 +/− 90 B.P. The 120-year gap between the two dates is a reasonable period for a single group to occupy a location. The temper, paste, and thickness of the sherds in the burial pit fill are consistent with Stafford Cordmarked ceramics. This pottery type is commonly affiliated with the Custer Phase (A.D. 800–1100) and less frequently with the Washita River Phase (A.D. 1100–1450).

Sometime between 1964 and1995, human remains representing, at minimum, one individual were removed from site 34GR7 in Greer County, OK. In May of 1995, a Reclamation archeologist obtained the human remains during meetings with local collectors. The human remains were transported to Wichita State University for inventorying and then taken to the Sam Noble Oklahoma Museum of Natural History. Subsequently, they were taken to the Museum of the Great Plains. The human remains belong to a subadult of unknown sex. No known individual was identified. No associated funerary objects are present.

On June 26, 1971, human remains representing, at minimum, one individual were removed from the Taylor site (34GR8) in Greer County, OK. The human remains were found by local collectors and submitted to the Oklahoma State Bureau of Investigation. The human remains were later transferred to the Oklahoma Museum of Natural History, and then to the Museum of the Great Plains. The human remains belong to an adult female believed to be 40–50 years old. No known individual was identified. No associated funerary objects are present.

On June 3, 1964, human remains representing, at minimum, one individual were removed from the Lone Wolf site (34KI2) in Kiowa County, OK. On March 8, 1995, Reclamation observed the human remains at the Museum of the Great Plains. Documentation accompanying the human remains suggested that the human remains and associated funerary objects had been collected on June 3, 1964. The human remains are currently at the Museum of the Great Plains. They belong to an adult male believed to be 40–45 years old. No known individuals were identified. No associated funerary objects are present. (A point tip, Olivella shell beads, and mussel shell might possibly be associated funerary objects, but none of these objects was found at the Museum of the Great Plains during visits by Reclamation on March 8, 1995 and in 2021.)

On June 26, 1964, human remains representing, at minimum, one individual were removed from the Lone Wolf site (34KI2) in Kiowa County, OK. On March 8, 1995, Reclamation observed the human remains were observed at the Museum of the Great Plains. Documentation accompanying the human remains stated how the remains were found and suggested that a local collector had some associations with the remains. The human remains are at the Museum of the Great Plains. They belong to an adult male believed to be 40–45 years old. No known individual was identified. No associated funerary objects are present.

On November 13 and 29, 1954, human remains representing, at minimum, one individual were removed from site 34KI3 in Kiowa County, OK, by a local collector. On March 31, 1955, the collector donated the human remains to the Stovall Museum. On October 9, 1964, the remains were sent to the University of Colorado Boulder for analysis. The human remains belong to an adult female believed to be 30–40 years old. No known individual was identified. No associated funerary objects are present.

Sometime between 1964 and 1995, human remains representing, at minimum, two individuals were removed from site 34KI3 in Kiowa County, OK. The human remains were surface collected by local collectors. In May of 1995, Reclamation obtained these human remains during meetings with local collectors, at which time the remains were transported to Wichita State University for inventorying. In May 1995, Reclamation moved the human remains to the Museum of the Great Plains. The human remains belong to an adult of unknown sex and age and a child believed to be 1 year old of unknown sex. No known individuals were identified. No associated funerary objects are present.

On March 14, 1965, human remains representing, at minimum, one individual were removed from site 34KI4 in Kiowa County, OK. On March 7–8, 1995, the human remains were observed during a visit to the Museum of the Great Plains. A note accompanying the human remains contains the local collector's name and a date of March 14, 1965. The human remains belong to an adult female

believed to be 40–45 years old. No known individual was identified. The one associated funerary object is a chert core.

Sometime between 1964 and1995, human remains representing, at minimum, one individual were removed from site 34KI6 in Kiowa County, OK, by local collectors. In May of 1995, Reclamation obtained these human remains during meetings with local collectors. The human remains were transported to Wichita State University for inventorying and then were moved to the Museum of the Great Plains. The human remains belong to an adult of unknown sex or age. No known individual was identified. No associated funerary objects are present.

The human remains detailed in this notice were determined to be Native American based on their archeological context and collection history. No lineal descendants associated with the burials have been identified. Archeological, ethnohistoric, ethnographic, and tribal oral traditional information support the finding that the human remains and associated funerary objects listed herein can be culturally affiliated with the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Determinations Made by the U.S. Department of the Interior, Bureau of Reclamation, Oklahoma-Texas Area Office

Officials of the U.S. Department of the Interior, Bureau of Reclamation, Oklahoma-Texas Area Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 82 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 530 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 Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), 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 and associated funerary objects should submit a written request with information in support of the request to Kate Ellison, Bureau of Reclamation, 5924 NW 2nd Street, Suite 200, Oklahoma City, OK 73127, telephone (405) 470–4816, email *kellison@usbr.gov,* by June 13, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma may proceed.

The U.S. Department of the Interior, Bureau of Reclamation, Oklahoma-Texas Area Office is responsible for notifying the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma that this notice has been published.

Dated: May 4, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–10252 Filed 5–12–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033898; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology 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 Beloit College, Logan Museum of Anthropology. 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 Beloit College, Logan Museum of Anthropology at the address in this notice by June 13, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.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 and associated funerary objects under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains and associated funerary objects were removed from Emmet County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). 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 Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and

Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups—the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all the Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from Emmet County, MI. The human remains (31209.31) and associated funerary objects were obtained by Albert Green Heath (1888–1953). Heath was an avid collector and dealer of Native American items who traveled throughout North America buying, trading, and selling Native American items. He had a summer home in Harbor Springs, MI, and developed relationships with the local Odawa/Ottawa. Heath's large collection came to be known as the Museum of Amerind Arts or the Museum of American Indian Art. In 1955, Beloit College, Logan Museum of Anthropology purchased the Albert Green Heath American Indian collection.

The human remains belong to an individual of undetermined age and sex. No known individual was identified. The 28 associated funerary objects are one lot of glass, stone, and shell beads (31209.32); one metal button (31209.24); one metal clock hand (31209.17); one metal ear wheel with RC touchmark (31209.7); one lot of metal head/hat band fragments (31209.5; 31209.6; 31209.27); one metal tube (31209.18); one lot of metal tinkler cones (31209.23); one lot of metal fragment wrapped in fiber cordage (31209.26); one lot of metal beads (31209.28); one lot of metal brooches and brooch fragments (31209.29); one lot of metal brooch with RC touchmark and brooch fragments attached to cloth (31209.10); one lot of metal strikers and striker fragments (31209.21; 31209.22); one lot of metal brooch fragments (31209.8; 31209.9); one lot of a bracelet crushed with leather and cloth fragments (31209.15); one lot of plain weave wool cloth fragments (31209.1); one lot of plain weave wool cloth fragments with metal brooches (31209.2); one lot of silk ribbon with whole and fragmentary brooches attached (31209.3); one lot of stone gunflint fragments (31209.30); one lot of wool garter fragment with wooden bead and glass beads (31209.4); one lot of corroded metal fragments (31209.25); one lot of plain weave cloth fragments (31209.33); one tube around stick (31209.19); one metal wire around wooden stick (31209.20); three metal bracelets—one with RC touchmark (31209.13; 31209.14; 31209.16); and two metal crosses—one with RC touchmark (31209.11; 31209.12).

Embedded in the human remains are small beads and red ochre. The ''RC'' touchmark belongs to Robert Cruickshank, a Montreal silversmith who produced sold silver ornaments and marketed them to the Northwest Company during the period 1779–1809.

Determinations Made Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 28 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 Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and the

Ottawa Tribe of Oklahoma (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 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 Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu,* by June 13, 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.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: May 4, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–10260 Filed 5–12–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033899; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology 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 Beloit College, Logan Museum of Anthropology. 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 Beloit College, Logan Museum of Anthropology at the address in this notice by June 13, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.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 and associated funerary objects under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains and associated funerary objects were removed from Monroe County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains 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 Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; and the Wyandotte Nation.

An invitation to consult was extended to the Cayuga Nation; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; and the Tuscarora Nation.

Hereafter, all Indian Tribes listed in this section are referred to as ''The Consulted and Notified Tribes.''

History and Description of the Remains

On an unknown date, human remains representing, at minimum, three individuals were removed from an Indian grave in Monroe County, NY. The human remains (number 1134) consist of 63 adult teeth. Subsequently, someone strung these teeth and 96 plum pits together. No known individuals were identified. The one associated funerary object is one lot of plum pits (number 1134).

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology 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(3)(A), the one object described in this notice is 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 Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; and the Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York] (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 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 Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu,* by June 13, 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.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes that this notice has been published.

Dated: May 4, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–10267 Filed 5–12–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1236]

Certain Polycrystalline Diamond Compacts and Articles Containing Same; Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ''), finding no violation of section 337 of the Tariff Act of 1930. The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. 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: The Commission instituted this investigation on December 29, 2020, based on a complaint filed by US Synthetic Corporation (''USS'') of Orem, Utah. 85 FR 85661 (Dec. 29, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain polycrystalline diamond compacts and articles containing same by reason of infringement of certain claims of U.S. Patent No. 10,507,565 (''the '565 patent''), U.S. Patent No. 10,508,502 (''the '502 patent''), U.S. Patent No. 8,616,306 (''the '306 patent''), U.S. Patent No. 9,932,274 (''the '274 patent''), and U.S. Patent No. 9,315,881 (''the '881 patent''). *Id.* The complaint further alleged that an industry in the United States exists as required by section 337. *Id.* The notice of investigation named as respondents: SF Diamond Co., Ltd., and SF Diamond USA, Inc. (collectively, ''SF Diamond''); Element Six Abrasives Holdings Ltd., Element Six Global Innovation Centre, Element Six GmbH, Element Six Limited, Element Six Production (Pty) Limited, Element Six Hard Materials (Wuxi) Co. Limited, Element Six Trading (Shanghai) Co., Element Six Technologies US Corporation, Element Six US Corporation, ServSix US, and Synergy Materials Technology Limited (collectively, ''Element Six''); Iljin Diamond Co., Ltd., Iljin Holdings Co., Ltd., Iljin USA Inc., Iljin Europe GmbH, Iljin Japan Co., and Ltd., Iljin China Co., Ltd. (collectively, ''Iljin''); Henan Jingrui New Material Technology Co., Ltd. (''Jingrui''); Zhenzghou New Asia Superhard Materials Composite Co., Ltd., and International Diamond Services, Inc. (collectively, ''New Asia/IDS''); CR Gems Superabrasives Co., Ltd. (''CR Gems''); FIDC Beijing Fortune International Diamond (''FIDC''); Fujian Wanlong Superhard Material Technology Co., Ltd. (''Wanlong''); Zhujau Juxin Technology (''Juxin'');[1] and Shenzhen Haimingrun Superhard Materials Co., Ltd. (''Haimingrun'') (together, ''the Respondents''). *Id.* at 85662. The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

USS moved to terminate the investigation as to Element Six and FIDC over the course of the investigation. All of the motions were granted by non-final IDs, and the Commission did not review them. ID at 2 (citing Order Nos. 6, 8, 10, and 16). Thus, the only remaining respondents are Iljin, SF Diamond, New Asia/IDS, Haimingrun, Juxin, CR Gems, Jingrui, and Wanlong.

USS also moved for partial termination of the investigation with respect to certain asserted patents and claims. All the motions were granted by non-final IDs, and the Commission did not review them. ID at 3 (citing Order Nos. 26, 32, and 57). As such, the '274 and '881 patents have been terminated from the investigation. Claims 1, 2, 4, 6, and 18 of the '565 patent; claims 1, 2, 11, 15, and 21 of the '502 patent; and claim 15 of the '306 patent remain in this investigation (collectively, ''the Asserted Patents'').

On May 24, 2021, Order No. 23 issued, which construed certain claim terms of the asserted patents. An evidentiary hearing was held on October 18–22, 2021.

On March 3, 2022, the ALJ issued his final ID, finding no violation of section 337 by Respondents. Specifically, the ID found at least one accused product infringes all asserted claims of the Asserted Patents, but those claims are invalid under 35 U.S.C. 101 and/or 102. The ID also found that Complainants have shown that the domestic industry requirement has been satisfied with respect to the Asserted Patents.

On March 15, 2022, Complainant filed a petition for review seeking review of certain patent invalidity findings. That same day, Respondents filed two contingent petitions for review. The first petition submitted by all active Respondents seeks review of certain findings related to infringement, the technical prong of the domestic industry requirement, and invalidity. The second petition submitted by Respondents New Asia, Haimingrun, and Juxin seeks review of Order No. 46, which allowed Complainant to present evidence regarding its revenue-based investment allocation method for the economic prong of the domestic industry requirement. On March 23, 2022, the parties filed separate replies to the petitions for review. On March 31, 2022, the Iljin Respondents submitted their public interest statement. The Commission solicited submissions from the public on public interest issues raised by the recommended determination. No submissions were filed.

Having reviewed the record of the investigation, including the final ID, the parties' submissions to the ALJ, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. Specifically, the

[1] On February 8, 2021, Guangdong Juxin Materials Technology Co., Inc. was substituted in place of Zhuhai Juxin Technology. ID at 1 n.1 (citing Order No. 8).

Commission has determined to review: (1) The ID's finding that the asserted claims are invalid under 35 U.S.C. 101; (2) the ID's finding that the asserted claims of the '565 patent are not entitled to an earlier priority date and, thus, they are invalid as anticipated by the sale of the CT–57 product; (3) the ID's finding that the Mercury product anticipates claims 1 and 2 of the '565 patent and claims 1 and 11 of the '502 patent; (4) the ID's finding that Respondents did not prove that the asserted claims are not enabled; and (5) the ID's findings regarding the economic prong of the domestic industry requirement (including the ruling allowing USS to supplement its domestic industry contentions with a revenue-based allocation method). The Commission has determined not to review any other findings presented in the final ID, including the ID's finding of no violation of section 337 with respect to the '306 patent.

In connection with its review, Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

1. Is each of the asserted patent claims directed to an abstract idea under the step one analysis of *Alice Corp.* v. *CLS Bank Int'l,* 573 U.S. 208 (2014) and, if so, what do you allege is the abstract idea? Are the claims directed to the abstract idea of ''enhanced'' or a ''high-degree'' of diamond-to-diamond bonding?

2. Is each of the individual claimed ''performance standards'' and ''electrical and magnetic side effects,'' as discussed in the ID, directed to an abstract idea? For each of the claimed PDC characteristics (including coercivity, specific magnetic saturation, specific permeability, average electrical conductivity, G-Ratio, and thermal stability), please discuss the expert testimony and any other record evidence relevant to whether that characteristic is indicative of ''the extent of diamond-to-diamond bonding,'' ''the amount of the metal-solvent catalyst present,'' or any other physical characteristics of the diamond microstructure as discussed in the patent specifications.

3. For any asserted claim that you allege invokes a judicial exception to patentability for being an abstract idea, does the claim recite additional elements that integrate the judicial exception into a practical application under step two of *Alice*? Please discuss whether the structures recited in each claim are well-known, routine, and conventional. *See Yu* v. *Apple Inc.,* 1 F.4th 1040, 1045 (Fed. Cir. 2021).

4. Do the specifications of U.S. Patent No. 7,866,418 (''the '418 patent'') and the '565 patent disclose, either expressly or inherently, an exemplary PDC exhibiting ''an average electrical conductivity of less than about 1200 S/m'' as required, for example, in claim 1 of the '565 patent? Please cite the relevant portions of the specification and expert testimony.

5. USS argues that the ID erred in relying on Dr. German's electrical conductivity measurements of other PDCs because there is no information confirming these other PDCs were manufactured in the same way as the disclosed examples in the '418 and '565 patents. *See* Compl. Pet. at 46. Is the way a PDC is manufactured relevant to USS's argument that electrical conductivity is inherently disclosed in the '418 patent? If it is relevant, please discuss whether Dr. Barron's mathematical model to predict the electrical conductivity from cobalt content assumes the same materials and manufacturing conditions as described in the '418 patent. Is USS's argument consistent with its contention that the electrical conductivity of a PDC is indicative of ''a PDC's microstructure''? *See id.* at 39.

6. Respondents argue that even if the '418 patent discloses example PDCs having specific electrical conductivities of less than 1200 S/m, those examples are insufficient to provide written description support for the entire claimed electrical conductivity range of ''less than about 1200 S/m.'' *See* Resp. Response at 34–37. Was this argument timely raised before the ALJ? Should the Commission find this argument is waived? If not waived, please discuss whether the '418 patent specification provides written description support for the entire claimed electrical conductivity range.

7. What evidence in the record supports the ID's finding that the Mercury 1613 sample tested by Mr. Bellin is prior art to the '565 and '502 patents? Please discuss whether and to what extent Mr. Gledhill's testimony regarding manufacturing practices at Diamond Innovations, including his testimony at Tr. 525:17–540:19, was admitted into the record in view of Order No. 48 and the ALJ's oral order at the evidentiary hearing, Tr. 667:5–72:22).

8. Please explain what appropriate methods of valuation provide a reliable estimate of the Complainant's investments in plant and equipment with respect to the articles protected by the '565 and '502 patents, including an explanation of any adjustments that are necessary to approximate those investments based on the record evidence and legal authority for such adjustments. For equipment that is purchased and placed into service years before the DI products are manufactured as described in the ID at page 148, please explain whether governing legal authority requires that the purchase price of the equipment be amortized or depreciated in order to be counted as an ''investment in . . . equipment'' under section 337(a)(3)(A). Discuss, with relevant legal authority, whether replacement costs may be used as a basis to estimate investments in equipment and if so must any adjustments be made to rely on such replacement costs.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public

interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The parties' opening submissions should not exceed 100 pages, and their reply submissions should not exceed 60 pages. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on Monday, May 23, 2022. Reply submissions must be filed no later than the close of business on Tuesday, May 31, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–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. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of 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.

The Commission vote for this determination took place on May 9, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: May 9, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10304 Filed 5–12–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0077]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Report of Stolen or Lost Intrastate Purchase of Explosives Coupon (IPEC)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until July 12, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Jason Lynch, United States Bomb Data Center, Office of Strategic Intelligence and Information, by mail at 3750 Corporal Road, Redstone Arsenal, AL 35898, email at *Jason.Lynch@atf.gov,* or telephone at 256–261–7580.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* Extension without Change of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Report of Stolen or Lost Intrastate Purchase of Explosives Coupon (IPEC).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Individuals or households, and Farms.

Abstract: This collection is a reporting requirement for Federal explosives licensees and permittees to notify the Bureau of Alcohol, Tobacco, Firearms, and Explosives when an Intrastate Purchase of Explosives Coupon (IPEC)—ATF Form 5400.30 is stolen, lost, or destroyed, by telephoning 1–888–ATF–BOMB.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10 respondents will prepare reports for this collection once annually, and it will take each respondent approximately 20 minutes to complete their report.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 3.3. or 3 hours, which is equal to 10 (total respondents) * 1 (# of response per respondent) * .3333333 (20 minutes or the time taken to prepare each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–405A, Washington, DC 20530.

Dated: May 9, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–10282 Filed 5–12–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on March 21, 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''), UHD Alliance, Inc. (''UHD Alliance'') 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, Beijing ESWIN Computing Technology Co. Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Google, Inc., Mountain View, CA; and Synaptics, San Jose, CA 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 UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance 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 July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on January 4, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2022 (87 FR 14041).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10251 Filed 5–12–22; 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—Silicon Integration Initiative, Inc.

Notice is hereby given that, on April 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''), Silicon Integration Initiative, Inc. (''Si2'') 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, ARM Limited, Cambridgeshire, UNITED KINGDOM; BAE Systems, Inc., Charlotte, NC; Numerical Innovations, Inc., Henderson, NV; Semiconductor Components Industries, LLC dba onsemi, Phoenix, AZ; proteanTecs, Haifa, ISREAL; Sanayi System Co., Ltd., Incheon, REPUBLIC OF KOREA; TexEDA Design GmbH, Brandenburg, GERMANY; and Tokyo Electron America Inc., Austin, TX have been added as parties to this venture.

Also, AMSIMCEL SRL, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Hongzhunda, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Marvell Semiconductor, Inc., Santa Clara, CA; and Nanjing Industrial Innovation Center of EDA, Nanjing, PEOPLE'S REPUBLIC OF CHINA have withdrawn as parties to this venture.

Additionally, Fractal Technologies, Los Gatos, CA, was acquired by existing member Siemens Industry Software, Inc., Wilsonville, OR; ams AG, Premstaetten, AUSTRIA has changed its name to ams-OSRAM AG; Silicon Technologies, Midvale, UT has changed its name to Silicon Technologies, Inc.; and SK Hynix Inc., Gyeonggi-do, REPUBLIC OF KOREA has changed its name to SK hynix.

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 Si2 intends to file additional written notifications disclosing all changes in membership.

On December 30, 1988, Si2 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 13, 1989 (54 FR 10456).

The last notification was filed with the Department on April 15, 2021. A notice was published in the **Federal Register** pursuant the Section 6(b) of the Act on May 25, 2021 (85 FR 28150).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10263 Filed 5–12–22; 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—Open RF Association, Inc.

Notice is hereby given that, on March 22, 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''), Open RF Association, Inc. 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, Skyworks Solutions, Inc., Irvine, CA 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 Open RF Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On February 21, 2020, Open RF Association, Inc. 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 11, 2020 (85 FR 14247).

The last notification was filed with the Department on January 7, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2022 (87 FR 14044).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10248 Filed 5–12–22; 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—Bytecode Alliance Foundation

Notice is hereby given that, on April 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''), Bytecode Alliance Foundation 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: Amazon Services LCC, Seattle, WA; Arm, Cambridge, UNITED KINGDOM; AsmNext, Incheon, REPUBLIC OF KOREA; Cosmonic, Arlington, VA 22207; DFINITY, Palo Alto, CA; EDJX, Raleigh, NC; Embark Studios, Stockholm, SWEDEN; Fastly, San Francisco, CA; Fermyon, Longmont, CO; Futurewei, Santa Clara, CA; Google, Mountain View, CA; Igalia, A Coruña, SPAIN; InfinyOn, Saratoga, CA; Intel, Santa Clara, CA; Microsoft, Redmond, WA; Midokura, Tokyo, JAPAN; Mozilla, San Francisco, CA; Profian, Raleigh, NC; Rackner, Silver Spring, MD; Shopify, Ottowa, Ontario CANADA; Siemens, Princeton, NJ; SingleStore, San Francisco, CA; Stackblitz, San Francisco, CA; Suborbital, Ottawa, Ontario CANADA; Tangram, Brookline, MA; University of California San Diego, La Jolla, CA; and VMWare, Palo Alto, CA. The general area of Bytecode Alliance Foundation's planned activity is (a) establish a capable, secure platform that allows application developers and service providers to confidently run untrusted code, on any infrastructure, for any operating system or device (the ''Platform''); (b) establish, maintain, seek support for, and develop infrastructure projects and technical and infrastructure collaboration initiatives (the ''Projects'') related to the Platform, and such other initiatives as may be appropriate to support, enable and promote the Platform; (c) encourage and increase user adoption, involvement with, and contribution to, the Platform; (d) facilitate communication and collaboration among users and developers of the Platform and the Bytecode Alliance; (e) support and maintain policies set by the Board; (f) manage and steward intellectual property rights related to the Platform; and (g) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10268 Filed 5–12–22; 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—Pistoia Alliance, Inc.

Notice is hereby given that, on March 31, 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''), Pistoia Alliance, Inc. 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, Vertex Inc., Boston, MA; Nagarro, Cluj-Napoca, ROMANIA; Exscientia, Oxford, UNITED KINGDOM; Atom Computing, Berkeley, CA; The Lens, Karabar, AUSTRALIA; IonQ Inc., College Park, MD; Prism Analytic, Cambridge, MA; and Accurids GmbH, Aachen, GERMANY have been added as parties to this venture.

Also, World Quant Predictive, New York, NY; Scinapsis, Toronto, CANADA; Synthace, London, UNITED KINGDOM; Qiagen, Redwood City, CA; Illumina, San Diego, CA; Mcule, Budapest, HUNGARY; Sapio, Baltimore, MD; PercayAI, St. Louis, MO; Titian, London, UNITED KINGDOM; Tellic, New York, NY; and GenAlz, Montreal, CANADA 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 Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. 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 July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on December 8, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act was published on March 11, 2022 (87 FR 14043).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10266 Filed 5–12–22; 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—Cooperative Research Group on Numerical Propulsion System Simulation

Notice is hereby given that, on April 25, 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 Numerical Propulsion System Simulation (''NPSS'') 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, Raytheon Technologies Corporation, acting through its Pratt & Whitney division, East Hartford, CT, 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 NPSS intends to file additional written notifications disclosing all changes in membership.

On December 11, 2013, NPSS 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 February 20, 2014 (79 FR 9767).

The last notification was filed with the Department on March 4, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 20, 2020 (85 FR 16132).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10278 Filed 5–12–22; 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—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on March 25, 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''), Interchangeable Virtual Instruments Foundation, Inc. (''IVI 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, ThinkRF, Kanata, Ontario, CANADA, 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 IVI Foundation intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, IVI 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 July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on April 2, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 15, 2021 (86 FR 19901).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10275 Filed 5–12–22; 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—Naval Surface Technology & Innovation Consortium

Notice is hereby given that, on April 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''), Naval Surface Technology & Innovation Consortium (''NSTIC'') 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, Accurate Machine & Tool Corporation, Madison, AL; Anduril Industries, Inc., Irvine, CA; Archer Laboratories LLC, Albuquerque, NM; CHI Systems, Inc., Plymouth Meeting, PA; Cognovi Government Services (CGS), Dayton, OH; Consolidated Resource Imaging LLC, Grand Rapids, MI; Cynalytica, Inc., San Luis Obispo, CA; DESAPRO, Inc., Rockledge, FL; Empirical Systems Aerospace, Inc., San Luis Obispo, CA; Engineering Services Network, Inc., Woodbridge, VA; Equinox Innovative Systems, Columbia, MD; esc Aerospace US, Inc., Orlando, FL; GENERAL ELECTRIC COMPANY dba GE ADDITIVE, West Chester, OH; Immobileyes, Inc., Kent, OH; Kyrus Tech, Inc., Sterling, VA; Lane LLC, Goose Creek, SC; Magothy River Technologies LLC, Herndon, VA; Sertainty Corporation, Nashville, TN; Solena Systems, Inc., Rochester, NY; SWR Technologies, Inc., Fremont, CA; The NOMAD Group LLC, Morristown, NJ and Vertex Aerospace LLC, Madison, MS, 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 NSTIC intends to file additional written notifications disclosing all changes in membership.

On October 8, 2019, NSTIC 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 12, 2019 (84 FR 61071).

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 March 11, 2022 (87 FR 14043).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10272 Filed 5–12–22; 8:45 am]

BILLING CODE

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Subcutaneous Drug Development & Delivery Consortium, Inc.

Notice is hereby given that, on April 25, 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''), Subcutaneous Drug Development & Delivery Consortium, Inc. (''Subcutaneous Drug Development & Delivery Consortium, Inc.'') 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, Roche Holding AG, Basel, SWITZERLAND, 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 Subcutaneous Drug Development & Delivery Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On October 26, 2020, Subcutaneous Drug Development & Delivery Consortium, Inc. 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 3, 2020 (85 FR 78148).

The last notification was filed with the Department on December 8, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 13, 2022 (87 FR 2182).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10240 Filed 5–12–22; 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—National Shipbuilding Research Program

Notice is hereby given that, on April 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''), National Shipbuilding Research Program (''NSRP'') 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, Conrad Industries, Inc., Morgan City, LA, 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 NSRP intends to file additional written notifications disclosing all changes in membership.

On March 13, 1998, NSRP 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 29, 1999 (64 FR 4708).

The last notification was filed with the Department on March 19, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 02, 2019 (84 FR 18864).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10243 Filed 5–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on April 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''), the DVD Copy Control Association (''DVD CCA'') 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, Wydawnictwo Muzyczne Sp Zo.o Fono Sp.K., Warsaw, POLAND; and Shine Media Company Limited, New Taipei City, TAIWAN, 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 DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA 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 3, 2001 (66 FR 40727).

The last notification was filed with the Department on December 15, 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. 2022–10279 Filed 5–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on March 23, 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 Media Workflow Association, Inc. 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, Appear, Oslo, NORWAY; Broadcast Solutions GmbH, Rheinland-Pfalz, GERMANY; Intel Corporation, Santa Clara, CA; One Diversified, LLC, Kenilworth, NJ; and Joost Rovers (individual member), Senhora de Hora,

PORTUGAL, 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 Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. 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 29, 2000 (65 FR 40127).

The last notification was filed with the Department on December 16, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 13, 2022 (87 FR 2181).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10280 Filed 5–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on April 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''), ODVA, Inc. (''ODVA'') 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, Sanwa Engineering Corp., Hsinchu County, TAIWAN (R.O.C.); CMD Corporation, Appleton, WI; JSL Technology Co., Ltd., Ashikaga City, JAPAN; Nikon Corporation, Tokyo, JAPAN; Perinet GmbH, Berlin, GERMANY; Panasonic Software Development Center Dalian Co., Ltd., Dalian, PEOPLE'S REPUBLIC OF CHINA; Neurala, Inc., Boston, MA; CodeWrights GmbH, Karlsruhe, GERMANY; Aber Instruments Ltd, Aberystwyth, UNITED KINGDOM; Georg Fischer Piping Systems Ltd., Schaffhausen, SWITZERLAND; and Telsonic AG, Bronschhofen, SWITZERLAND, have been added as parties to this venture.

Also, HIMA Paul Hildebrandt GmbH & Co KG, Bruehl, GERMANY, 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 ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA 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 February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on January 4, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 13, 2022 (87 FR 2177).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10281 Filed 5–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical Technology Enterprise Consortium

Notice is hereby given that, on April 14, 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 Technology Enterprise Consortium (''MTEC'') 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, Acenxion Biosystems, Inc., Kansas City, KS; Advanced Functional Fabrics of America, Inc., Cambridge, MA; American Type Culture Collection, Manassas, VA; ApnoMed, Inc., Bellevue, WA; Arete Associates, Northridge, CA; Asayena, La Jolla, CA; Aspisafe Solutions, Inc., Brooklyn, NY; Atmospheric Plasma Solutions, Cary, NC; Avel eCare LLC, Sioux Falls, SD; Avocado Labs Inc., Dallas, TX; Baylor University, Waco, TX; Bennett Federal LLC, Plymouth, MN; Blue Horizon Development LLC dba Precise Portions LLC, Norfolk, VA; Boston Engineering Corporation, Waltham, MA; Cambridge Research & Development, Inc., Nashua, NH; Capital Edge Consulting, Inc., McLean, VA; Caretaker Medical, Charlottesville, VA; Centre for Injury Studies London, UK; Chenega Reliable Services LLC, San Antonio, TX; Clemson University Research Foundation, Clemson, SC; CorNeat Vision Ltd., Raanana, ISR; D-Prime LLC, McLean, VA; DxLab, Inc., Somerville, MA; Ejenta, Inc., San Francisco, CA; Enalare Therapeutics, Inc., Princeton, NJ; Excera, Inc., Minneapolis, MN; Fed Grow LLC dba FedNetix, Issaquah, WA; Federal Strategies LLC, Fredericksburg, VA; Frater GmbH, Naters, CH; GelSana Therapeutics, Inc., Aurora, CO; HAI Solutions, Inc., Santa Barbara, CA; Icahn School of Medicine at Mount Sinai, New York, NY; Ideal Medical Technologies, Inc., Asheville, NC; INdev LLC, Austin, TX; JAG Consulting LLC, Gulf Breeze, FL; JOHN J. RYAN (SEALING PRODUCTS) LIMITED, Dunboyne, IRE; Kunasan, Inc., Aurora, CO; Lactea Therapeutics LLC, Frederick, MD; LAINE Technologies, Goose Creek, SC; Leo Mora Therapy Services, PLLC, Killeen, TX; Limax Biosciences, Inc., Somerville, MA; Matregenix, Irvine, CA; MDC Studio, Inc., Baltimore, MD; MicroGEM US, Inc., Charlottesville, VA; Mid-America Applied Technologies Corporation, Chagrin Falls, OH; MLM Biologics, Inc., Gainesville, FL; Nakamir, Inc., Palo Alto, CA; Nanohmics, Inc., Austin, TX; Nanovatif Materials Technologies, Ankara, TUR; National Association of Veterans' Research and Education Foundations (NAVREF), Washington, DC; NowSecure, Inc., Vienna, VA; NuPeak Therapeutics, St Louis, MO; Obsidio, Inc., Columbia, SC; OneBreath, Inc., Palo Alto, CA; Organizational Performance Systems, Los Altos, CA; PALANQUINX PTY LTD, Hornsby Heights, AUS; Pascal Medical Corporation, Richmond, VA; PCCI, Inc., Alexandria, VA; PERSOWN, Inc., Jacksonville, FL; Quantumhave Ventura, Inc., San Jose, CA; Regranion LLC, Mt. Pleasant, SC; Repurposed Therapeutics, Inc. dba Defender Pharmaceuticals, Inc., Saint Louis, MO; Rock West Composites, Inc., San Diego, CA; SafetySpect, Inc., Grand Forks, ND; SanaHeal, Inc., Boston, MA; Scaled Microbiomics LLC, Hagerstown, MD; Selsym Biotech, Inc., Raleigh, NC; Sherpa 6, Inc., Littleton, CO; SISCAPA Assay Technologies, Inc., Washington, DC; Soliyarn, Belmont, MA; Sparta Biomedical, Inc., Chatham, NJ; SPEAR Human Performance, Inc., Sandy Springs, GA; SurgiBox, Cambridge, MA;

TechEn, Inc., Milford, MA; Technion Research and Development Foundation Ltd, Haifa, ISR; TetraCells, Inc., Marietta, GA; The University of Texas at Tyler, Tyler, TX; TrainXR LLC, Las Vegas, NV; University of Oregon, Eugene, OR; University of Texas Medical Branch at Galveston, Galveston, TX; University of Texas Permian Basin, Odessa, TX; University of Texas System, Austin, TX; Valtamer Oy, Helsinki, FIN; Vista LifeSciences, Inc. dba Vista Partners, Parker, CO; Vistendo, Inc., Arcadia, CA; War Horses for Veterans, Inc., Stilwell, KS; Wave Neuroscience, Inc., Newport Beach, CA; and Xomix Ltd, Chicago, IL, been added as parties to this venture.

Also, Advancement Strategy LLC, Columbia, MD; Aktiv Pharma Group, Broomfield, CO; Alcamena Stem Cell Therapeutics LLC, Halethorpe, MD; Aldyn, Inc., Boston, MA; American Systems, Chantilly, VA; Arcos, Inc., Missouri City, TX; ARD Global LLC, McLean, VA; Avera Health, Sioux Falls, SD; Belle Artificial Intelligence Corporation, Cambridge, MA; Brainbox Solutions, Inc., Richmond, VA; Canvas Incorporated, Huntsville, AL; Capricor Therapeutics, Inc., Beverly Hills, CA; Carahsoft Technology Corporation, Reston, VA; Catharsis Productions, Chicago, IL; Cimarron Software Services, Inc., Houston, TX; Circadian Positioning Systems, Inc., Newport, RI; Cognosante, Falls Church, VA; Computer Technology Associates, Inc., Ridgecrest, CA; Dascena, Houston, TX; Delta Chase LLC, West Chester, OH; Dovel Technologies, McLean, VA; Dustoff Technologies LLC, Saint Augustine, FL; Exciton Technologies, Inc., Edmonton, Alberta, CAN; Expesicor, Inc., Missoula, MT; Exploration Institute, Cheyenne, WY; FesariusTherapeutics, Inc., Brooklyn, NY; Florida International University Board of Trustees, Miami, FL; FUJIFILM Pharmaceuticals USA, Inc., Valhalla, NY; GEN–AVIV LLC, North Miami Beach, FL; Georgia State University Research Foundation, Inc., Atlanta, GA; GreyScan, Inc., Melbourne, AUS; iGov Technologies, Inc., Tampa, FL; Kurve Technology, Inc., Lynnwood, WA; Luna Innovations Incorporated, Roanoke, VA; Martellus Pty, Ltd., Sydney, AUS; Maryland Development Center, Baltimore, MD; Navitas Business Consulting, Inc., Herndon, VA; Odyssey Systems Consulting Group, Ltd., Wakefield, MA; Opticyte, Inc., Seattle, WA; Parallax Advanced Research Corporation, Beavercreek, OH; Parnell Pharmaceuticals, Inc., San Rafael, CA; Pennsylvania State University, University Park, PA; PhAST Corp., Cambridge, MA; Phiex Technologies, Inc., Boston, MA; Plantiga Technologies, Inc., Vancouver, CAN; PreVeteran Group LLC, Jackson, WY; Rain Technologies LLC, Las Vegas, NV; Research Bridge Partners, Inc., Austin, TX; Retia Medical LLC, Valhalla, NY; Rhode Island Hospital, Providence, RI; RIVA Solutions, Inc., Mclean, VA; Rockland Technimed Limited, Mahwah, NJ; San Diego State University, San Diego, CA; SanMelix Laboratories, Inc., Hollywood, FL; Sentio Solutions, Inc., San Francisco, CA; Seventh Dimension LLC, Mocksville, NC; Sibel, Inc., Evanston, IL; SweetBio, Inc., Memphis, TN; Tagup, Inc., Somerville, MA; Think-Dragon LLC, Ellicott City, MD; Thornton Tomasetti, Inc., New York, NY; Throne Biotechnologies, Inc., Paramus, NJ; TITUS Sports Academy LLC, Tallahassee, FL; Turner Innovations, Orem, UT; University of New Hampshire, Durham, NH; VES LLC, Wilmington, OH; Virginia Commonwealth University, Richmond, VA; W.R. Joyce Incorporated, Michigan City, IN; ZIEN Medical Technologies, Inc., Salt Lake City, UT, has 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 MTEC intends to file additional written notifications disclosing all changes in membership.

On May 9, 2014, MTEC 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 February 4, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2022 (87 FR 14041).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10244 Filed 5–12–22; 8:45 am]

BILLING CODE 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 April 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''), 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, 7 Hills Pharma LLC, Houston, TX; Aleph Therapeutics, Inc., Stanford, CA; Amaratek, San Diego, CA; Applied Research Associates, Inc.; Albuquerque, NM; Horizons Global Solutions LLC; Purcellville, VA; Icahn School of Medicine at Mount Sinai; New York, NY; Iowa State University of Science and Technology; Ames, IA; Mainstream Engineering Corporation; Rockledge, FL; Najit Technologies, Inc.; Beaverton, OR; National Strategic Research Institute; Lincoln, NE; POP Biotechnologies, Inc.; Buffalo, NY; The Henry M. Jackson Foundation for the Advancement of Military Medicine; Bethesda, MD; University of Massachusetts; Lowell, MA and Virion Therapeutics LLC; Newark, DE have been added as parties to this venture.

Also, Aardvark Medical, Inc., Ross, CA; Cytonus Therapeutics, Inc., Columbus, OH; Entasis Therapeutics, Waltham, MA; EUSA Pharma (US) LLC, Burlington, MA; GeneCapture, Inc., Huntsville, AL; and Visby Medical, Inc., San Jose, CA, 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 January 10, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 10, 2022 (87 FR 13756).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10239 Filed 5–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—R Consortium, Inc.

Notice is hereby given that, on April 23, 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''), R Consortium, Inc. (''R Consortium'') 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, Pfizer, Collegeville, PA, has been added as a party to this venture.

Also, Alteryx Inc., Irvine, CA, 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 R Consortium intends to file additional written notifications disclosing all changes in membership.

On September 15, 2015, R Consortium 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 2, 2015 (80 FR 59815).

The last notification was filed with the Department on February 2, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2022 (87 FR 14045).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10274 Filed 5–12–22; 8:45 am]

BILLING CODE

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Rare Earth Technologies

Notice is hereby given that, on April 22, 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''), Consortium for Rare Earth Technologies (''CREaTe'') 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: 14bis Supply Tracking, Burlington, MA; APL Engineered Materials, Inc., Urbana, IL; Arnold Magnetic Technologies, Rochester, NY; Battelle Memorial Institute, Columbus, OH; BD Consulting and Investigations, Inc., San Jose, CA; BlueDesal, Inc., Sausalito, CA; Cambria County Association for the Blind and Handicapped, Johnstown, PA; Concurrent Technologies Corporation, Johnstown, PA; DKW Consulting LLC, Tallahassee, FL; ePropelled, Lowell, MA; GlycoSurf, Inc., Salt Lake City, UT; Graphene Layers, North Brunswick, NJ; Greentech Minerals Advisory Group, Alexandria, VA; Guided Particle Systems, Inc., Pensacola, FL; ICD Alloys and Metals LLC, Winston Salem, NC; II–VI Aerospace & Defense, Murrieta, CA; Intelligent Material Solutions, Princeton, NJ; Inventus LLC, Greer, SC; Lawrence Livermore National Laboratory, Livermore, CA; Lockheed Martin, Bethesda, MD; Mannahatta Partners LLC, Indialantic, FL; Matsys, Inc., Sterling, VA; Minerva Lithium, Greensboro, NC; MuniRem Environmental LLC, Duluth, GA; NGC, Plymouth, MN; NuMat Technologies, Skokie, IL; Pangea Filtration Technology LLC, St. Petersburg, FL; Polaron Analytics, Beavercreek, OH; Polykala Technologies LLC, San Antonio, TX; Powdermet, Inc., Euclid, OH; Rensselaer Polytechnic Institute, Troy, NY; Riverside Research Institute, Arlington, VA; SimBlocks LLC, Orlando, FL; Smardt Chiller Group, Inc., Plattsburgh, NY; Southwest Research Institute, San Antonio, TX; UNandUP, LLC, Saint Louis, MO; Universal Achemetal Titanium LLC, Butte, MT; University of North Dakota, College of Engineering and Mines, Grand Forks, ND; Urban Mining Company, San Marcos, TX; Weinberg Medical Physics, Inc., North Bethesda, MD; Western Rare Earths, Phoenix, AZ; and Xlight Corporation, Mendham, NJ. The general area of CREaTe's planned activity is to guide, conduct, or use research to support Rare Earth extraction, processing, reclaiming and implementation in end products.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10276 Filed 5–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rust Foundation

Notice is hereby given that, on April 14, 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''), Rust Foundation 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: AgileBits, Inc., 4711 Yonge Street, 10th Floor, Toronto, ON Canada M2N 6K8, Amazon Web Services, Inc., 410 Terry Ave North, Seattle, WA 98109, Arm Ltd, 110 Fulbourn Road, Cambridge, CB1 9NJ, UK, Automata Labs Ltd, Craigmuir Chambers, Road Town, Tortola, VG 1110, British Virgin Islands, SAS Clever Cloud, 3 Rue de l'Allier, 44000 Nantes, France, Dropbox Inc, 1800 Owens St, San Francisco, CA 94158, Ferrous Systems GmbH, Boxhagener Strasse 79, 10245 Berlin, Germany, Futurewei Technology, Inc, 2220 Central Expressway, Santa Clara, CA 95050, Google, LLC, 1600 Amphitheater Parkway, Mountain View, CA 94043, Grafbase, 3039 Octavia Street, 94123 San Francisco, CA, Huawei Technologies Co., Ltd, Section H, Huawei Industrial Base, Bantian, Longgang District, Shenzhen, 518129, China, Klarälvdalens Datakonsult AB, Box 30, 68321 Hagfors Sweden, Knoldus Inc, 3095 Tours Road, Missisauga, ON, L5N3H9, Canada, Meta Platforms, Inc, 1 Hacker Way, Menlo Park, CA 94025, Microsoft, One Microsoft Way, Redmond, WA 98052–6399, Mozilla Corporation, 2 Harrison St #175, San Francisco, CA 94105, Open Source Security, Inc., 205 Granite Run Drive, Suite 235, Lancaster, PA 17601, ParaState Foundation, 73 Upper Paya

Lebar Road #06–01C, Centro Bianco, Singapore, Functional Software Inc, 45 Fremont Street, Floor 8, San Francisco, CA 94105, simplabs GmbH, Hans-Sachs-Strasse 12, 80469 München, Germany, SixtyFPS GmbH, Am Panke-Park 47, 16321 Bernau bei Berlin, Germany, Spectral Cyber Technologies Ltd, 7 Mikve Israel, POB 342, Tel Aviv 6511506, Israel, Tabnine, 94 Yigal Alon Alon Tower #2 6th Floor, Tel Aviv-Yafo, 6789139, Israel, Tag1 Consulting, Inc, 637 E Atlantic Blvd. #21865, Pompano Beach, FL 33062, Tangram Vision, 1350 Old Bay Shore Hwy, Suite 520, Burlingame, CA 94010, Threema GmbH, Churerstrasse 82, 8808 Pfäffikon, Switzerland, Toyota Connected North America, Inc., 5905 Legacy Drive, Suite 201, Plano TX 75024, Tweede golf B.V., Castellastraat 26, 6512 EX Nijmegen, The Netherlands, Watchful, Inc., 600 California Street, Fl 11, San Francisco, CA 94108, Wyliodrin SRL, Str. Transilvania nr. 19 ap. 6, Targu Mures, 540551, Romania, Zama, 17 rue de Choiseul, Paris 75002, France. The general area of Rust Foundation's planned activity is (a) support the maintenance and development of the Rust programming language and related projects (the ''Projects''); (b) cultivate the Rust project team members and user communities, including by producing events; (c) manage the technical infrastructure underlying the development of the Projects; (d) manage and steward the Rust trademark and other assets of the Foundation; and (e) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10269 Filed 5–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Outdoor Power Equipment Institute

Notice is hereby given that, on April 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''), the Outdoor Power Equipment Institute (''OPEI'') 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, OPEI has expanded its development activities to include standards for the following products: Log Splitters, Multi-purpose Off-Highway Utility Vehicles, Fuel Systems, Robotic Mowers, Chain Saws, Cutoff Machines, Edgers, Hedge Trimmers, Pole Pruners, Golf Cars, and Personal Transport Vehicles.

On September 16, 2004, OPEI 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 22, 2004 (69 FR 67948).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10242 Filed 5–12–22; 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 March 31, 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, VMED O2 UK Limited, London, UNITED KINGDOM; Telenet Holding Group N.V./S.A., Brussels, BELGIUM; UPC Holding B.V., Amsterdam, NETHERLANDS; UPC Slovakia Group Holding B.V., Bratislava, SLOVAKIA, and Liberty Global, Inc., London, UNITED KINGDOM have been added as a party to this venture. Also, General Communications, Inc. has changed its name to GCI Liberty, Inc., Englewood, CO, and Ziggo B.V. has changed its name to VodafoneZiggo Group Holding B.V., Utrecht, NETHERLANDS.

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 January 7, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 10, 2022 (87 FR 13755).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10264 Filed 5–12–22; 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—Information Warfare Research Project Consortium

Notice is hereby given that, on April 6, 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''), Information Warfare Research Project Consortium (''IWRP'') 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, Applied Engineering Management Corporation, Herndon, VA; Aurora Insight, Inc., Denver, CO; Base-2 Solutions LLC, Washington, DC; By Light Professional IT Services LLC, McLean, VA; CableLabs, Inc., Louisville, CO; Capgemini Government Solutions LLC, McLean, VA; Chenega Decision Sciences LLC, Anchorage, AK; Cognovi Government Services, Dayton, OH; Core4ce LLC, Reston, VA; Data Systems Analysts, Inc., Trevose, PA; DRS Signal Solutions, Inc., Germantown, MD; Equinox Innovative Systems, Columbia, MD; Executive Airborne Solutions, Inc., Bellevue, NE; First RF Corporation, Boulder, CO; FutureGen Robotics LLC, Boca Raton, FL; GE Aviation Systems, Grand Rapids, MI; High Side Technology LLC, Summerville, SC; ICF

Incorporated LLC, Fairfax, VA; IntelliDyne LLC, Falls Church, VA; Invictus International Consulting, Alexandria, VA; J-Mack Technologies LLC, Fort Worth, TX; KYRUS Tech, Inc., Sterling, VA; Leapfrog AI dba Defense Unicorns, Colorado Springs, CO; McQ, Inc., Fredericksburg, VA; MKS2 LLC, Lakeway, TX; Mynaric USA, Inc., Hawthorne, VA; Netrist Solutions LLC, Charleston, SC; Novateur Research Solutions LLC, Ashburn, VA; P&J Robinson Corp, Boerne, TX; Precision Solutions LLC, Owings Mills, MD; Red Pulley Technology Solutions, Inc., Ashburn, VA; SparkCognition Government Systems, Inc., Austin, TX; TACG LLC, Beavercreek, OH; Tim Price, Inc., Winchester, VA; Vertex Aerospace LLC, Madison, MS; VivSoft Technologies LLC, Brambleton, VA; and W.S. Darley & Co, Itasca, NC, have been added as parties to this venture.

Also, 11 Cyber Services LLC, Mt Pleasant, SC; Abside Networks, Inc., Acton, MA; Applied Insight LLC, Tysons, VA; Artlin Consulting LLC, Vienna, VA; Aspen Consulting Group, Inc., Point Pleasant, NJ; Aviation & Missile Solutions LLC, Huntsville, AL; Bluestone Analytics LLC, Charlottesville, VA; Cambridge International Systems, Inc., Arlington, VA; Capstone Corporation, Alexandria, VA; Capstone Partners, Inc., Lancaster, PA; Cask NX LLC, San Diego, CA; CoAspire LLC, Fairfax, VA; Corsair Technical Services, Inc., Bellevue, WA; CRFS, Inc., Chantilly, VA; Darkblade Systems Corporation, Winchester, VA; Engineering USA, Windsor Locks, CT; Excelerated Analytics LLC, Woodbridge, VA; Haivision Network Video, Inc., Deerfield, IL; Kaizen Approach, Inc., Hanover, MD; KIHOMAC, Inc., Reston, VA; KinetX Aerospace, Inc., Tempe, AZ; Kingfisher Systems, Inc., Falls Church, VA; Knight Sky LLC, Frederick, MD; Optimal Solutions and Technologies, McLean, VA; Partnership Solutions International, Painesville, OH; Procentrix, Inc., Herndon, VA; Quantitative Scientific Solutions LLC, Arlington, VA; Red Octopus Digital Services LLC, Arlington, VA; Selection Pressure LLC dba Ion Channel, Alexandria, VA; Semper Fortis Solutions, Leesburg, VA; Sher Industries LLC, Daniel Island, SC; TapHere! Technology LLC, Manassas, VA; Teksouth Corporation, Gardendale, AL; Tercero Technologies LLC, Pittsburgh, PA; The MIL Corporation, Bowie, MD; Thinklogical LLC, Milford, CT; Veritech LLC, Glendale, AZ; and Vista Defense Technologies LLC, Rock Island, IL, have withdrawn from 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 IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP 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 23, 2018 (83 FR 53499).

The last notification was filed with the Department on February 22, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2022 (87 FR 14042).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10271 Filed 5–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Z-Wave Alliance, Inc.

Notice is hereby given that, on March 22, 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''), Z-Wave Alliance, Inc. (''Z-Wave'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and the name change of one of its existing members. 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, Lexi Devices, Inc., Oslo, NORWAY; Futurehome AS, Lighthouse Point, FL; Alarm Grid, Inc, Ashburn, VA; and Oy K1 Services Ab, Jakobstad, FINLAND have joined as parties to the venture.

Also, Digital Home Systems PTY LTD, Victoria, AUSTRALIA; EUROtronic Technology GmbH, Steinau-Ulmbach, GERMANY; LINDSEY Technical Solutions, Lakewood Ranch, FL; OOT Technologies Ltd., Siofok, HUNGARY; ACTE A/S, Broendby, DENMARK; Tronico Technology Company Limited, Shatin, N.T., HONG KONG-CHINA; Zhejiang TKB Technology Co., LTD, Yueqing, PEOPLE'S REPUBLIC OF CHINA; The Delaney Hardware Co., Cumming, GA; NEDECO Electronics LTD, Nicosia, CYPRUS; RG Nets, Inc., Reno, NV; Yas Electronics Systems, Sharjah, UNITED ARAB EMIRATES; and Nemlia sp/f, Torshavn, FAROE ISLANDS have withdrawn as parties to the venture.

In addition, an existing member, Black Nova Corp. Limited, changed its name to Black Nova Italia srl, Central, HONG KONG-CHINA.

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 Z-Wave intends to file additional written notifications disclosing all changes in membership.

On November 19, 2020, Z-Wave 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 1, 2020 (85 FR 77241).

The last notification was filed with the Department on December 28, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2022 (87 FR 14041).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10247 Filed 5–12–22; 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—Open Mobile Alliance

Notice is hereby given that, on April 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''), Open Mobile Alliance (''OMA'') 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, Swift Navigation Inc., San Francisco, CA; Comtech Telecommunications Corp., Melville, NY; Tartabit, LLC, Boca Raton, FL, have been added as parties to this venture.

Also, Advantech B&B Smartworx, Oranmore, IRELAND; Carota Corporation, Xuhui District, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Cisco Systems, San Jose, CA; EDF R&D, Palaiseau, FRANCE; ETRI Electronics and Telecommunications Research Institute, Yuseong-Gu, Daejeon,

REPUBLIC OF KOREA; Hansung University, Seongbuk-gu, Seoul, REPUBLIC OF KOREA; Mavenir Systems, Inc., Ra'anana, ISRAEL; NextNav LLC., Sunnyvale, CA; NTT DOCOMO, Inc., Tokyo, JAPAN; RobotnMore Co., Ltd., Incheon, REPUBLIC OF KOREA; Sierra Wireless, Richmond, British Columbia, CANADA; Telecommunications Technology Association, Seongnam-si, Gyeonggi-do, PEOPLE'S REPUBLIC OF CHINA; Thales Group, Amsterdam, NETHERLANDS; Traxens, Marseille, FRANCE; u-blox AG, Thalwil, SWITZERLAND, 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 OMA intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, OMA 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 31, 1998 (63 FR 72333).

The last notification was filed with the Department on May 12, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 27, 2020 (85 FR 31808).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10249 Filed 5–12–22; 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—America's Datahub Consortium

Notice is hereby given that, on March 9, 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''), America's DataHub Consortium (''ADC'') 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, Accenture Federal Services LLC, Arlington, VA; Clarivate Analytics (US) LLC, Chandler, AZ; Dakota Consulting Inc., Silver Spring, MD; ICF Incorporated LLC, Fairfax, VA; Integrated Systems Solutions, Inc., Tysons Corner, VA; Map-Collective Inc., Washington, DC; Research Triangle Institute, dba RTI International, Research Triangle Park, NC; TalTeam Inc, Herndon, VA; Trewon Technologies, Stafford, VA; Westat, Rockville, MD 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 ADC intends to file additional written notifications disclosing all changes in membership.

On November 11, 2021, ADC 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 22, 2021 (86 FR 72628).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–10270 Filed 5–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Agency Information Collection Activities; Proposed eCollection eComments Requested; Existing Collection in Use Without an OMB Control Number: AVUE Digital Services—Electronic Applications

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Office of Justice Programs, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 12, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jennifer McCarthy, (202) 616–3089, Deputy Director of Administration, Office of Administration, Human Resources Division, Office of Justice Programs, Department of Justice, 810 7th Street NW, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Existing collection in use without an OMB Control Number.

2. *The Title of the Form/Collection:* The Avue Digital Services application for federal employment.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* NA. The applicable component within the Department of Justice is the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The primary respondents are public citizens who are applying for OJP federal positions. Avue is a web-based application system that provides automated support for posting federal vacancies. The applicants use the system to submit electronic applications for job vacancies. Candidates enter pertinent information and responds to a series of electronic screens and experience statements. The data is then certified and submitted for OJP HR Specialists to review and certify the applications. The candidate is automatically notified by email that his/her application has been received when he/she certifies and submits his/her electronic application and provided

other status updates throughout the hiring cycle.

5. *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* In calendar year 2021, there were 1,707 applications submitted for jobs at OJP. A sampling of applicants who started and completed their OJP applications on the same day in 2021 was 740 applicants and using this sample, the system reported a total of 56,832 minutes for those 740 applications, or an average of 76.8 minutes (76 minutes, 48 seconds) spent on each application.

6. *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this application is 949 hours in calendar year 2021. This is based on 740 applicants spending 77 (rounded up) minutes on each application for a total of 56,980 minutes.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: May 10, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–10332 Filed 5–12–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligiblity To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) issued during the period of *April 1, 2022, through April 30, 2022.*

This notice includes summaries of initial determinations such as Affirmative Determinations of Eligibility, Negative Determinations of Eligibility, and Determinations Terminating Investigations of Eligibility within the period. If issued in the period, this notice also includes summaries of post-initial determinations that modify or amend initial determinations such as Affirmative Determinations Regarding Applications for Reconsideration, Negative Determinations Regarding Applications for Reconsideration, Revised Certifications of Eligibility, Revised Determinations on Reconsideration, Negative Determinations on Reconsideration, Revised Determinations on remand from the Court of International Trade, and Negative Determinations on remand from the Court of International Trade.

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued.

TA–W–No.	Subject firm	Location	Reason(s)
96,991	Mattress Mill	Bozeman, MT	ITC Determination.
98,181	Sony DADC US Inc	Terre Haute, IN	Actual/Likely Increase in Imports following a Shift Abroad.
98,185	Element Electronics	Winnsboro, SC	Increased Customer Imports.
98,208	Tops Products, LLC	Beresford, SD	Shift in Production to an FTA Country or Beneficiary.
98,216	HP Inc.—Puerto Rico, Imaging and Printing Group	Aguadilla, PR	Shift in Production to an FTA Country or Beneficiary.
98,228	Android Industries Belvidere, LLC	Belvidere, IL	Upstream Supplier.
98,230	MPT Lansing LLC, Powertrain Division	Lansing, MI	Shift in Production to an FTA Country or Beneficiary.
98,240	Flowserve Corporation, Aftermarket Service & Solutions Division.	Tulsa, OK	Shift in Production to an FTA Country or Beneficiary.
98,247	Hutchinson Precision Sealing Systems, Inc	Danielson, CT	Shift in Production to an FTA Country or Beneficiary.
98,253	VITECH Manufacturing, LP	Hopkinsville, KY	Shift in Production to an FTA Country or Beneficiary.

Negative Determinations for Trade Adjustment Assistance

The following investigations revealed that the eligibility criteria for TAA have not been met for the reason(s) specified.

TA–W–No.	Subject firm	Location	Reason(s)
96,934	Perform Group LLC	York, PA	No Shift in Production or Other Basis.
98,124	Linwood Mining and Minerals	Davensport, IA	No Import Increase and/or Production Shift Abroad.
98,164	Providence Health & Services, HIM CODING PSMS–48187069 Team St. Joseph.	Mission Hills, CA	Workers Do Not Produce an Article.
98,180	Siemens Industry (SI)—Nebraska Sales Office	Omaha, NE	Workers Do Not Produce an Article.
98,187	The Enstrom Helicopter Corporation	Menominee, MI	No Import Increase and/or Production Shift Abroad.
98,194	Amy's Kitchen, Inc	Pocatello, ID	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,195	Endomines Idaho, LLC, U.S. Division	Elk City, ID	Predominant Cause of Layoffs Unrelated to Imports, Shift in Production to Beneficiary Country, or Increase in Imports Following a Shift.

TA–W–No.	Subject firm	Location	Reason(s)
98,197	Zones, Inc	Auburn, WA	Workers Do Not Produce an Article.
98,207	LSC Communications Book LLC dba Lakeside Book Company.	Cranbury, NJ	Predominant Cause of Layoffs Unrelated to Imports, Shift in Production to Beneficiary Country, or Increase in Imports Following a Shift.
98,211	KWS Services North America LLC	Bloomington, MN	Workers Do Not Produce an Article.
98,224	TE Connectivity Corporation, Customer Care Team	Hampton, VA	Workers Do Not Produce an Article
98,226	Greatbatch, Ltd	Beaverton, OR	Workers Do Not Produce an Article.
98,232	Genesys Cloud Services Inc. as Genesys Telecommunications Laboratories Inc.	Indianapolis, IN	Workers Do Not Produce an Article.
98,241	MyJoVE Corporation	Cambridge, MA	Workers Do Not Produce an Article.
98,245	ALM Media LLC, Editorial Division	Erlanger, KY	No Import Increase and/or Production Shift Abroad.

Determinations Terminating Investigations for Trade Adjustment Assistance

The following investigations were terminated for the reason(s) specified.

TA–W–No.	Subject firm	Location	Reason(s)
96,940	HCL America	Houston, TX	Invalid Petition.
97,059	Granite Source Acquisition, LLC dba Premier Surfaces.	Chantilly, VA	Existing Certification in Effect.

Revised Certifications of Eligibility

The following revised certifications of eligibility to apply for TAA have been issued.

TA–W–No.	Subject firm	Location	Reason(s)
95,607	Granite Source Acquisition, LLC, DBA Premier Surfaces.	Chantilly, VA	Worker Group Clarification.
95,607A	Granite Source Acquisition, LLC dba Premier Surfaces.	Ashland, VA	Worker Group Clarification.
95,607B	Granite Source Acquisition, LLC dba Premier Surfaces.	Ashland, VA	Worker Group Clarification.
95,607C	Granite Source Acquisition, LLC dba Premier Surfaces.	Wichita, KS	Worker Group Clarification.
95,607D	Granite Source Acquisition, LLC dba Premier Surfaces.	Fenton, MO	Worker Group Clarification.
95,607E	Granite Source Acquisition, LLC dba Premier Surfaces.	Burnsville, MN	Worker Group Clarification.
95,607F	Granite Source Acquisition, LLC dba Premier Surfaces.	Omaha, NE	Worker Group Clarification.
95,607G	Granite Source Acquisition, LLC dba Premier Surfaces.	Urbandale, IA	Worker Group Clarification.
95,607H	Granite Source Acquisition, LLC dba Premier Surfaces.	Huntsville, AL	Worker Group Clarification.
95,607I	Granite Source Acquisition, LLC dba Premier Surfaces.	Alpharetta, GA	Worker Group Clarification.
95,607J	Granite Source Acquisition, LLC dba Premier Surfaces.	Alpharetta, GA	Worker Group Clarification.
95,607K	Granite Source Acquisition, LLC dba Premier Surfaces.	Birmingham, MI	Worker Group Clarification.
95,607L	Granite Source Acquisition, LLC dba Premier Surfaces.	Rochester, NY	Worker Group Clarification.
95,607M	Granite Source Acquisition, LLC dba Premier Surfaces.	Chattanooga, TN	Worker Group Clarification.
95,607N	Granite Source Acquisition, LLC dba Premier Surfaces.	Riverside, MO	Worker Group Clarification.

I hereby certify that the aforementioned determinations were issued during the period of *April 1, 2022 through April 30, 2022.* These determinations are available on the Department's website *https://www.dol.gov/agencies/eta/tradeact* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 5th day of May 2022.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2022–10338 Filed 5–12–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligiblity To Apply for Trade Adjustment Assistance

In accordance with the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents notice of investigations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) started during the period of *April 1, 2022, through April 30, 2022.*

This notice includes instituted initial investigations following the receipt of validly filed petitions. Furthermore, if applicable, this notice includes investigations to reconsider negative initial determinations or terminated initial investigations following the receipt of a valid application for reconsideration.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. Any persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than ten days after publication in Federal Registration.

Initial Investigations

The following are initial investigations commenced following the receipt of a properly filed petition.

TA–W–No.	Subject firm	Location	Inv start date
98,245	ALM Media LLC, Editorial Division	Erlanger, KY	4/6/2022
98,246	Home Products International-NA, Inc	Seymour, IN	4/6/2022
98,247	Hutchinson Precision Sealing Systems, Inc	Danielson, CT	4/6/2022
98,248	Mountain State Carbon LLC	Follansbee, WV	4/6/2022
98,249	Fastenal Company	Cranston, RI	4/7/2022
98,250	Ronstan International, Inc	Portsmouth, RI	4/7/2022
98,251	Salisbury by Honeywell	Smithfield, RI	4/7/2022
98,252	KPI Composites	West Burlington, IA	4/8/2022
98,253	VITECH Manufacturing, LP	Hopkinsville, KY	4/8/2022
98,254	Yeti Coolers, LLC	Austin, TX	4/8/2022
98,255	Integra Pool Covers	Burlington, IA	4/11/2022
98,256	Cardinal Health	Norfolk, NE	4/13/2022
98,257	NeuWave Medical Inc	Madison, WI	4/13/2022
98,258	Schneider Electric Buildings Americas, Inc	Clovis, CA	4/13/2022
98,259	Arkwright Advanced Coating Inc	Fiskeville, RI	4/13/2022
98,260	Lexington Law Firm	Phoenix, AZ	4/14/2022
98,261	Medtronic PLC	Warsaw, IN	4/14/2022
98,262	Sanofi US (Kadmon Holdings, Inc)	New York, NY	4/14/2022
98,263	Weiss Instruments, LLC	Holtsville, NY	4/14/2022
98,264	Hanwha Advanced Materials	Shelby, NC	4/18/2022
98,265	Peloton Interactive, Inc	Warren, MI	4/18/2022
98,266	Magna Exteriors Belvidere	Belvidere, IL	4/20/2022
98,267	Roseburg Forest Products	Dillard, OR	4/20/2022
98,268	Syncreon US-Automotive	Belvidere, IL	4/20/2022
98,269	Andersen Manufacturing Inc	Idaho Falls, ID	4/21/2022
98,270	Concentrix CVG Customer Management Group, Inc	Pocatello, ID	4/21/2022
98,271	Grass Valley USA, LLC	Grass Valley, CA	4/21/2022
98,272	Peloton Headquarters 2	Plano, TX	4/21/2022
98,273	ReedGroup	Westminster, CO	4/25/2022
98,274	Grupo Antolin	Belvidere, IL	4/26/2022
98,275	SSB Manufacturing Company/Serta Simmons Bedding, LLC	Fredericksburg, VA	4/26/2022
98,276	Closet Maid	Pharr, TX	4/27/2022
98,277	GE Lighting A Savant Company	Bucyrus, OH	4/28/2022
98,278	Piston Automotive	Belvidere, IL	4/28/2022
98,279	Oakley Industries	Belvidere, IL	4/29/2022
98,280	SSB Manufacturing Company	Clear Lake, IA	4/29/2022
98,281	WestRock Company	Panama City, FL	4/29/2022

A record of these investigations and petitions filed are available, subject to redaction, on the Department's website *https://www.dol.gov/agencies/eta/trade act* under the searchable listing or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC this 5th day of May 2022.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2022–10339 Filed 5–12–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 13, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Wage and Hour Division of the Department of Labor administers the Davis-Bacon Act (DBA) and Davis-Bacon Related Acts (DBRA), 40 U.S.C. 3141 *et seq.,* and the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. 3701 *et seq.* Regulations at 29 CFR part 5 prescribe labor standards for federally financed and federally assisted construction contracts subject to DBA, DBRA, and labor standards for all contracts subject to CWHSSA. The DBA and DBRA require payment of locally prevailing wages and fringe benefits, as determined by the Department, to laborers and mechanics on most federally financed or assisted construction projects. CWHSSA requires the payment of one and one-half times the basic rate of pay for hours worked over 40 in a week on most federal contracts involving the employment of laborers or mechanics. The requirements of this information collection consist of (1) reports of conformed classifications and wage rates, and (2) requests for approval of unfunded fringe benefit plans. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 7, 2022 (87 FR 6894).

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 the OMB approves it 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–WHD.

Title of Collection: Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act.

OMB Control Number: 1235–0023.

Affected Public: Federal Government; Private Sector— Businesses or other for-profits.

Total Estimated Number of Respondents: 8,518.

Total Estimated Number of Responses: 8,518.

Total Estimated Annual Time Burden: 2,143 hours.

Total Estimated Annual Other Costs Burden: $5,196.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: May 9, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–10341 Filed 5–12–22; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice for Health Reimbursement Arrangements Integrated With Individual Health Insurance Coverage

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 13, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection request is authorized under regulations

promulgated under the following sections of ERISA: 29 U.S.C. 1002, 1135, 1182, 1185d, 1191a, 1191b, and 1191c, and Secretary of Labor's Order 1–2011, Delegation of Authority and Assignment of Responsibilities to the Employee Benefits Security Administration, dated January 9, 2012 (77 FR 1088). The final rules removed the prohibition on integrating Health Reimbursement Arrangements (HRAs) with individual health insurance coverage, if certain conditions are met. The following information collections are contained in the final rules: (1) Verification of Enrollment in Individual Coverage; (2) HRA Notice to Participants; (3) Notice to Participants that Individual Policy is not Subject to Title I of ERISA; (4) Participant Notification of Individual Coverage HRA of Cancelled or Discontinued Coverage; (5) Notice for Excepted Benefit HRAs. The information collection requirements are needed to notify the HRA that participants are enrolled in individual health insurance coverage, to help individuals understand the impact of enrolling in an HRA on their eligibility for the PTC, and that coverage is not subject to the rules and consumer protections of the Employee Retirement Income Security Act. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 13, 2021 (86 FR 70866).

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 the OMB approves it 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Notice for Health Reimbursement Arrangements Integrated With Individual Health Insurance Coverage.

OMB Control Number: 1210–0160.

Affected Public: Individuals or Households; Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 177,480.

Total Estimated Number of Responses: 2,140,197.

Total Estimated Annual Time Burden: 53,131 hours.

Total Estimated Annual Other Costs Burden: $24,831.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: May 9, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–10340 Filed 5–12–22; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Legal Services Corporation's Board of Directors will meet remotely on Monday, May 23, 2022. The meeting will commence at 4:00 p.m. EDT, and will continue until the conclusion of the Board's agenda.

PLACE:

Public Notice of Virtual Meeting: LSC will conduct the May 23, 2022 meeting via Zoom.

Public Observation: The Board meeting will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Open Session

May 23, 2022

- To join the Zoom meeting by computer, please use the below link.

  Link:
- *https://lsc-gov.zoom.us/j/85232217382?pwd=TExpT0ZvcnlpWFRSRzR1S21BZWM3UT09&from=addon*
  - Meeting ID: 852 3221 7382
  - Passcode: 52322
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
  - +13017158592,,85232217382# U.S. (Washington DC)
  - +13126266799,,85232217382# U.S. (Chicago)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
  - Dial by your location
  - +1 301 715 8592 U.S. (Washington DC)
  - +1 312 626 6799 U.S. (Chicago)
  - +1 646 876 9923 U.S. (New York)
  - +1 408 638 0968 U.S. (San Jose)
  - +1 669 900 6833 U.S. (San Jose)
  - +1 253 215 8782 U.S. (Tacoma)
  - +1 346 248 7799 U.S. (Houston)
  - Meeting ID: 852 3221 7382
  - Passcode: 52322

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Board or Committee Chair may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Approval of minutes of the Board's Open Session meeting on April 5, 2022
3. Presentation of the Fiscal Year 2021 IRS Form 990 (Filed May 16, 2022)
   - Debbie Moore, Chief Financial Officer and Treasurer
4. Consider and Act on Resolution #2022–XXX, Acceptance of the Draft Audited Financial Statements for Fiscal Years 2021 and 2022
5. Consider and act on the Board of Directors' transmittal letter to accompany the Inspector General's Semiannual Report to Congress for the period of October 1, 2021 through March 31, 2022
   - Ron Flagg, President
   - Roxanne Caruso, Acting Inspector General
6. Public comment
7. Consider and act on other business
8. Consider and act on adjournment of meeting

CONTACT PERSON FOR MORE INFORMATION: Kaitlin Brown, Executive and Board Project Coordinator, at (202) 295–1555. Questions may also be sent by electronic mail to *brownk@lsc.gov*.

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

Dated: May 11, 2022.

Kaitlin D. Brown,

Executive and Board Project Coordinator, Legal Services Corporation.

[FR Doc. 2022–10482 Filed 5–11–22; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Committee on Equal Opportunities in Science and Engineering (CEOSE) (#1173).

Date and Time: June 16, 2022; 1:00 p.m.–5:30 p.m., June 17, 2022; 11:00 a.m.–4:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Meeting Registration: Virtual attendance information will be forthcoming on the CEOSE website at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp*.

Type of Meeting: Open.

Contact Person: Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of Integrative Activities (OIA), National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Contact Information: 703–292–8040/*banderso@nsf.gov*.

Minutes: Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the website at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp*.

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Day 1

1:00 p.m.–1:15 p.m. Welcome and Introductions/Meeting Overview
1:15 p.m.–1:45 p.m. NSF CEOSE Executive Liaison Report
1:45 p.m.–2:45 p.m. Presentation: CEOSE Subcommittee's Report on the Future of EPSCoR
2:45 p.m.–3:00 p.m. Break
3:00 p.m.–4:00 p.m. Presentation: Issues of Invisibility: K–12/Informal Science Perspectives
4:00 p.m.–4:30 p.m. Data Briefing—NCSES/WMPD Leadership Team
4:30 p.m.–5:30 p.m. Discussion: CEOSE Liaison Reports

Day 2

11:00 a.m.–11:30 a.m. Opening Remarks
11:30 a.m.–1:00 p.m. Working Lunch Session: 2021–2022 CESOE Report
1:00 p.m.–1:20 p.m. CEOSE Discussion: Topics/Ideas to Share with Leadership
1:30 p.m.–2:00 p.m. Discussion with NSF Leadership
2:00 p.m.–2:15 p.m. Break
2:15 p.m.–3:35 p.m. Leadership Roundtable: Bold Leadership Actions
3:35 p.m.–4:00 p.m. Announcements and Final Remarks

Dated: May 10, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–10393 Filed 5–12–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by June 13, 2022. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2023–002

1. *Applicant:* Dr. Paul Ponganis, Scripps Institute of Oceanography, UCSD, La Jolla, CA 92093–0204

Activity for Which Permit is Requested: Take, Harmful Interference, Enter Antarctic Specially Protected Area. The applicant seeks an Antarctic Conservation Act permit authorizing take and harmful interference associated with ongoing research examining the oxygen transport systems of emperor penguins (*Aptenodytes forsteri*) in Antarctica. The applicant proposes capturing up to 32 non-breeding or sub-adult penguins from the McMurdo Sound region or, if necessary, in Cape Washington (ASPA 173). The applicant will access ASPA 173 by fixed-wing aircraft in accordance with the ASPA management plan. Throughout the course of the physiology study, penguins will be kept captive on the sea ice, but will be allowed to dive and forage at will. Research activities involve the administration of general anesthesia and the attachment of instrumentation to measure oxygen levels, heart rate/stroke rate, and dive depth/activity. In some penguins, blood samples may be collected during dives. At the end of each dive study, equipment will be removed, and the penguins will be released at the McMurdo Sea ice edge, where they will be able to rejoin nearby colonies.

Location: McMurdo Sound, ASPA 173: Cape Washington and Silverfish Bay.

Dates of Permitted Activities: October 1–December 20, 2022.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–10327 Filed 5–12–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal**

Register, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://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.

DATES: Comments regarding this information collection are best assured of having their full effect if received by June 13, 2022.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission(s) may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the 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 should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Grantee Reporting Requirements for the Research Experiences for Undergraduates (REU) Program.

OMB Approval Number: 3145–0224.

Overview of Information Collection

NSF's Research Experiences for Undergraduates (REU) program funds REU Site grants and REU Supplements to organizations to provide authentic research experiences and related training for postsecondary students in STEM fields.

All NSF Principal Investigators in all programs are required to submit annual and final project reports through the NSF Project Reports System in *Research.gov.* The REU Program Module is a component of the NSF Project Reports System that is designed to gather basic information about the pool of student applicants and participants in REU Site and REU Supplement projects. The information allows NSF to assess the demand and allocate resources for REU student positions within each discipline, to analyze the types of academic institutions and the educational levels represented by the participants, and to identify the participants for inclusion in periodic program evaluations.

NSF is committed to providing stakeholders with information regarding the expenditure of taxpayer funds on its investments in human capital, including activities such as REU Sites and REU Supplements. If NSF could not collect information about the students who participate in undergraduate research experiences, NSF would have no other means to consistently document the number and diversity of the participants or to identify the participants for inclusion in efforts that gauge the quality of programmatic activities and the long-term effects of the activities on the students. Without the REU Program Module, NSF also would not have information about the competitiveness of the REU opportunities, which informs the management of the program's budget.

Consultation With Other Agencies and the Public

This information collection is specific to a subset of NSF grantees. NSF has not consulted with other agencies but has gathered information from its grantee community through attendance at PI conferences. A request for public comments will be solicited through announcement of data collection in the **Federal Register**.

Background

All NSF Principal Investigators are required to use the project reporting functionality in *Research.gov* to report on progress, accomplishments, participants, and activities annually and at the conclusion of their project. Information from annual and final reports provides yearly updates on project inputs, activities, and outcomes for use by NSF program officers in monitoring projects and for agency reporting purposes.

If project participants include undergraduate students supported by a Research Experiences for Undergraduates (REU) Sites grant or by an REU Supplement, then the Principal Investigator is required to complete the REU Program Module in addition to the questions in NSF's standard report template.

Respondents: Individuals (Principal Investigators).

Number of Principal Investigator Respondents: 3,900 annually.

Burden on the Public: 650 total hours.

Dated: May 10, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–10405 Filed 5–12–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of May 16, 23, 30, June 6, 13, 20, 2022. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices

electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of May 16, 2022

There are no meetings scheduled for the week of May 16, 2022.

Week of May 23, 2022—Tentative

There are no meetings scheduled for the week of May 23, 2022.

Week of May 30, 2022—Tentative

Wednesday, June 1, 2022

10:00 a.m. Transformation at the NRC—Sustaining Progress as Modern, Risk-Informed Regulator; (Contact: Aida Rivera-Varona: 301–415–4001)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Friday, June 3, 2022

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards; (Contact: Larry Burkhart: 301–287–3775)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of June 6, 2022—Tentative

There are no meetings scheduled for the week of June 6, 2022.

Week of June 13, 2022

Tuesday, June 14, 2022

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity; (Contact: Nicole Newton: 301–415–8316)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, June 16, 2022

10:00 a.m. Briefing on Results of the Agency Action Review Meeting; (Contact: Nicole Fields: 630–829–9570)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of June 20, 2022—Tentative

There are no meetings scheduled for the week of June 20, 2022.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 11, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator Office of the Secretary.

[FR Doc. 2022–10484 Filed 5–11–22; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0096]

Modeling High Energy Arcing Fault Hazards and Zones of Influence

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft research information letter reports; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment two draft Research Information Letter reports, ''Predicting High Energy Arcing Fault Zones of Influence for Aluminum Using a Modified Arc Flash Model, Evaluation of a modified model bias, uncertainty, parameter sensitivity and zone of influence estimation, Draft for public comment,'' and ''Determining the Zone of Influence for High Energy Arcing Faults using Fire Dynamics Simulator, Draft for public comment.''

DATES: Submit comments by June 13, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0096. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Gabriel J. Taylor, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0781, email: *Gabriel.Taylor@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0096 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0096.
- *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 draft research information letter reports ''Predicting High Energy Arcing Fault Zones of Influence for Aluminum Using a Modified Arc Flash Model, Evaluation of a modified model bias, uncertainty, parameter sensitivity and zone of influence estimation, Draft for public comment'' is available in ADAMS under Accession No. ML22095A236, and ''Determining the Zone of Influence for

High Energy Arcing Faults using Fire Dynamics Simulator, Draft for public comment,'' is available in ADAMS under Accession No. ML22095A237.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0096 in your comment submission.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS. All comments should reference the applicable report.

II. Discussion

The NRC Office of Nuclear Regulatory Research (RES) is advancing the understanding and state-of-practice for modeling High Energy Arcing Faults (HEAF) in fire Probabilistic Risk Assessment (PRA). One important aspect of this research is the ability to reliably predict the HEAF hazard for various scenarios important for nuclear safety. The high intensity and short duration of a HEAF has not been explicitly modeled in past fire PRA methodologies. As such, there was a need to advance HEAF modeling capabilities to reliably predict the scenario specific HEAF hazards to support refinements to the zones of influence (ZOI) used in fire PRA. The NRC worked with its collaborative research partners to develop two models to predict the HEAF hazard.

In the report titled, ''Predicting High Energy Arcing Fault Zones of Influence for Aluminum Using a Modified Arc Flash Model, Evaluation of a modified model bias, uncertainty, parameter sensitivity and zone of influence estimation, Draft for public comment,'' the NRC worked with Sandia National Laboratories to evaluate an existing base model. Differences between the base model and nuclear power plant fire PRA scenarios were identified. Modification of the base model established from existing literature and test data was used to minimize these differences. The modified model was evaluated against NRC datasets to understand the model prediction and relative uncertainties. Finally, a range of fire PRA ZOIs were developed based on the modified model and draft update HEAF PRA methodology. The results are expected to be used to inform an update to ZOIs used in fire PRA.

In the report titled, ''Determining the Zone of Influence for High Energy Arcing Faults using Fire Dynamics Simulator, Draft for public comment,'' the NRC worked with the Electric Power Research Institute and the National Institute of Standards and Technology to adapt a computational fluid dynamic code known as the Fire Dynamics Simulator (FDS) to predict the HEAF hazard. This report documents (1) the development of the approach to use FDS to predict thermal exposures to targets from a HEAF, (2) validation of the model and (3) application of the model to estimate HEAF ZOI for a broad range of fire PRA HEAF scenarios.

The draft research information letter reports present the NRC–RES/Sandia National Laboratories (SNL) and NRC–RES/Electric Research Power Institute (EPRI) working groups efforts to predict realistic HEAF hazards. The two approaches to model HEAF hazards present complementary but diverse methods to estimating the hazard ZOI. For most scenarios the two approaches provide results that are consistent with each other. The NRC–SNL report can be viewed as a first order approximation providing a single value scenario specific ZOI estimate, while the NRC–RES/EPRI report provides additional geometric detail to the ZOI estimate.

Dated: May 9, 2022.

For the Nuclear Regulatory Commission.

Mark H. Salley,

Chief, Fire and External Hazards Analysis Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2022–10323 Filed 5–12–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2022–62; Order No. 6167]

Competitive Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service document with the Commission concerning changes in rates of general applicability for competitive products. The changes are scheduled to take effect July 10, 2022. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 6, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Overview

On May 6, 2022, the Postal Service filed notice with the Commission concerning changes in rates and classifications of general applicability for Competitive products.[1] The Postal Service represents that, as required by 39 CFR 3035.102(b) and 39 CFR 3035.104(b), the Notice includes an explanation and justification for the changes, the effective date, and a schedule of the changed rates. *See* Notice at 1–2. The changes are

[1] USPS Notice of Changes in Rates and Classifications of General Applicability for Competitive Products, May 6, 2022 (Notice). Pursuant to 39 U.S.C. 3632(b)(2), the Postal Service is obligated to publish the Governors' Decision and record of proceedings in the **Federal Register** at least 30 days before the effective date of the new rates.

scheduled to take effect on July 10, 2022. *Id.* at 2.

Attached to the Notice is Governors' Decision No. 22–1, which states the new prices are in accordance with 39 U.S.C. 3632 and 3633 and 39 CFR 3035.102.[2] The Governors' Decision provides an analysis of the Competitive products' price and classification changes intended to demonstrate that the changes comply with 39 U.S.C. 3633 and 39 CFR part 3035. Governors' Decision No. 22–1 at 1. The attachment to the Governors' Decision sets forth the classification and price changes and includes draft Mail Classification Schedule language for Competitive products of general applicability.

The Notice also includes an application for non-public treatment of the attributable costs, contribution, and cost coverage data in the unredacted version of the annex to the Governors' Decision, as well as the supporting materials for the data. Notice at 2.

Planned price and classification changes. The Governors' Decision includes an overview of the Postal Service's planned price and classification changes for Priority Mail, Parcel Select, and certain International Special Services, which are summarized as follows:

- Eligibility requirements for Priority Mail Commercial Plus Cubic will be removed, so that all commercial customers can use Priority Mail cubic pricing.
- Classification changes will be made to increase insurance to $100 for Priority Mail and to extend the inclusion of $100 in insurance to Priority Mail Returns.
- Cubic pricing will be introduced for Parcel Select Ground.
- Prices for Outbound International Insurance will be increased 55 percent on average, and prices for International Money Transfer Service (IMTS)—Outbound, which includes international Postal Money Orders and Electronic Money Transfer Service, will increase by about 305 percent.[3]

II. Initial Administrative Actions

The Commission establishes Docket No. CP2022–62 to consider the Postal Service's Notice. Interested persons may express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3035, and 39 CFR part 3040 subparts B and E. Comments are due no later than June 6, 2022. For specific details of the planned price changes, interested persons are encouraged to review the Notice, which is available on the Commission's website at *www.prc.gov.*

Pursuant to 39 U.S.C. 505, Gregory S. Stanton is appointed to serve as Public Representative to represent the interests of the general public in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2022–62 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3035, and 39 CFR part 3040 subparts B and E.

2. Comments are due no later than June 6, 2022.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Gregory S. Stanton to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–10238 Filed 5–12–22; 8:45 am]

BILLING CODE 7710–FW–P

[2] Notice, Decision of the Governors of the United States Postal Service on Changes in Rates and Classification of General Applicability for Competitive Products (Governors' Decision No. 22–1), at 1 (Governors' Decision No. 22–1).

[3] *See* Notice at 1; *see also* Governors' Decision No. 22–1 at 2.

POSTAL REGULATORY COMMISSION

[Docket No. MC2022–57; Order No. 6168]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing requesting minor corrections to the International Money Transfer Service (IMTS)—Inbound product description in the Mail Classification Schedule. The changes are intended to take effect on two dates: When this docket is concluded and on October 1, 2022. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 6, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On May 6, 2022, the Postal Service filed a notice of minor corrections to the International Money Transfer Service (IMTS)—Inbound product description in the Mail Classification Schedule (MCS) pursuant to 39 CFR 3040.190(b).[1] The Postal Service seeks to remove certain countries from the list of countries in MCS subsection 2625.2 consistent with certain Postal Bulletin notices. Notice at 1. The changes are intended to take effect on two dates: When this docket is concluded and on October 1, 2022. *Id.* at 2.

II. Summary of Changes

The Postal Service proposes two corrections to MCS section 2625.2, which lists the countries where IMTS–Inbound is offered. First, it requests that the Commission remove Japan from the list of countries when this docket is concluded because the Postal Service terminated the exchange of international postal money orders with Japan Post. *Id.* Second, the Postal Service proposes to remove the Bahamas, Barbados, British Virgin Islands, Dominica, Montserrat, St. Kitts, and St. Vincent from the list of countries effective October 1, 2022, because it will stop cashing international postal money orders issued by the postal operators of those countries. *Id.* The Postal Service asserts that the Notice satisfies the requirements of 39 CFR 3040.190(c) because the proposed corrections are consistent with applicable authorities and do not constitute material changes to the IMTS-Inbound product description. *Id.* The Notice includes a copy of the affected sections of the MCS with the proposed changes in legislative format, which the Postal Service contends satisfies 39 CFR 3040.190(c)(3). *Id.* Attachment—Mail Classification Schedule.

III. Notice of Commission Action

Pursuant to 39 CFR 3040.191, the Commission has posted the Notice on

[1] Notice of United States Postal Service of Filing Minor Corrections to the Product Description of International Money Transfer Service—Inbound, May 6, 2022 (Notice).

its website and invites comments on whether the Postal Service's filings are consistent with the policies and applicable criteria of chapter 36 of title 39 of the United States Code, 39 CFR 3040.190–192, and any applicable Commission directives and orders. Comments are due no later than June 6, 2022. The filing can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Joseph K. Press to represent the interests of the general public (Public Representative) in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2022–57 to consider matters raised by the Notice.

2. Comments by interested persons are due by June 6, 2022.

3. Pursuant to 39 U.S.C. 505, Joseph K. Press is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–10324 Filed 5–12–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Change in Rates and Classes of General Applicability for Competitive Products

AGENCY: Postal Service™.

ACTION: Notice of a change in rates and classifications of general applicability for competitive products.

SUMMARY: This notice sets forth changes in rates and classifications of general applicability for competitive products.

DATES: *Effective date:* July 10, 2022.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: On May 5, 2022, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices and classification changes for competitive products. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with section 3632(b)(2).

Sarah Sullivan,

Attorney, Ethics and Legal Compliance.

Decision of the Governors of the United States Postal Service on Changes in Rates and Classifications of General Applicability for Competitive Products (Governors' Decision No. 22–1)

May 5, 2022

Statement of Explanation and Justification

Pursuant to authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (''PAEA''), we establish prices and classifications of general applicability for certain of the Postal Service's competitive products. The changes are described generally below, with a detailed description of the changes in the attachment. The attachment includes the draft Mail Classification Schedule sections with classification changes in legislative format, and new prices displayed in the price charts.

As shown in the nonpublic annex being filed under seal herewith, the changes we establish should enable each competitive product to cover its attributable costs (39 U.S.C. 3633(a)(2)) and should result in competitive products as a whole complying with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3035.107(c), requires competitive products collectively to contribute a minimum of 10.0 percent to the Postal Service's institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. 3633(a)(1)). We therefore find that the new prices are in accordance with 39 U.S.C. 3632–3633 and 39 CFR 3035.102.

I. Domestic Products

A. Priority Mail

The existing structure of the Priority Mail Retail, Commercial Base, and Commercial Plus price categories is maintained. No price changes are proposed, but classification changes are made to increase insurance to $100 for Priority Mail and to extend the inclusion of $100 in insurance to Priority Mail Returns. Eligibility requirements for Commercial Plus Cubic pricing are being removed, so that all commercial customers can utilize Priority Mail cubic pricing.

B. Parcel Select

Cubic pricing will be introduced for the Parcel Select Ground price category. No other price or classification changes are proposed for the Parcel Select product, and the existing structure is maintained.

No other price or classification changes for Domestic Products are being made.

I. International Products

A. International Ancillary Services and Special Services

Prices for Outbound International Insurance will be increased about 55 percent on average to ensure adequate cost coverage, in response to recent directives from the Postal Regulatory Commission (PRC) in its FY 2021 Annual Compliance Determination (ACD) to take corrective action in this regard in relation to Outbound International Insurance's failure to cover its costs in FY 2021. Prices for International Money Transfer Service (IMTS)—Outbound, which includes international Postal Money Orders and Electronic Money Transfer Service, will increase by about 305 percent, in response to a PRC directive in the FY 2021 ACD after a finding that IMTS—Outbound did not cover its costs.

No other price or classification changes for International Products are being made.

Order

The changes in prices and classes set forth herein shall be effective at 12:01 a.m. on July 10, 2022. We direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. 3632(b)(2) and direct management to file with the Postal Regulatory Commission appropriate notice of these changes.

By The Governors:

/s/

Roman Martinez IV,

Chairman, Board of Governors.

United States Postal Service Office of the Board of Governors

Certification of Governors' Vote on Governors' Decision No. 22–1

Consistent with 39 U.S.C. 3632(a), I hereby certify that, on May 5, 2022, the Governors voted on adopting Governors' Decision No. 22–1, and that a majority of the Governors then holding office voted in favor of that Decision.

Date: May 5, 2022.

/s/

Michael J. Elston,

Secretary of the Board of Governors.

BILLING CODE 7710–12–P

PART B

COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

2100 Domestic Products

* * *

2110 Priority Mail

2110.1 Description

a. Priority Mail service provides expeditious handling and transportation.

b. Any matter eligible for mailing may, at the option of the mailer, be mailed by Priority Mail service for expeditious handling and transportation.

c. Priority Mail pieces are sealed against postal inspection and shall not be opened except as authorized by law.

d. Priority Mail pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender without additional charge.

e. Up to ~~$50.00~~$100.00 of General Insurance coverage is included at no additional cost in the price of Priority Mail pieces that bear an Intelligent Mail package barcode or retail tracking barcode. This does not apply to Priority Mail pieces sent using~~non-prepaid returns,~~ Priority Mail Open and Distribute~~,~~ or Premium Forwarding Service.

f. Up to $100.00 of General Insurance coverage is included at no additional cost in the price of Priority Mail pieces that bear an Intelligent Mail package barcode and for which the mailer pays Commercial Plus prices or uses ePostage, Electronic Verification System, Hardcopy Manifest, or an approved Manifest Mailing System. This does not apply to Priority Mail pieces sent using ~~non-prepaid returns,~~ Priority Mail Open and Distribute~~,~~ or Premium Forwarding Service.

g. Return parcels may be sent without prepayment of postage if authorized by the returns customer, who agrees to pay the postage.

2110.2 Size and Weight Limitations[1]

	Length	Height	Thickness	Weight
Minimum	large enough to accommodate postage, address, and other required elements on the address side			none
Maximum				70 pounds[1]
Flat Rate Envelope	Nominal Sizes: Regular: 9.5 x 12.5 inches Padded: 10 x 13 inches Legal: 9.5 x 15.0 inches			
Flat Rate Box	Nominal Sizes: Large: 12 x 12 x 5.5 inches or 11. 75 x 3 x 23.6875 inches – approximately 1/2 cu. ft. Medium: 11.875 x 3.375 x 13.625 inches or 11 x 8.5 x 5.5 inches – approximately 1/3 cu. ft. Small: 8.625 x 5.375 x 1.625 inches – approximately 1/20 cu. ft.			
Regional Rate Box A	Outside Dimensions: Top Loaded: 10.125 x 7.125 x 5.0 inches Side Loaded: 13.0625 x 11.0625 x 2.5 inches			15 pounds
Regional Rate Box B	Outside Dimensions: Top Loaded: 12.25 x 10.5 x 5.5 inches Side Loaded: 16.25 x 14.5 x 3 inches			20 pounds
~~Commercial Plus~~ Cubic	Various, not to exceed 0.1, 0.2, 0.3, 0.4, or 0.5 cubic feet			20 pounds
Open and Distribute	Half Tray: 15 x 11.75 x 4.75 inches Full Tray: 25.875 x 11.75 x 4.75 inches EMM Tray: 12.375 x 6.4375 x 25.25 inches Flat Tub: 19.375 x 13.8125 x 12.25 inches			70 pounds[1]
All Others	108 inches in combined length and girth			70 pounds[1]

Notes

1. A charge of $100.00 applies to pieces found in the postal network that exceed the 70-pound maximum weight limitation or the the 130-inch length plus girth maximum dimensional limit for Postal Service products. Such items are nonmailable and will not be delivered. As described in the Domestic Mail Manual, this charge is payable before release of the item, unless the item is picked up at the same facility where it was entered.

2110.3 Minimum Volume Requirements

	Minimum Volume Requirements
~~Commercial Plus~~ Cubic Priority Mail	50 pounds or 200 pieces (Permit Imprint only)
All Other Priority Mail	none

2110.4 Price Categories

* * *

- ~~Commercial Plus~~ Cubic – Prices are available to customers who use specifically authorized postage payment methods ~~and whose annual Priority Mail volume exceeds 50,000 pieces~~
  - Zone/Cubic Volume

* * *

2110.6 Prices

* * *

~~Commercial Plus~~ Cubic

Maximum Cubic Feet	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
0.10	7.54	7.81	8.05	8.37	9.18	9.77	10.43	18.56
0.20	8.02	8.20	8.49	9.12	10.96	11.62	12.67	25.09
0.30	8.25	8.62	9.01	10.03	13.48	15.22	17.93	34.46
0.40	8.37	8.85	9.57	11.83	15.92	18.73	21.59	42.67
0.50	8.50	9.07	10.04	13.18	17.79	22.31	25.74	51.21

* * *

2115 Parcel Select

* * *

2115.2 Size and Weight Limitations[1]

Parcel Select

	Length	Height	Thickness	Weight
Minimum	large enough to accommodate postage, address, and other required elements on the address side			none
Maximum	130 inches in combined length and girth			70 pounds[1]

Parcel Select Ground

	Length	Height	Thickness	Weight
Minimum	large enough to accommodate postage, address, and other required elements on the address side			none
Maximum				
Cubic	Various, not to exceed 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, or 1.0 cubic feet			20 pounds
All Others	130 inches in combined length and girth			70 pounds[1]

Lightweight

	Length	Height	Thickness	Weight
Minimum	large enough to accommodate postage, address, and other required elements on the address side			none
Maximum	108 inches in combined length and girth			< 16 ounces

Notes

1. A charge of $100.00 applies to pieces found in the postal network that exceed the 70-pound maximum weight limitation or the 130-inch length plus girth maximum dimensional limit for Postal Service products. Such items are nonmailable and will not be delivered. As described in the Domestic Mail Manual, this charge is payable before release of the item, unless the item is picked up at the same facility where it was entered.

* * *

2115.4 Price Categories

* * *

Non-Destination Entered

- Parcel Select Ground
  - Parcel Select Ground
  - Cubic
  - Dimensional Weight
  - Oversized
  - Forwarding and Returns

* * *

2115.6 Prices

* * *

Non-Destination Entered — Parcel Select Ground

a. Parcel Select Ground

* * *

b. Cubic

Maximum Cubic Feet	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
0.10	6.86	7.11	7.29	7.42	7.64	8.09	8.45	8.45
0.20	7.26	7.60	7.87	8.08	8.98	9.57	10.12	10.12
0.30	7.31	7.70	8.06	8.55	10.48	11.01	11.64	11.64
0.40	7.40	7.87	8.42	9.53	11.47	12.14	12.76	12.76
0.50	7.51	8.08	8.81	10.23	12.16	12.93	13.66	13.66
0.60	7.63	8.40	9.26	11.72	12.68	13.45	14.15	14.15
0.70	7.99	9.09	9.73	12.56	13.01	13.91	14.84	14.84
0.80	8.21	9.73	10.93	12.91	13.48	14.40	15.50	15.50
0.90	8.87	10.21	11.68	13.14	13.90	15.09	16.42	16.42
1.00	9.39	10.74	11.92	13.54	14.33	16.10	17.68	17.68

~~b~~c. Dimensional Weight

Parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

~~c~~d. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the $100.00 overweight item charge.

~~d~~e. Forwarding and Returns

Parcel Select pieces that are forwarded on request of the addressee or forwarded or returned on request of the mailer will be subject to the applicable Parcel Select Ground price, plus $3.00, when forwarded or returned. For customers using Address Correction Service with Shipper Paid Forwarding/Return, and also using an IMpb, the additional fee will be $2.50.

* * *

2615 International Ancillary Services

* * *

2615.5 Outbound International Insurance

* * *

2615.5.3 Prices

Outbound International Insurance

a. Priority Mail International Insurance and Priority Mail Express International Merchandise Insurance

Indemnity Limit Not Over ($)	Price ($)
200[1]	0.00
300	11.05
400	14.00
500	16.95
600	19.90
700	22.85
800	25.80
900	28.75
Over 900	28.75 plus 2.95 for each 100.00 or fraction thereof over 900.00. Maximum indemnity varies by country.

Notes

1. Insurance coverage is provided, for no additional charge, up to $200.00 for merchandise, and up to $100.00 for document reconstruction.

b. Global Express Guaranteed Insurance

($)		($)	($)
Amount of coverage:			
0.01	to	100.00	0.00
100.01	to	200.00	2.10
200.01	to	300.00	4.20
300.01	to	400.00	6.30
400.01	to	500.00	8.40
For document reconstruction insurance or non-document insurance coverage above 500.00, add 2.10 per 100.00 or fraction thereof, up to a maximum of 2,499.00 per shipment. Maximum indemnity varies by country.			
Up to		2,499.00	48.30

* * *

2620 International Money Transfer Service—Outbound

* * *

2620.3 Prices

International Money Order

	($)
Per International Money Order	49.65
Inquiry Fee	36.45

Vendor Assisted Electronic Money Transfer

	Transfer Amount		
	Minimum Amount ($)	Maximum Amount ($)	Per Transfer ($)
Electronic Money Transfer	0.01	750.00	69.30
	750.01	1,500.00	100.25
Refund	0.01	1,500.00	151.90
Change of Recipient	0.01	1,500.00	80.80

Electronic Money Transfer

[Reserved]

[FR Doc. 2022–10377 Filed 5–12–22; 8:45 am]
BILLING CODE 7710–12–C

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–258, OMB Control No. 3235–0268]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 2a–7

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act'') governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually $1.00. The rule exempts money market funds from the valuation requirements of the Act, and, subject to certain risk-limiting conditions, permits money market funds to use the ''amortized cost method'' of asset valuation or the ''penny-rounding method'' of share pricing.

Rule 2a–7 also imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value (''NAV''); establish written procedures to test periodically the ability of the fund to maintain a stable NAV based on certain hypothetical events (''stress testing''); review, revise, and approve written procedures to stress test a fund's portfolio; and create a report to the fund board documenting the results of stress

testing. The board must also adopt guidelines and procedures relating to certain responsibilities it delegates to the fund's investment adviser. These procedures and guidelines typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both these procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes, including determinations to impose any liquidity fees or temporary suspension of redemptions. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to securities subject to demand features or guarantees, evaluations with respect to asset-backed securities not subject to guarantees, and determinations with respect to adjustable rate securities and asset-backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to Form N–CR describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to Form N–CR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

A fund must also post certain periodic information on the its website including disclosure of portfolio holdings, disclosure of daily and weekly liquid assets and net shareholder flow, disclosure of daily current NAV, and disclosures of financial support received by the fund, the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions. Lastly, for funds that elect to be retail funds, they must create written policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons.

The recordkeeping requirements in rule 2a–7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a–7 are intended to assist Commission staff in overseeing money market funds and reduce the likelihood that a fund is unable to maintain a stable NAV.

Commission staff estimates that there are 320 money market funds (80 fund complexes), all of which are subject to rule 2a–7. Commission staff further estimates that there will be approximately 10 new money market funds established each year. Commission staff estimates that rule 2a–7 contains the following collection of information requirements:

- Record of credit risk analyses, and determinations regarding adjustable rate securities, asset-backed securities, asset-backed securities not subject to guarantees, securities subject to a demand feature or guarantee, and counterparties to repurchase agreements. Commission staff estimates a total annual hour burden for 320 funds to be 260,440 hours.
- Establishment of written procedures designed to stabilize NAV and guidelines and procedures for board delegation of authority. Commission staff estimates a total annual hour burden for 10 new money market funds to be 155 hours.
- Board review of procedures and guidelines of any investment adviser or officers to whom the fund's board has delegated responsibility under rule 2a–7 and amendment of such procedures and guidelines. Commission staff estimates a total annual hour burden for 80 funds to be 400 hours.
- Records of the board's determination for imposing any liquidity fees or temporary suspension of redemptions. Commission staff estimates a total annual hour burden for 2 funds to be 14 hours.
- Records of the board's determinations and actions related to failure of a security to meet certain eligibility standards or an event of default or insolvency. Commission staff estimates a total annual hour burden for 20 funds to be 50 hours.
- Establishment of written procedures to test periodically the ability of the fund to maintain a stable NAV per share based on certain hypothetical events (''stress testing''). Commission staff estimates a total annual hour burden for 10 new money market funds to be 220 hours.
- Review, revise, and approve written procedures to stress test a fund's portfolio. Commission staff estimates a total annual hour burden for 80 fund complexes to be 960 hours.
- Reports to fund boards on the results of stress testing. Commission staff estimates a total annual hour burden for 80 fund complexes to be 4,000 hours.
- Website disclosures of portfolio holdings, of daily and weekly liquid assets and net shareholder flow, of daily current NAV, and disclosures of financial support received by the fund, the imposition and removal of liquidity fees and the suspension and resumption of fund redemptions. Commission staff estimates a total annual hour burden for 320 funds to be 27,251 hours.
- For funds electing retail fund status, written policies and procedures limiting all beneficial owners of the fund to natural persons. Commission staff estimates a total annual hour burden for 2 funds to be 26 hours.

Thus, the Commission estimates the total annual burden of the rule's information collection requirements is 293,516 hours.

The estimated total annual burden is being decreased from 337,328 hours to 293,516 hours. This net decrease of 43,812 hours is attributable to a combination of factors, including a decrease in the number of money market funds and fund complexes, and updated information from money market funds regarding hourly burdens, including revised staff estimates of the burden hours required to comply with rule 2a–7.

Commission staff estimates that in addition to the costs described in section 12, money market funds will incur costs to preserve records, as required under rule 2a–7.[1] These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records.[2] Commission staff estimates that the amount an individual fund may spend ranges from $100 per year to $300,000. Based on a cost of $0.0051295 per dollar of assets under management for small funds, $0.0005041 per dollar assets under

[1] A significant portion of the recordkeeping burden involves organizing information that the funds already collect when initially purchasing securities. In addition, when a money market fund analyzes a security, the analysis need not be presented in any particular format. Money market funds therefore have a choice of methods for maintaining these records that vary in technical sophistication and formality. Accordingly, the cost of preparing these documents may vary significantly among individual funds. The burden hours associated with filing reports to the Commission as an exhibit to Form N–CR are included in the PRA burden estimate for that form.

[2] The amount assets under management in individual money market funds ranges widely, varying from below $50 million to well over $150 billion. We further note that the assets under management figures were calculated based on net assets at the fund level and not the sum of the market values of the underlying funds.

management for medium funds, and $0.0000009 per dollar of assets under management for large funds, the staff estimates compliance with the record storage requirements of rule 2a–7 costs the fund industry approximately $33.0 million per year.[3]

Based on responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a–7. Based on a cost of $0.0000132 per dollar of assets under management for large funds, the staff estimates that total annualized capital/startup costs range from $0 for small funds to $71.6 million for all large funds.[4] Commission staff further estimates that, even absent the requirements of rule 2a–7, money market funds would spend at least half of the amount for capital costs ($35.8 million)[5] and for record preservation ($16.5 million)[6] to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share.

These estimates of burden hours and costs are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

The collection of information under Rule 2a–7 is mandatory. The information provided by the rule is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid 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 June 13, 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*.

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10299 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

[3] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of $328.5 million under management in small funds, $52.4 billion under management in medium funds and $5.4 trillion under management in large funds, the costs of preservation were estimated as follows: ((0.0051295 × $328.5 million) + (0.0005041 × $52.4 billion) + (0.0000009 × $5.4 trillion) = $33.0 million. For purposes of this PRA submission, Commission staff used the following categories for fund sizes: (i) small–money market funds with $50 million or less in assets under management; (ii) medium–money market funds with more than $50 million up to and including $1 billion in assets under management; and (iii) large–money market funds with more than $1 billion in assets under management.

[4] This estimate is based on the following calculation: $0.0000132 × $5.4 trillion in assets under management for large funds = $71.6 million.

[5] This estimate is based on the following calculation: $71.6 million in capital costs/2 = $35.8 million.

[6] This estimate is based on the following calculation: $33.0 million in record preservation costs/2 = $16.5 million.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–344, OMB Control No. 3235–0391]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form T–6

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–6 (17 CFR 269.9) is an application for eligibility and qualification for a foreign person or corporation under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T–6 provides the basis for determining whether a foreign person or corporation is eligible to serve as a trustee for qualified indenture. Form T–6 is filed on occasion. The information collected must be filed with the Commission and is publicly available. Form T–6 takes approximately 17 burden hours per response and is filed by approximately one respondent annually. We estimate that 25% of the 17 hours (4.25 hours) is prepared by the filer for an annual reporting burden of 4 hours (4.25 hours per response × 1 response).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view 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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10297 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–330, OMB Control No. 3235–0645]

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:
Interactive Data

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

The ''Interactive Data'' collection of information requires issuers filing registration statements under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and reports under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to submit specified financial

information to the Commission and post it on their corporate websites, if any, in interactive data format using eXtensible Business Reporting Language (XBRL). This collection of information is located primarily in registration statement and report exhibit provisions, which require interactive data, and Rule 405 of Regulation S–T (17 CFR 232.405), which specifies how to submit and post interactive data. The exhibit provisions are in Item 601(b)(101) of Regulation S–K (17 CFR 229.601(b)(101)), Form F–10 under the Securities Act (17 CFR 239.40) and Forms 20–F, 40–F and 6–K under the Exchange Act (17 CFR 249.220f, 17 CFR 249.240f and 17 CFR 249.306).

In interactive data format, financial statement information could be downloaded directly into spreedsheets and analyzed in a variety of ways using commercial off-the-shelf software. The specified financial information already is and will continue to be required to be submitted to the Commission in traditional format under existing requirements. The purpose of the interactive data requirement is to make financial information easier for investors to analyze and assist issuers in automating regulatory filings and business information processing. We estimate that 8,315 respondents per year will each submit an average of 4.5 reponses per year for an estimated total of responses. We further estimate an internal burden of 54.56446 hours per response for a total annual internal burden of 2,041,693 hours (54.56446 hours per response × 37,418 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view 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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10298 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–121, OMB Control No. 3235–0110]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form T–1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–1 (17 CFR 269.1) is a statement of eligibility and qualification under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) of a corporation designated to act as a trustee under an indenture. The information is used to determine whether the corporation is qualified to serve as a trustee. Form T–1 is filed on occasion. The information required by Form T–1 is mandatory. This information is publicly available on EDGAR. Form T–1 takes approximately 15 hours per response to prepare and is filed by approximately 2 respondents. We estimate that 25% of the 15 hours (4 hours) is prepared by the company for a total annual reporting burden of 8 hours (4 hours per response × 2 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view 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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10294 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–779, OMB Control No. 3235–0732]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants [1] (17 CFR 240.3a67–10, 240.3a71–3,240.3a71–6, 240.15Fh–1 through 15Fh–6 and 240.15Fk–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

In 2010, Congress passed the Dodd-Frank Act, establishing a comprehensive framework for regulating the over-the-counter swaps markets.[2] As required by Title VII of the Dodd-Frank Act, new section 15F(h) of the Exchange Act established business conduct standards for security-based swap (''SBS'') Dealers and Major SBS Participants

[1] *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release 77617 (Apr. 14, 2016), 81 FR 29959 (May 13, 2016). *See also Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants; Correction,* Exchange Act Release 77617A (May 19, 2016), 81 FR 32643 (May 24, 2016). (together, 'the Business Conduct Rules for SBSDs and MSBSPs'' or ''BCS Rules'')

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010) (''Dodd-Frank Act'').

(''collectively ''SBS Entities'') in their dealings with counterparties, including special entities. In 2016, in order to implement the Dodd-Frank Act, the Commission adopted the BCS Rules for SBS Dealers and Major SBS Participants,[3] a comprehensive set of business conduct standards and chief compliance officer requirements applicable to SBS Entities, that are designed to enhance transparency, facilitate informed customer decision-making, and heighten standards of professional conduct to better protect investors.[4]

Rules 15Fh–1 through 15Fh–6 and 15Fk–1 require SBS Entities to:

- Verify whether a counterparty is an eligible contract participant and whether it is a special entity;
- Disclose to the counterparty material information about the SBS, including material risks, characteristics, incentives and conflicts of interest;
- Provide the counterparty with information concerning the daily mark of the SBS;
- Provide the counterparty with information regarding the ability to require clearing of the SBS;
- Communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith;
- Establish a supervisory and compliance infrastructure; and
- Designate a chief compliance officer that is required to fulfill the described duties and provide an annual compliance report.

The rules also require SBS Dealers to:

- Determine that recommendations they make regarding SBS are suitable for their counterparties.
- Establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each known counterparty that are necessary to conduct business with such counterparty; and
- Comply with rules designed to prevent ''pay-to-play.''

The rules also define what it means to ''act as an advisor'' to a special entity, and require an SBS Dealer who acts as an advisor to a special entity to:

- Make a reasonable determination that any security-based swap or trading strategy involving a security-based swap recommended by the SBS Dealer is in the best interests of the special entity whose identity is known at a reasonably sufficient time prior to the execution of the transaction to permit the SBS Dealer to comply with this obligation; and
- Make reasonable efforts to obtain such information that the SBS Dealer considers necessary to make a reasonable determination that a security-based swap or trading strategy involving a security-based swap is in the best interests of the known special entity.

In addition, the rules require SBS Entities acting as counterparties to special entities to reasonably believe that the counterparty has an independent representative who meets the following requirements:

- Has sufficient knowledge to evaluate the transaction and risks;
- Is not subject to a statutory disqualification;
- Undertakes a duty to act in the best interests of the special entity;
- Makes appropriate and timely disclosures to the special entity of material information concerning the security-based swap;
- Evaluates, consistent with any guidelines provided by the special entity, the fair pricing and the appropriateness of the security-based swap;
- Is independent of the security-based swap dealer or major security-based swap participant that is the counterparty to a proposed security-based swap.

Under the rules, the special entity's independent representative must also be subject to pay-to-play regulations, and if the special entity is an ERISA plan, the independent representative must be an ERISA fiduciary.

The information that must be collected pursuant to the BCS Rules is intended to increase accountability and transparency in the market. The information will therefore help establish a framework that protects investors and promotes efficiency, competition and capital formation.

Based on a review of recent data, as of 2020, the Commission estimates the number of respondents to be as follows: 44 SBS Dealers, 0 Major SBS Participants, for a total of 44 ''SBS Entities''.[5] Further, we estimate that approximately 41 of these 44 SBS Entities will be dually registered with the CFTC as Swap Entities. We also estimate that there are currently 15,187 security-based swap market participants of which 11,531 are also swap market participants. In 2020, there were approximately 354,814 security-based swap transactions between an SBS Dealer and counterparty that is not an SBS Dealer of which 225,924 were new and 6,841amended trades (totaling 232,765). The Commission estimates there are 329 independent, third-party representatives and 23 in-house independent representatives.[6] We estimate that there are approximately 11,219 unique SBS Dealer and non-SBS-Dealer pairs. We have used these estimates in calculating the hour and cost burdens for the rule provisions that we anticipate have a ''collection of information'' burden within the meaning of the PRA.

The Commission estimates that the aggregate burden of the ongoing reporting and disclosures required by the BCS Rules, as described above, is approximately 486,535 hours and $1,812,800 calculated as follows:

[3] *Id.*

[4] Commission staff has prepared separate supporting statements pursuant to the Paperwork Reduction Act (''PRA'') regarding Rules 3a71–3(c) and 3a71–6, which address the cross-border application of the business conduct standards and the availability of substituted compliance. The Office of Management and Budget (''OMB'') has assigned control number 3235–0717 to Rule 3a71–3(c) and 3235–0715 to Rule 3a71–6. Rule 3a67–10(d) is a definitional rule and does not have a PRA burden associated with it. Rules 3a71–3(a), 15Fh–1 and 15Fh–2(b) and (c) address scope of the rules and definitions and so do not have PRA burdens associated with them.

[5] Unless otherwise noted, estimates were derived from the DTCC–TIW data set (November 2006 through December 2020).

[6] *See,* Exchange Act Rule 15Fh–5.

Section		Type of burden	Respondents	Ongoing annual burden (hours)	Ongoing annual burden (cost)	Industry-wide annual burden (hours)	Industry-wide annual burden (cost)
15Fh–3(b), (c), (d)	Disclosures—SBS Entities	Reporting	44	4,120	$0	181,280	$0
15Fh–3(b), (c), (d)	Disclosures—SBS Transactions Between SBS Dealer and Non-SBSD Counterparty.	Reporting	232,765	1	0	232,765	0
15Fh–3(e), (f)	Know Your Counterparty and Recommendations (SBS Dealers).	Reporting	44	127.5	0	5,610	0
15Fh–3(g)	Fair and Balanced Communications	Reporting	44	2	3,600	88	158,400
15Fh–3(h)	Supervision	Reporting	44	540	4,800	23,760	211,200
15Fh–5	SBS Entities Acting as Counterparties to Special Entities.	Reporting	44	352	0	15,488	0
15Fh–5	SBS Entities Acting as Counterparties to Special Entities.	Third-Party Disclosure.	44	352	0	15,488	0
15Fh–6	Political Contributions	Reporting	44	1	25,600	44	1,126,400
15Fk–1	Chief Compliance Officer	Reporting	44	273	7,200	12,012	316,800
Total						486,535	1,812,800

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by July 12, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10286 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94876; File No. SR–PEARL–2022–12]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase the Monthly Fees for MIAX Express Network Full Service Port

May 9, 2022.

On April 1, 2022, MIAX PEARL LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the MIAX Pearl Options Fee Schedule to increase the monthly fees for the MIAX Express Network Full Service (''MEO'') Ports.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On April 20, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On May 2, 2022, the Exchange withdrew the proposed rule change (SR–PEARL–2022–12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10261 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94875; File No. SR–PEARL–2022–11]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees

May 9, 2022.

On April 1, 2022, MIAX PEARL LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the MIAX Pearl Options Fee Schedule to increase certain connectivity fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On April 20, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94722 (April 14, 2022), 87 FR 23660.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On May 2, 2022, the Exchange withdrew the proposed rule change (SR–PEARL–2022–11).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10259 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–357, OMB Control No. 3235–0404]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form F–80

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form F–80 (17 CFR 239.41) is a registration form used by large, publicly-traded Canadian issuers to register securities that will be offered in a business combination, exchange offer or other reorganization requiring the vote of shareholders of the participating companies. The information collected is intended to make available material information upon which shareholders and investors can make informed voting and investment decisions. The information provided is mandatory and all information is made available to the public upon request. Form F–80 takes approximately 2 hours per response and is filed by approximately 4 issuers for a total annual reporting burden of 8 hours (2 hours per response × 4 responses). The estimated burden of 2 hours per response was based upon the amount of time necessary to compile the registration statement using the existing Canadian prospectus plus any additional information required by the Commission.

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view 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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10290 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–123, OMB Control No. 3235–0105]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form T–3

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collections of information discussed below.

Form T–3 (17 CFR 269.3) is an application for qualification of an indenture under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). The information provided under Form T–3 is used by the Commission to determine whether to qualify an indenture relating to an offering of debt securities that is not required to be registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form T–3 is filed on occasion. The information required by Form T–3 is mandatory. This information is publicly available on EDGAR. Form T–3 takes approximately 43 hours per response to prepare and is filed by approximately 11 respondents. We estimate that 25% of the 43 hours per response (11 hours) is prepared by the filer for a total annual reporting burden of 121 hours (11 hours per response × 11 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view 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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10296 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–261, OMB Control No. 3235–0274]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17Ad–11

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

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94721 (April 14, 2022), 87 FR 23573.

[7] 17 CFR 200.30–3(a)(12).

extension of the previously approved collection of information provided for in Rule 17Ad–11 (17 CFR 240.17Ad–11), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–11 requires every registered recordkeeping transfer agent to report certain information to issuers and its appropriate regulatory agency in the event that the aggregate market value of an ''aged record difference'' exceeds certain thresholds. A ''record difference'' occurs when the number of shares or principal dollar amount of securities in an issuer's records do not equal those in the master securityholder file as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. An ''aged record difference'' is a record difference that has existed for more than 30 calendar days. In addition, the rule requires every registered recordkeeping transfer agent to report certain information to issuers and its appropriate regulatory agency concerning buy-ins of all issues for which it acts as recordkeeping transfer agent. Further, the rule requires every registered recordkeeping transfer agent to report to its appropriate regulatory agency when it has failed to post certificate detail to the master securityholder file within five business days of the time required by Rule 17Ad–10 (17 CFR 240.17Ad–10). Transfer agents must also maintain a copy of any report required under Rule 17Ad–11 for a period of not less than three years following the date of the report, the first year in an easily accessible place.

Because the information required by Rule 17Ad–11 is already available to transfer agents, any collection burden for small transfer agents is minimal. Based on a review of the number of Rule 17Ad–11 reports the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the ''appropriate regulatory agencies'') received since 2015, the Commission staff estimates that 8 respondents will file a total of approximately 10 reports annually. The Commission staff estimates that, on average, each report can be completed in 30 minutes. Therefore, the total annual time burden for the entire transfer agent industry is approximately 5 hours (0.5 hours × 10 reports). Assuming an average hourly rate of $72 for a compliance staff employee at a transfer agent, the average total internal compliance cost for each report is $36. The total annual internal cost of compliance for the estimated 8 respondents is thus approximately $360 ($36 per report × 10 reports).

The retention period for the recordkeeping requirement under Rule 17Ad–11 is not less than three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad–11 is mandatory to assist the Commission and other regulatory agencies in monitoring transfer agents who are not performing their functions promptly and accurately. This rule does not involve the collection of confidential information.

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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10287 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–057, OMB Control No. 3235–0057]

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:

Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Section 14(c) of the Securities Exchange Act of 1934 (the ''Exchange Act'') operates to require issuers that do not solicit proxies or consents from any or all of the holders of record of a class of securities registered under Section 12 of the Exchange Act and in accordance with the rules and regulations prescribed under Section 14(a) in connection with a meeting of security holders (including action by consent) to distribute to any holders that were not solicited an information statement substantially equivalent to the information that would be required to be transmitted if a proxy or consent solicitation were made. Regulation 14C (Exchange Act Rules 14c–1 through 14c–7 and Schedule 14C) (17 CFR 240.14c–1 through 240.14c–7 and 240.14c–101) sets forth the requirements for the dissemination, content and filing of the information statement. We estimate that Schedule 14C takes approximately 132.058 hours per response and will be filed by approximately 569 issuers annually. In addition, we estimate that 75% of the 132.058 hours per response (99.044 hours) is prepared by the issuer for an annual reporting burden of 56,356 hours (99.044 hours per response × 569 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view 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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10301 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–122, OMB Control No. 3235–0111]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street, NE, Washington, DC 20549–2736

Extension:
Form T–2

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–2 (17 CFR 269.2) is a statement of eligibility of an individual trustee under the Trust Indenture Act of 1939. The information is used to determine whether the individual is qualified to serve as a trustee under the indenture. Form T–2 is filed on occasion. The information required by Form T–2 is mandatory. This information is publicly available on EDGAR. Form T–2 takes approximately 9 hours per response to prepare and is filed by approximately 9 respondents. We estimate that 25% of the 9 hours per response (2 hours) is prepared by the filer for a total annual reporting burden of 18 hours (2 hours per response × 9 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view 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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10295 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94873; File No. SR–MIAX–2022–14]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX Fee Schedule To Increase Certain Connectivity Fees

May 9, 2022.

On April 1, 2022, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Fee Schedule to increase certain connectivity fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On April 20, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On May 2, 2022, the Exchange withdrew the proposed rule change (SR–MIAX–2022–14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10257 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94719 (April 14, 2022), 87 FR 23600.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–105, OMB Control No. 3235–0121]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form 18

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 18 (17 CFR 249.218) is a registration form used for by a foreign government or political subdivision to register securities for listing on a U.S. exchange. The information collected is intended to ensure that the information required by the Commission to be filed permits verification of compliance with securities law requirements and assures the public availability of the information. The information provided is mandatory and all information is made available to the public upon request. Form 18 takes approximately 8 hours per response and is filed by approximately 5 respondents for a total of 40 annual burden hours (8 hours per response × 5 responses). It is estimated that 100% of the total reporting burden is prepared by the company.

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view 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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10289 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94869; File No. SR–NYSEArca–2022–13]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 7.31–E(h)(3)

May 9, 2022.

On March 9, 2022, NYSE Arca, Inc. 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 modify certain factors relevant to the quote instability calculation for Discretionary Pegged Orders. The proposed rule change was published for comment in the **Federal Register** on March 28, 2022.[3]

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 12, 2022.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates June 26, 2022 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2022–13).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10253 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94490 (Mar. 22, 2022), 87 FR 17376 (Mar. 28, 2022).

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94872; File No. SR–EMERALD–2022–15]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Emerald Express Interface Ports

May 9, 2022.

On April 1, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Fee Schedule to adopt a tiered-pricing structure for additional limited service express interface ports.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On April 20, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On May 2, 2022, the Exchange withdrew the proposed rule change (SR–EMERALD–2022–15).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10256 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94718 (April 14, 2022), 87 FR 23633.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–291, OMB Control No. 3235–0328]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form ID

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form ID (OMB Control No. 3235–0328; SEC File No. 270–291) is used by companies and other entities to apply for identification numbers and passwords used in conjunction with the EDGAR electronic filing system. The information provided on Form ID is essential to the security of the EDGAR system. Form ID is a not a public document because it is used solely for the purpose of registering filers on the EDGAR system. Form ID must be filed every time a registrant or other person obtains or changes an identification number. Form ID is filed by individuals, companies or other for-profit organizations that are required to file electronically. We estimate approximately 48,493 registrants file Form ID and it takes approximately an estimated 0.15 hours per response for a total annual burden of 7,274 hours.

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view 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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10291 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94870; File Nos. SR–MIAX–2022–15, SR–EMERALD–2022–14]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC and MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Changes To Establish Fees for the Exchanges' cToM Market Data Products

May 9, 2022.

On April 1, 2022, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald'') (collectively, the ''Exchanges'') each 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 establish fees for, respectively, the MIAX Complex Top of Market (''cToM'') and the MIAX Emerald cToM market data products.

The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On April 20, 2022, the proposed rule changes were published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule changes; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule changes.[6] On April 29, 2022, the Exchanges withdrew the proposed rule changes (SR–MIAX–2022–15, SR–EMERALD–2022–14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10254 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–549, OMB Control No. 3235–0610]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 248.30

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 248.30 (17 CFR 248.30) under Regulation S–P is titled ''Procedures to Safeguard Customer Records and Information; Disposal of Consumer Report Information.'' Rule 248.30 (the ''safeguard rule'') requires brokers, dealers, investment companies, and investment advisers registered with the Commission (''registered investment advisers'') (collectively ''covered institutions'') to adopt written policies and procedures for administrative, technical, and physical safeguards to protect customer records and information. The safeguards must be reasonably designed to ''insure the security and confidentiality of customer records and information,'' ''protect against any anticipated threats or hazards to the security and integrity'' of those records, and protect against unauthorized access to or use of those records or information, which ''could result in substantial harm or inconvenience to any customer.'' The safeguard rule's requirement that covered institutions' policies and procedures be documented in writing constitutes a collection of information and must be maintained on an ongoing basis. This requirement eliminates uncertainty as to required employee actions to protect customer records and information and promotes more systematic and organized reviews of safeguard policies and procedures by institutions. The information collection also assists the Commission's examination staff in assessing the existence and adequacy of covered institutions' safeguard policies and procedures.

We estimate that as of the end of 2020, there are 3,681 broker-dealers, 2,840 investment companies, and 13,788 investment advisers registered with the Commission, for a total of 20,309 covered institutions. We believe that all of these covered institutions have already documented their safeguard policies and procedures in writing and therefore will incur no hourly burdens related to the initial documentation of policies and procedures. Although existing covered institutions would not incur any initial hourly burden in complying with the safeguards rule, we expect that newly registered institutions would incur some hourly burdens associated with documenting their safeguard policies and procedures. We estimate that approximately 1,375 broker-dealers, investment companies, or investment advisers register with the Commission annually. However, we also expect that approximately 20% of these newly registered covered institutions, or 372 institutions, are affiliated with an existing covered institution, and will rely on an organization-wide set of previously documented safeguard policies and procedures created by their affiliates. We estimate that these affiliated newly registered covered institutions will incur a significantly reduced hourly burden in complying with the safeguards rule, as they will need only to review their affiliate's existing policies and procedures, and identify and adopt the relevant policies for their business. Therefore, we expect that newly registered covered institutions with existing affiliates will incur an hourly burden of approximately 15 hours in identifying and adopting safeguard policies and procedures for their business, for a total hourly burden for all affiliated new institutions of 5,580 hours. We expect that half of this time would be incurred by inside counsel at an hourly rate of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release Nos. 94716 (April 14, 2022), 87 FR 23616 (SR–MIAX–2022–15); and 94715 (April 14, 2022), 87 FR 23674 (SR–EMERALD–2022–14).

[7] 17 CFR 200.30–3(a)(12).

$455, and half would be by a compliance officer at an hourly rate of $400, for a total cost of $2,385,450.

Finally, we expect that the 1,003 newly registered entities that are not affiliated with an existing institution will incur a significantly higher hourly burden in reviewing and documenting their safeguard policies and procedures. We expect that virtually all of the newly registered covered entities that do not have an affiliate are likely to be small entities and are likely to have smaller and less complex operations, with a correspondingly smaller set of safeguard policies and procedures to document, compared to other larger existing institutions with multiple affiliates. We estimate that it will take a typical newly registered unaffiliated institution approximately 60 hours to review, identify, and document their safeguard policies and procedures, for a total of 60,180 hours for all newly registered unaffiliated entities. We expect that half of this time would be incurred by inside counsel at an hourly rate of $455, and half would be by a compliance officer at an hourly rate of $400, for a total cost of $25,726,950.

Therefore, we estimate that the total annual hourly burden associated with the safeguards rule is 65,760 hours at a total hourly cost of $28,112,400. We also estimate that all covered institutions will be respondents each year, for a total of 20,309 respondents.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number. The safeguard rule does not require the reporting of any information or the filing of any documents with the Commission. The collection of information required by the safeguard rule is mandatory.

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 June 13, 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.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10300 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–651, OMB Control No. 3235–0702]

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 18a–3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 18a–3 (17 CFR 240.18a–3), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.[1]

Rule 18a–3 establishes minimum margin requirements for nonbank security-based swap dealers (''SBSDs'') and nonbank major security-based swap participants (''MSBSPs'') for non-cleared security-based swaps. Under paragraph (e) of Rule 18a–3 nonbank SBSDs are required to monitor the risk of each account that holds non-cleared security based swaps for a counterparty and to establish, maintain, and document procedures and guidelines for monitoring the risk of accounts as part of its risk management control system required under Exchange Act Rule 15c3–4. In addition, paragraph (d)(2) of Rule 18a–3 provides that a nonbank SBSD seeking approval to use a model to calculate initial margin will be subject to an application process consistent with Exchange Act Rule 15c3–1e and paragraph (d) of Exchange Act Rule 18a–1, as applicable, governing the use of internal models to compute net capital.[2]

The total annual hour burden associated with Rule 18a–3 is approximately 2,243 hours calculated as follows:

The Commission staff estimates that there are 7 nonbank SBSDs that are subject to Rule 18a–3. The staff further estimates that each would spend an average of approximately 210 hours establishing and documenting their Rule 18a–3 counterparty risk monitoring procedures, for a one-time industry-wide hour burden of approximately 1,470 recordkeeping hours or 490 hours per year when annualized over three years.[3] In addition, the staff estimates that each nonbank SBSD would spend an average of approximately 60 hours per year reviewing risks associated with its counterparties, for an annual industry-wide burden of approximately 420 recordkeeping hours.[4] Taken together, the annual industry-wide hour burden is approximately 910 hours.[5]

The Commission estimates it will take a nonbank SBSD approximately 50 hours to prepare and submit an application to the Commission to seek authorization to use an internal model to calculate initial margin. The staff estimates that five non-bank SBSDs have sought Commission approval to use an internal model to calculate initial margin, resulting in a total industry-wide one-time hour burden of approximately 250 hours or approximately 83 hours per year when annualized over three years.[6] The Commission also estimates that each nonbank SBSD will spend approximately 250 hours per year reviewing, updating, and back testing their initial margin model, resulting in

[1] This OMB Control Number previously included the collections of information in Rule 18–10 as well as the ones in Rule 18a–3. The Commission subsequently requested a separate OMB Control Number for the collections of information in Rule 18a–10. OMB approved that request on February 9, 2022, and the collections of information for Rule 18a–10 are now in OMB Control Number 3235–0785. As a result, the Commission is now changing the burdens in this OMB Control Number 3235–0702 to remove the ones previously included for Rule 18a–10. The Collections of information in Rule 18a–10 were included in OMB Control Number 3235–0702 because Rule 18a–10 was not proposed, but was adopted concurrently with 18a–3 as a result of comments received on the proposal for Rule 18a–3. The Commission later amended Rule 18a–10 and revised the collections of information in Rule 18a–10 and, at that time, requested a separate OMB Control Number. *See* PRA ICR Documents for 3235–0785 on (*reginfo.gov*).

[2] While Rule 18a–3 contains requirements that apply to both nonbank SBSDs and MSBSPs, the particular requirements that constitute a collection of information relate only to nonbank SBSDs.

[3] 7 nonbank SBSDs × 210 hours = 1,470 hours. These amounts are annualized over three years resulting in 70 (210 hours/3 years) hours per nonbank SBSD per year and an industry wide annual burden of 490 recordkeeping hours.

[4] 7 nonbank SBSDs × 60 hours = 420 hours.

[5] 490 hours + 420 hours = 910 hours.

[6] 5 nonbank SBSDs × 50 hours = 250 hours. These amounts are annualized over three years resulting in 16.67 (50 hours/3 years) hours per nonbank SBSD per year and an industry wide annual burden of 83.33 recordkeeping hours, rounded down to 83 hours.

a total industry-wide annual hour burden of approximately 1,250 recordkeeping hours.[7] Taken together, the Commission estimates an annual industry-wide hour burden of approximately 1,333 hours.[8]

The total annual hour burden associated with Rule 18a–3 is thus approximately 2,243 hours (910 hours + 1,333 hours).

The total annual cost burden associated with Rule 18a–3 is approximately $3,333 calculated as follows:

The 7 respondents subject to the collection of information may incur start-up costs in order to comply with this collection of information. These costs may vary depending on the size and complexity of the nonbank SBSD. In addition, the start-up costs may be less for the 2 nonbank SBSD respondents also registered as broker-dealers because these firms may already be subject to similar requirements with respect to other margin rules. For the remaining 5 nonbank SBSDs, because these written procedures may be novel undertakings for these firms, the Commission staff assumes these nonbank SBSDs will have their written risk analysis methodology reviewed by outside counsel. Therefore, the staff estimates that these 5 nonbank SBSDs will engage an outside counsel to review their written risk analysis methodology, at a rate of approximately $400 per hour for 5 hours (*i.e.,* $2,000 in legal costs). This will result in a one-time industry-wide external recordkeeping cost of approximately $10,000, or approximately $3,333 per year [9] annualized over 3 years.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by July 12, 2022.

[7] 5 nonbank SBSDs × 250 hours = 1,250 hours.

[8] (250 hours/3 years) + 1,250 hours = 1,333.33 hours, rounded down to 1,333 hours.

[9] 5 nonbank SBSDs × $400/hour × 5 hours= $10,000. This amount annualized is $3,333.33 per nonbank SBSD, rounded down to $3,333.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10285 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–54, OMB Control No. 3235–0056]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Form 8–A

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 8–A (17 CFR 249.208a) is a registration statement used to register a class of securities under Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(b) and 78*l*(g)) (''Exchange Act''). Section 12(a) (15 U.S.C. 78*l*(a)) of the Exchange Act makes it unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless such security has been registered under the Exchange Act (15 U.S.C. 78a *et seq.*). Exchange Act Section 12(b) establishes the registration procedures. Exchange Act Section 12(g) requires an issuer that is not a bank or bank holding company to register a class of equity securities (other than exempted securities) within 120 days after its fiscal year end if, on the last day of its fiscal year, the issuer has total assets of more than $10 million and the class of equity securities is ''held of record'' by either (i) 2,000 persons, or (ii) 500 persons who are not accredited investors. An issuer that is a bank or a bank holding company, must register a class of equity securities (other than exempted securities) within 120 days after the last day of its first fiscal year ended after the effective date of the JOBS Act if, on the last day of its fiscal year, the issuer has total assets of more than $10 million and the class of equity securities is ''held of record'' by 2,000 or more persons. The information must be filed with the Commission on occasion. Form 8–A is a public document. Form 8–A takes approximately 3 hours to prepare and is filed by approximately 1,376 respondents for a total annual reporting burden of 4,128 hours (3 hours per response × 1,376 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view 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 June 13, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10288 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94874; File No. SR–MIAX–2022–16]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX Fee Schedule To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Express Interface Ports

May 9, 2022.

On April 1, 2022, Miami International Securities Exchange, LLC (''MIAX'' or

''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Fee Schedule to adopt a tiered-pricing structure for additional limited service express interface ports.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On April 20, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On May 2, 2022, the Exchange withdrew the proposed rule change (SR–MIAX–2022–16).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10258 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94878; File No. SR–MIAX–2022–18]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule for the Priority Customer Rebate Program

May 9, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2022, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend footnote 14 referenced in Section 1)a)iii) of the Fee Schedule to amend the list of MIAX Select Symbols[3] contained in the Priority Customer Rebate Program (''PCRP'')[4] to remove symbol ''AIG,'' (American International Group, Inc.) from the Select Symbols list.

The Exchange initially created the list of MIAX Select Symbols on March 1, 2014,[5] and has added and removed option classes from that list since that time.[6] Select Symbols are rebated slightly higher in certain PCRP tiers and segment than non-Select Symbols. The Exchange notes that historically, Select Symbols generally include a subset of classes of options that are included in the Penny Interval Program, an industry-wide program that provides for the quoting and trading of certain option classes in penny increments (the ''Penny Program'').[7] The Penny Program allows the quoting and trading of certain option classes in minimum increments of $0.01 for all series in such option classes with a price of less than $3.00; and in minimum increments of $0.05 for all series in such option classes with a price of $3.00 or higher. The Penny Program was initiated as a pilot program at the then existing option exchanges in January 2007,[8] was made a permanent program in 2020, and currently includes more than 300 of the most actively traded option classes.

On March 31, 2022, the Exchange issued an alert that the Select symbol ''AIG'' would no longer be included in the Penny Program industry-wide as of April 1, 2022.[9] Accordingly, for business and competitive reasons, the Exchange proposes to amend the Fee Schedule to remove the symbol ''AIG'' from the list of MIAX Select Symbols contained in the PCRP as that Select

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94720 (April 14, 2022), 87 FR 23586.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''MIAX Select Symbols'' means options overlying AAL, AAPL, AIG, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CLF, CVX, DAL, EBAY, EEM, FB, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, INTC, IWM, JNJ, JPM, KMI, KO, MO, MRK, NFLX, NOK, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, SPY, T, TSLA, USO, VALE, WBA, WFC, WMB, X, XHB, XLE, XLF, XLP, XOM and XOP.

[4] *See* section 1)a)iii) of the Fee Schedule for a complete description of the PCRP.

[5] *See* Securities Exchange Act Release No. 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13).

[6] *See* Securities Exchange Act Release Nos. 89530 (August 12, 2020), 85 FR 50845 (August 18, 2020) (SR–MIAX–2020–26); 88850 (May 11, 2020), 85 FR 29497 (May 15, 2020) (SR–MIAX–2020–09); 87964 (January 14, 2020), 85 FR 3435 (January 21, 2020) (SR–MIAX–2020–01); 87790 (December 18, 2019), 84 FR 71037 (December 26, 2019) (SR–MIAX–2019–49); 85314 (March 14, 2019), 84 FR 10359 (March 20, 2019) (SR–MIAX–2019–07; 81998 (November 2, 2017), 82 FR 51897 (November 8, 2017) (SR–MIAX–2017–45); 81019 (June 26, 2017), 82 FR 29962 (June 30, 2017) (SR–MIAX–2017–29); 79301 (November 14, 2016), 81 FR 81854 (November 18, 2016) (SR–MIAX–2016–42); 74291 (February 18, 2015), 80 FR 9841 (February 24, 2015) (SR–MIAX–2015–09); 74288 (February 18, 2015), 80 FR 9837 (February 24, 2015) (SR–MIAX–2015–08); 73328 (October 9, 2014), 79 FR 62230 (October 16, 2014) (SR–MIAX–2014–50); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR–MIAX–2014–34); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR–MIAX–2014–26); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13).

[7] *See* Securities Exchange Act Release No. 88988 (June 2, 2020), 85 FR 35153 (June 8, 2020) (SR–MIAX–2020–13). *See also* Exchange Rule 510(c).

[8] *See* Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 54886 (December 6, 2006), 71 FR 74979 (December 13, 2006) (SR–Phlx–2006–74); 54590 (October 12, 2006), 71 FR 61525 (October 18, 2006) (SR–NYSEArca–2006–73); and 54741 (November 9, 2006), 71 FR 67176 (November 20, 2006) (SR–Amex–2006–106).

[9] *See* MIAX Listing Alert (March 31, 2022), *available at https://www.miaxoptions.com/alerts/2022/03/31/miax-exchange-group-options-markets-option-classes-be-removed-penny-interval.*

Symbol is no longer in the Penny Program.

Implementation

The proposed change is effective beginning May 1, 2022.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposal to remove the symbol ''AIG'' from the list of MIAX Select Symbols contained in the PCRP is consistent with Section 6(b)(4) of the Act because the proposed change will allow for continued benefit to investors by providing them an updated list of MIAX Select Symbols contained in the PCRP on the Fee Schedule.

The Exchange believes that the proposal to amend an option class that qualifies for the credit for transactions in MIAX Select Symbols is fair, equitable and not unreasonably discriminatory. The Exchange believes that the PCRP itself is reasonably designed because it incentivizes providers of Priority Customer [12] order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The Exchange believes the PCRP, which provides increased incentives in certain tiers in high volume select symbols, is also reasonably designed to increase the competitiveness of the Exchange with other options exchanges that also offer increased incentives to higher volume symbols.

The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act because it will apply equally to all similarly situated Priority Customer orders in MIAX Select Symbols in the PCRP. All similarly situated Priority Customer orders in MIAX Select Symbols are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change should enable the Exchange to continue to attract and compete for order flow with other exchanges. Notwithstanding the removal of the symbol ''AIG'' from the Select Symbols list, the Exchange's rebates remain highly competitive with those of other exchanges, and therefore should enable the Exchange to continue to attract and compete for order flow with other exchanges which offer comparable rebates for particular symbols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and to attract order flow.

Further, the Exchange does not believe that its proposal to delete the symbol ''AIG'' from the list of MIAX Select Symbols contained in the PCRP will result in any burden on intra-market or inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposed change is a not a competitive proposal but rather is designed to update the list of MIAX Select Symbols contained in the PCRP in order to avoid potential confusion on the part of market participants and other competing options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[13] and Rule 19b–4(f)(2) [14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2022–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2022–18. 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

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–18, and should be submitted on or before June 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10262 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94871; File No. SR–EMERALD–2022–13]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Increase Certain Connectivity Fees

May 9, 2022.

On April 1, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Fee Schedule to increase certain connectivity fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On April 20, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On May 2, 2022, the Exchange withdrew the proposed rule change (SR–EMERALD–2022–13).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10255 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–136, OMB Control No. 3235–0157]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form N–8F

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N–8F (17 CFR 274.218) is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company cease to be in effect. The form requests information about: (i) The investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of the investment company's business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

The Form takes approximately 5.2 hours on average to complete. It is estimated that approximately 143 investment companies file Form N–8F annually, so the total annual burden for the form is estimated to be approximately 744 hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study.

The collection of information on Form N–8F is not mandatory. The information provided on Form N–8F is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently-valid OMB control number.

The public may view 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 June 13, 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.*

Dated: May 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10292 Filed 5–12–22; 8:45 am]

BILLING CODE 8011–01–P

SELECTIVE SERVICE SYSTEM

Form To Be Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following form will be submitted to the Office of Management and Budget (OMB) for extension of clearance without change in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form 750

Title: Request for a Medical Exception to the COVID–19 Vaccination Requirement.

Summary: Per Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees, and guidance from the Safer Federal Workforce Task Force, the Selective Service System (SSS) created and received emergency clearance for the Agency's Request for a Medical Exception to the COVID–19 Vaccination

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94717 (April 14, 2022), 87 FR 23648.

[7] 17 CFR 200.30–3(a)(12).

Requirement form. This form is for SSS employees requesting a medical exception to the vaccine requirements. The current form is only valid for six months. In anticipation of future requests from its employees, the SSS is seeking an extension of this currently approved collection.

Respondents: SSS employees and their personal medical providers.

Frequency: Completion is a one-time occurrence.

Burden: A burden of 30 minutes or less on the individual respondent.

SUPPLEMENTARY INFORMATION: Copies of the above identified form can be obtained upon written request to the Selective Service System, IT Directorate, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance without change of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Mr. Daniel Mira, Senior Agency Official for Privacy, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of DC 20503.

Daniel Mira,

Deputy Chief Information Officer, Senior Agency Official for Privacy.

[FR Doc. 2022–10349 Filed 5–12–22; 8:45 am]

BILLING CODE 8015–01–P

SMALL BUSINESS ADMINISTRATION

[Docket No.: SBA–2020–0048]

Termination of Nonmanufacturer Rule Class Waiver

AGENCY: Small Business Administration.

ACTION: Notification of termination of the class waiver to the Nonmanufacturer Rule for radiology equipment.

SUMMARY: The U.S. Small Business Administration (SBA) is terminating a class waiver of the Nonmanufacturer Rule (NMR) for irradiation apparatus manufacturing, computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; fluoroscopes manufacturing; fluoroscopic X-ray apparatus and tubes manufacturing; generators, X-ray, manufacturing; irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing under manufacturing categorized under North American Industry Classification System (NAICS) code 334517 and Product Service Code (PSC) 6525. As the above-identified class waiver is terminated, small businesses will no longer be authorized to provide the product of any manufacturer regardless of size on the identified items, unless a Federal contracting officer obtains an individual waiver to the NMR.

DATES: Termination of the class waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Attorney Advisor, by telephone at 202–205–6347 or by email at *Carol-Ann.Hulme@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b), require that recipients of Federal supply contracts issued as a small business set-aside (except as stated below), service-disabled veteran-owned small business set-aside or sole source contract, Historically Underutilized Business Zone set-aside or sole source contract, women-owned small business or economically disadvantaged women-owned small business set-aside or sole source contract, 8(a) set-aside or sole source contract, partial set-aside, or set aside of an order against a multiple award contract provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). Note that the NMR does not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold but continues to apply to socioeconomic set-aside and sole source acquisitions over the micro-purchase threshold.

Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market. SBA identifies a ''class of products'' based on a combination of the six-digit NAICS code and a description of the class of products. As implemented in SBA's regulations at 13 CFR 121.1202(c), to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

In accordance with the SBA's regulations at 13 CFR 121.1204(a)(7), SBA will periodically review existing class waivers to the NMR to determine whether small business manufacturers or processors have become available to participate in the Federal market. Upon receipt of information that such a small business manufacturer or processor exists, SBA will announce its intent to terminate the NMR waiver for a class of products. 13 CFR 121.1204(a)(7)(ii). Unless public comment reveals no small business exists for the class of products in question, SBA will publish a Final Notice of Termination in the **Federal Register**.

On October 31, 2007, SBA published in the **Federal Register** a notice of intent to waive the NMR for Irradiation Apparatus Manufacturing (X-Ray Equipment and Supplies) with NAICS code 334517 and PSC 6525. The comments submitted in response failed to establish the existence of a small business manufacturer of these products. As such, on December 26, 2007, after the comment and notice period passed, SBA issued a class waiver for those products effective January 10, 2008. That notice can be found at 77 FR 73057. Effective January 5, 2022, SBA ceased using PSCs to classify products covered by class waivers.

On April 20, 2020, SBA received a request to terminate the previously issued waiver under NAICS code 334517 for Irradiation Apparatus Manufacturing. The requester provided information that established the existence of a small business manufacturer of the identified products. On February 15, 2022, SBA published notice of its intent to terminate the class waiver with the public comment period closing on March 9, 2022. That notice can be found at 87 FR 8630. However, there were no comments submitted.

Thus, SBA is terminating the class waiver for irradiation apparatus manufacturing, computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; fluoroscopes manufacturing; fluoroscopic X-ray apparatus and tubes manufacturing; generators, X-ray, manufacturing; irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing under NAICS code 334517. As the above-identified class waiver is terminated, small businesses will need to comply with the NMR where applicable, unless a Federal Contracting Officer obtains an individual waiver to the NMR.

More information on the NMR and class waivers can be found at *https://www.sba.gov/partners/contracting-officials/small-business-procurement/nonmanufacturer-rule.*

Wallace D. Sermons II,

Acting Director, Office of Government Contracting.

[FR Doc. 2022–10329 Filed 5–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 11726]

Annual Determination and Certification of Shrimp-Harvesting Nations

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs.

ACTION: Notice of annual determination and certification.

SUMMARY: On May 3rd, 2022, the Department of State determined and certified that wild-caught shrimp harvested in the following nations, particular fisheries of certain nations, and Hong Kong are eligible to enter the United States: Argentina, Australia (Northern Prawn Fishery, the Queensland East Coast Trawl Fishery, the Spencer Gulf, and the Torres Strait Prawn Fishery), the Bahamas, Belgium, Belize, Canada, Chile, Colombia, Costa Rica, Denmark, the Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, France (French Guiana), Gabon, Germany, Guatemala, Guyana, Honduras, Iceland, Ireland, Italy (giant red shrimp) Jamaica, Japan (shrimp baskets in Hokkaido), Republic of Korea (mosquito nets), Malaysia (Kelantan, Terengganu, Pahang, and Johor), Mexico, the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Panama, Peru, Russia, Spain (Mediterranean red shrimp), Sri Lanka, Suriname, Sweden, the United Kingdom, and Uruguay. For nations, economies, and fisheries not listed above, only shrimp harvested from aquaculture is eligible to enter the United States. All shrimp imports into the United States must be accompanied by the DS–2031 Shrimp Exporter's/Importer's Declaration.

DATES: This determination and certification notice is effective on May 13, 2022.

FOR FURTHER INFORMATION CONTACT: Jared Milton, Section 609 Program Manager, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, 2201 C Street NW, Washington, DC 20520–2758; telephone: (202) 647–3263; email: *DS2031@state.gov.*

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 (''Sec. 609'') prohibits imports of wild-caught shrimp or products from shrimp harvested with commercial fishing technology unless the President certifies to the Congress by May 1, 1991, and annually thereafter, that either: (1) The harvesting nation has adopted a regulatory program governing the incidental taking of relevant species of sea turtles in the course of commercial shrimp harvesting that is comparable to that of the United States and that the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or (2) the particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of sea turtles in the course of shrimp harvesting. The President has delegated the authority to make this certification to the Secretary of State (''Secretary'') who further delegated the authority within the Department of State (''Department''). The Revised Guidelines for the Implementation of Sec. 609 were published in the **Federal Register** on July 8, 1999, at 64 FR 36946.

On May 3rd, 2022, the Department certified the following nations pursuant to section 609(b)(2)(A) and (B) on the basis that they have adopted a regulatory program governing the incidental taking of relevant species of sea turtles in the course of commercial shrimp harvesting that is comparable to that of the United States and that the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of such sea turtles by United States vessels in the course of such harvesting: Colombia, Ecuador, El Salvador, Gabon, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Nigeria, Panama, and Suriname. The Department also certified pursuant to section 609(b)(2)(C) several shrimp-harvesting nations and one economy as having fishing environments that do not pose a threat to sea turtles, including the following nations with shrimping grounds only in cold waters where the risk of taking sea turtles is negligible: Argentina, Belgium, Canada, Chile, Denmark, Estonia (effective for Estonia with Date of Export June 1st and after), Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Additionally, the Department certified pursuant to section 609(b)(2)(C) that the following nations and Hong Kong only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets or catch shrimp using other methods that do not pose a threat of incidental taking of sea turtles: The Bahamas, Belize, Costa Rica, the Dominican Republic, Fiji, Jamaica, Oman, Peru, and Sri Lanka.

The Department has certified the above listed nations and Hong Kong pursuant to Sec. 609, and shrimp and products from shrimp are eligible for importation into the United States utilizing the Shrimp Exporter's/Importer's Declaration (''DS–2031'') Box 7(B) provision for shrimp ''harvested in the waters of a nation currently certified pursuant to Section 609 of P.L. 101–162.''

Shrimp and products of shrimp harvested with turtle excluder devices (''TEDs'') in an uncertified nation may, under specific circumstances, be eligible for importation into the United States under the DS–2031 Box 7(A)(2) provision for shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States. Use of this provision requires that the Secretary or his or her delegate determine in advance that the government of the harvesting nation has put in place adequate procedures to monitor the use of TEDs in the specific fishery in question and to ensure the accurate completion of the DS–2031 forms. At this time, the Department has determined that only shrimp and products from shrimp harvested in the Northern Prawn Fishery, the Queensland East Coast Trawl Fishery, and the Torres Strait Prawn Fishery in Australia, in the French Guiana domestic trawl fishery, and in the fisheries of Kelantan, Terengganu, Pahang, and Johor in Malaysia, are eligible for entry under this provision. A responsible government official of Australia, France, or Malaysia must sign in Block 8 of the DS–2031 form accompanying these imports into the United States.

In addition, shrimp and products of shrimp harvested in a manner or under circumstances determined by the Department of State not to pose a threat of the incidental taking of sea turtles may, under specific circumstances, be eligible for importation into the United States under the DS–2031 Box 7(A)(4) provision for ''shrimp harvested in a manner or under circumstances determined by the Department of State not to pose a threat of the incidental

taking of sea turtles.'' The Department has determined that shrimp and products from shrimp harvested in the Spencer Gulf region in Australia, with shrimp baskets in Hokkaido, Japan, with ''mosquito'' nets in the Republic of Korea, Mediterranean red shrimp (*Aristeus antennatus*) and products from that shrimp harvested in the Mediterranean Sea in Spain, and giant red shrimp (*Aristaeomorpha foliacea*) and products from that shrimp harvested in Italy (effective for Italy with Dates of Export June 1st and after) may be imported into the United States under the DS–2031 Box 7(A)(4) provision. A responsible government official of Australia, Japan, the Republic of Korea, Spain, or Italy must sign in Block 8 of the DS–2031 form accompanying these imports into the United States.

A completed DS–2031 Shrimp Exporter's/Importer's Declaration (''DS–2031'') must accompany all imports of shrimp and products from shrimp into the United States. Importers of shrimp and products from shrimp harvested in certified nations and Hong Kong must either provide the DS–2031 form to Customs and Border Protection at the port of entry or provide the information required by the DS–2031 through the Automated Commercial Environment. Importers of shrimp and products from shrimp from certified nations and Hong Kong should mark the box 7(B) provision for shrimp ''harvested in the waters of a nation currently certified pursuant to Section 609 of Public Law 101–162'' regardless of whether the shrimp is wild-caught or the product of aquaculture. DS–2031 forms accompanying all imports of shrimp and products from shrimp harvested in uncertified nations and economies, to include all fisheries with determinations, must be originals with Box 7(A)(1), 7(A)(2), or 7(A)(4) checked, consistent with the form's instructions with regard to the method of harvest of the shrimp and based on any relevant prior determinations by the Department, and signed by a responsible government official of the harvesting nation. The Department did not determine that shrimp or products from shrimp harvested in a manner as described in 7(A)(3) in any uncertified nation or economy is eligible to enter the United States. The importation of wild-caught shrimp from any nation or fishery without a certification or determination will not be allowed.

The Department has communicated these certifications and determinations under Sec. 609 to the Offices of Field Operations and of Trade at U.S. Customs and Border Protection.

Jared R. Milton,

Section 609 Program Manager, Department of State.

[FR Doc. 2022–10378 Filed 5–12–22; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0580]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Quality System Audit Feedback Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about its intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information is collected from FAA production approval holders and associated facilities in the form of a feedback survey regarding the conduct of the Quality System Audit (QSA) recently conducted at their facility. The feedback is used by the FAA for continuous quality improvement of the Aircraft Certification Service's certificate management program.

DATES: Written comments should be submitted by July 12, 2022.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By Mail: Scott Geddie, Manager—Compliance Systems, AIR–634, Aircraft Certification Service, Federal Aviation Administration, 6500 S. MacArthur Blvd., ARB Building Room 304, Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Scott Geddie by email at: *Scott.Geddie@faa.gov;* phone: (405) 954–6897.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0605.

Title: Quality System Audit Feedback Report.

Form Numbers: FAA Form 8100–7.

Type of Review: Renewal of an information collection.

Background: In accordance with Executive Orders 12862 and 14058, and as part of the FAA and industry continuous improvement efforts for QSA activities, FAA utilizes a form for auditees to provide feedback to the FAA about the conduct of the QSA. FAA Order 8120.23, Certificate Management of Production Approval Holders, provides guidance on the QSA and related activities and discusses FAA Form 8100–7, QSA Customer Feedback Report. The FAA provides FAA Form 8100–7 to the facility being audited at the outset of the QSA. The FAA encourages completion of the form within 30 days of the QSA post-audit conference; however, completion of the form is not mandatory. The FAA considers any proposals for improvements to the QSA process in its pursuit for continuous improvement of the Aircraft Certification Service's certificate management of production approval holders. The form is collected electronically or via prepaid self-addressed envelope.

Respondents: Approximately 160 production approval holders and associated facilities.

Frequency: Feedback information is collected about 30 days after conclusion of the oversight activity. The feedback provided is voluntarily submitted by the audited facility on occasion which is predicated on their audit due date frequency.

Estimated Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 80 hours.

Issued in Oklahoma City, Oklahoma, on May 9, 2022.

Scott A. Geddie,

Manager, Compliance Systems, Systems Policy Branch, AIR–630, Policy and Innovation Division.

[FR Doc. 2022–10284 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0042]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt eight individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on May 6, 2022. The exemptions expire on May 6, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2022–0042, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On April 1, 2022, FMCSA published a notice announcing receipt of applications from eight individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (87 FR 19169). The public comment period ended on May 2, 2022, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received two comments in this proceeding. One of the two comments was in support of granting the exemptions. The other comment opposed granting the exemptions because the commenter believed that doing so would add danger to the highways. The Agency has evaluated each driver's application and determined that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety. Therefore, exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the commercial driver's license Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the April 1, 2022, **Federal Register** notice (87 FR 19169) and will not be repeated in this notice.

These eight applicants have been seizure-free over a range of 9 to 23 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the eight exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Michael Curtis (DE)
Denise Denton (MI)
Paul Drewer (PA)
Peter Guzman (VA)
Zachary Henson (IL)
Scott Hughes (IL)
Scott Hunter (MA)
Robert Lombardo (CA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–10273 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0043]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or June 13, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2022–0043 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2022–0043, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2022–0043), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2022-0043.* Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2022–0043, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed,

and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 11 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

James Craw

Mr. Craw is a 40-year-old class C license holder in Maine. He has a history of focal epilepsy and has been seizure free since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since 2010. His physician states that he is supportive of Mr. Craw receiving an exemption.

Jeremy Fehrman

Mr. Fehrman is a 36-year-old class D license holder in Minnesota. He has a history of focal epilepsy and has been seizure free since 2013. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Fehrman receiving an exemption.

David Funk

Mr. Funk is a 49-year-old class D license holder in Ohio. He has a history of focal epilepsy and has been seizure free since 2014. He takes anti-seizure medication with the dosage and frequency remaining the same since 2014. His physician states that he is supportive of Mr. Funk receiving an exemption.

Christopher Gilmore

Mr. Gilmore is a 32-year-old class C license holder in Texas. He has a history of seizure disorder and has been seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since 2018. His physician states that he is supportive of Mr. Gilmore receiving an exemption.

John Holland, III

Mr. Holland is a 36-year-old class A license holder in Indiana. He has a history of localization related epilepsy and has been seizure free since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since 2019. His physician states that he is supportive of Mr. Holland receiving an exemption.

[1] These criteria may be found in APPENDIX A to PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

Sean Moran

Mr. Moran is a 26-year-old regular operator's license holder in Massachusetts. He has a history of epilepsy and has been seizure free since 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since 2015. His physician states that he is supportive of Mr. Moran receiving an exemption.

John Picken

Mr. Picken is a 73-year-old class D license holder in Utah. He has a history of stroke aborted by tissue plasminogen activator and has been seizure free since 2021. He does not take anti-seizure medication. His physician states that he is supportive of Mr. Picken receiving an exemption.

Neil Southern

Mr. Southern is a 63-year-old class R license holder in Colorado. He has a history of epilepsy and has been seizure free since 2013. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Southern receiving an exemption.

Daniel Verduzco

Mr. Verduzco is a 30-year-old class C license holder in California. He has a history of a single seizure and has been seizure free since 2016. He takes anti-seizure medication with the dosage and frequency remaining the same since 2016. His physician states that he is supportive of Mr. Verduzco receiving an exemption.

Charles Vicars

Mr. Vicars is a 66-year-old class A license holder in Virginia. He has a history of epilepsy and has been seizure free since 1990. He takes anti-seizure medication with the dosage and frequency remaining the same since 2019. His physician states that he is supportive of Mr. Vicars receiving an exemption.

Karl Wilson, Jr.

Mr. Wilson is a 41-year-old class A license holder in Georgia. He has a history of seizures and has been seizure free since 2014. He takes anti-seizure medication with the dosage and frequency remaining the same since 2019. His physician states that he is supportive of Mr. Wilson receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–10350 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0108; FMCSA–2013–0442; FMCSA–2013–0443; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0116; FMCSA–2015–0119; FMCSA–2015–0320; FMCSA–2015–0321; FMCSA–2017–0181; FMCSA–2017–0253; FMCSA–2017–0254; FMCSA–2018–0050; FMCSA–2018–0051; FMCSA–2019–0030; FMCSA–2019–0034; FMCSA–2019–0036; FMCSA–2019–0206; FMCSA–2019–0211; FMCSA–2019–0212; FMCSA–2020–0045; FMCSA–2020–0046]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 32 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before June 13, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0108, Docket No. FMCSA–2013–0442, Docket No. FMCSA–2013–0443, Docket No. FMCSA–2014–0381, Docket No. FMCSA–2015–0115, Docket No. FMCSA–2015–0116, Docket No. FMCSA–2015–0119, Docket No. FMCSA–2015–0320, Docket No. FMCSA–2015–0321, Docket No. FMCSA–2017–0181, Docket No. FMCSA–2017–0253, Docket No. FMCSA–2017–0254, Docket No. FMCSA–2018–0050, Docket No. FMCSA–2018–0051, Docket No. FMCSA–2019–0030, Docket No. FMCSA–2019–0034, Docket No. FMCSA–2019–0036, Docket No. FMCSA–2019–0206, Docket No. FMCSA–2019–0211, Docket No. FMCSA–2019–0212, Docket No. FMCSA–2020–0045, or Docket No. FMCSA–2020–0046 using any of the following methods:

Federal eRulemaking Portal: Go to *www.regulations.gov/,* insert the docket number, FMCSA–2013–0108, FMCSA–2013–0442, FMCSA–2013–0443, FMCSA–2014–0381, FMCSA–2015–0115, FMCSA–2015–0116, FMCSA–2015–0119, FMCSA–2015–0320, FMCSA–2015–0321, FMCSA–2017–0181, FMCSA–2017–0253, FMCSA–2017–0254, FMCSA–2018–0050, FMCSA–2018–0051, FMCSA–2019–0030, FMCSA–2019–0034, FMCSA–2019–0036, FMCSA–2019–0206, FMCSA–2019–0211, FMCSA–2019–0212, FMCSA–2020–0045, or FMCSA–2020–0046 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2013–0108, Docket No. FMCSA–2013–0442, Docket No. FMCSA–2013–0443, Docket No. FMCSA–2014–0381, Docket No. FMCSA–2015–0115, Docket No. FMCSA–2015–0116, Docket No. FMCSA–2015–0119, Docket No. FMCSA–2015–0320, Docket No. FMCSA–2015–0321, Docket No. FMCSA–2017–0181, Docket No. FMCSA–2017–0253, Docket No. FMCSA–2017–0254, Docket No. FMCSA–2018–0050, Docket No. FMCSA–2018–0051, Docket No. FMCSA–2019–0030, Docket No. FMCSA–2019–0034, Docket No. FMCSA–2019–0036, Docket No. FMCSA–2019–0206, Docket No. FMCSA–2019–0211, Docket No. FMCSA–2019–0212, Docket No. FMCSA–2020–0045, or Docket No. FMCSA–2020–0046), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number, FMCSA–2013–0108, FMCSA–2013–0442, FMCSA–2013–0443, FMCSA–2014–0381, FMCSA–2015–0115, FMCSA–2015–0116, FMCSA–2015–0119, FMCSA–2015–0320, FMCSA–2015–0321, FMCSA–2017–0181, FMCSA–2017–0253, FMCSA–2017–0254, FMCSA–2018–0050, FMCSA–2018–0051, FMCSA–2019–0030, FMCSA–2019–0034, FMCSA–2019–0036, FMCSA–2019–0206, FMCSA–2019–0211, FMCSA–2019–0212, FMCSA–2020–0045, or FMCSA–2020–0046 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2013–0108, FMCSA–2013–0442, FMCSA–2013–0443, FMCSA–2014–0381, FMCSA–2015–0115, FMCSA–2015–0116, FMCSA–2015–0119, FMCSA–2015–0320, FMCSA–2015–0321, FMCSA–2017–0181, FMCSA–2017–0253, FMCSA–2017–0254, FMCSA–2018–0050, FMCSA–2018–0051, FMCSA–2019–0030, FMCSA–2019–0034, FMCSA–2019–0036, FMCSA–2019–0206, FMCSA–2019–0211, FMCSA–2019–0212, FMCSA–2020–0045, or FMCSA–2020–0046 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The 32 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 32 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 32 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of May and are discussed below.

As of May 15, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 29 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

William Brown (NC)
Frank Corino (NJ)
Barry Dull (OH)
Robert J. Forney (WI)
Scott William Gessner (PA)
Daniel Halstead (NV)
Aaron Harms (MO)
Matthew Heinen (MN)
Logan Hertzler (PA)
Brian Johnson (MN)
Preston R. Kanagy (TN)
Kenneth L. Lewis (NC)
Larry Lintelman (AK)
Kevin Market (OH)
Shane W. Martinek (OK)
Jeffrey Mills (NC)
Gary Olsen (MN)
Randy Pinto (PA)
Matthew Scarlata (NY)
Steven Shirley (UT)
Chad Smith (MA)
Alvin Strite (PA)
Jeffrey Totten (KS)
Paul Vitous (WA)
Thomas B. Vivirito (PA)
Mohammad S. Warrad (IA)
Richard J. Wenner (MN)
Michael R. Weymouth (NH)
Dennis R. Zayic (MN)

The drivers were included in docket number FMCSA–2013–0108, FMCSA–2013–0442, FMCSA–2014–0381, FMCSA–2015–0115, FMCSA–2015–0116, FMCSA–2015–0119, FMCSA–2015–0320, FMCSA–2015–0321, FMCSA–2017–0181, FMCSA–2017–0253, FMCSA–2017–0254, FMCSA–2018–0050, FMCSA–2019–0030, FMCSA–2019–0034, FMCSA–2019–0036, FMCSA–2019–0206, FMCSA–2019–0211, FMCSA–2019–0212, FMCSA–2020–0045, or FMCSA–2020–0046. Their exemptions are applicable as of May 15, 2022 and will expire on May 15, 2024.

As of May 19, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Ronald Hartl (WI) and Michael Miller (WI).

The drivers were included in docket number FMCSA–2013–0443. Their exemptions are applicable as of May 19, 2022 and will expire on May 19, 2024.

As of May 30, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Nathan Kanouff (GA) has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers.

This driver was included in docket number FMCSA–2018–0051. The exemption is applicable as of May 30, 2022 and will expire on May 30, 2024.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the 32 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–10277 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0031]

Establishment of the Corridor Identification and Development Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of establishment; request for expressions of interest.

SUMMARY: On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL), which requires the Secretary of Transportation (Secretary) to establish a Corridor Identification and Development program to facilitate the development of intercity passenger rail corridors within 180 days of enactment. In compliance with this directive, by this Notice, FRA is establishing the Corridor Identification and Development program.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for further information regarding submitting expressions of interest to docket number FRA–2022–0031.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Peter Schwartz, Chief, Project Engineering and Transportation Planning Division, by email: *PaxRailDev@dot.gov* or by telephone: 202–493–6360.

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Executive Summary

The BIL requires the Secretary to establish a program—referred to here as the Corridor Identification and Development Program or Corridor ID Program—to facilitate the development of intercity passenger rail corridors, within 180 days of enactment. 49 U.S.C. 25101(a). The Federal Railroad Administrator is delegated the authority to establish and administer the Corridor ID Program. 49 CFR 1.89(a).

The Corridor ID Program establishes a comprehensive intercity passenger rail planning framework that will help guide future federal project development work and capital investments. FRA encourages eligible entities to submit expressions of interest in the Corridor ID Program consistent with the directions below. In addition, as described below, FRA plans to publish a notice soliciting proposals by eligible entities to participate in the Corridor ID Program in the last quarter of this calendar year.

II. Federal Role in Intercity Passenger Rail Service Development

The establishment of the Corridor ID Program represents a major milestone in the over five decades of Federal work on intercity passenger rail development. Beginning with the enactment of the High-Speed Ground Transportation Act of 1965, FRA worked to deploy modern high-speed ground transportation technologies and introduced a multi-modal, long-term planning effort for the Northeast Corridor (NEC). With the creation of Amtrak in 1970, and the subsequent major engineering and construction effort of the Northeast Corridor Improvement Project, FRA helped to demonstrate the ability of intercity passenger rail to compete successfully in the passenger transportation market of one of the country's most heavily traveled corridors.

In the 1980s, FRA, in conjunction with Amtrak, issued a series of reports on ''Emerging Corridors,'' which explored the potential for the development of intercity passenger rail corridors throughout the United States. At the same time, States began to demonstrate increased interest and involvement in intercity passenger rail development, with many undertaking independent investigations into the development of new corridors. State interest in intercity passenger rail development has continued to grow, with many States now considering passenger rail an integral part of their State transportation policy, and providing significant funding to the operation, improvement, and expansion of such services.

With the enactment of the Intermodal Surface Transportation Efficiency Act of 1991, Congress called upon FRA to designate five high-speed rail corridors for the purpose of directing funding for the elimination of railroad-highway grade crossings (from 1998 through 2011 FRA made additional corridor designations and extensions). FRA also completed a ''commercial feasibility study'' of high-speed ground transportation systems, resulting in the 1997 report *High-Speed Ground Transportation for America,* which examined the potential of a variety of high-speed ground transportation technologies across eight illustrative corridors.

Then, in the Passenger Rail Investment and Improvement Act of 2008, Congress expanded the role of States in intercity passenger rail development and implementation, and created several new grant programs to fund capital improvements to existing and new intercity passenger rail services. Under these new programs, FRA administered significant investments in passenger rail development and implementation. These efforts included funding for service development plans, preliminary engineering and environmental review work activities, and engagement with State rail plans, as well as the development of regional rail plans. Additional railroad capital improvement programs were established by the Fixing America's Surface Transportation Act of 2015, and significant funding has been appropriated for those programs in every year since. Most recently, the enactment of the BIL has provided a historic, unprecedented level of funding for the improvement and expansion of intercity passenger rail service. Importantly, the BIL requires the establishment of the Corridor ID Program—a formal framework to guide the future development of intercity passenger rail throughout the country. Unlike previous Federal intercity passenger rail planning efforts, the Corridor ID Program is intended both to support a sustained long-term development effort, and to set forth a capital project pipeline ready for Federal (and other) funding.

III. Statutory Overview

A. In General

The BIL requires the Secretary, within 180 days of enactment, to establish the Corridor ID Program to facilitate the development of intercity passenger rail corridors. 49 U.S.C. 25101(a).

The BIL further provides that the Corridor ID Program shall include: (1) A process for eligible entities to submit proposals for the development of corridors; (2) a process for the review and selection of such proposals; (3) criteria for determining level of readiness for Federal financial assistance of a corridor (to include identification of the service operator, service sponsor, and capital project sponsors; engagement with host railroads; and other criteria determined appropriate by the Secretary); (4) a process for preparing service development plans; (5) the creation of a pipeline of intercity passenger rail corridor projects; (6) planning guidance; and (7) such other features as the Secretary considers relevant to the successful development of intercity passenger rail corridors. 49 U.S.C. 25101(a)(1)–(7).

B. Eligible Entities

The following entities are eligible to submit proposals to participate in the Corridor ID Program: (1) Amtrak; (2) States; (3) groups of States; (4) entities implementing interstate compacts; (5) regional passenger rail authorities; (6) regional planning organizations; (7) political subdivisions of a State; (8) federally-recognized Indian Tribes; and (9) other public entities, as determined by the Secretary. 49 U.S.C. 25101(b).

C. Eligible Routes

The following types of routes are eligible to participate in the Corridor ID Program: (1) A new intercity passenger rail route of less than 750 miles; (2) the enhancement of an existing intercity passenger rail route of less than 750 miles; (3) the restoration of service over all or portions of an intercity passenger rail route formerly operated by Amtrak; and (4) the increase of service frequency of a long-distance intercity passenger rail route. 49 U.S.C. 25101(h).

D. Selection Criteria

In selecting intercity passenger rail corridors for participation in the Corridor ID Program, the Secretary must consider 14 criteria, as follows:

(1) Whether the route was identified as part of a regional or interregional planning study;

(2) The projected ridership, revenues, capital investment, and operating funding requirements;

(3) The anticipated environmental, congestion mitigation, and other public benefits;

(4) The projected trip times and their competitiveness with other transportation modes;

(5) The anticipated positive economic and employment impacts;

(6) The committed or anticipated non-Federal funding for operating and capital costs;

(7) The benefits to rural communities;

(8) Whether the corridor is included in a State's approved State rail plan;

(9) Whether the corridor serves historically unserved or underserved and low-income communities or areas of persistent poverty;

(10) Whether the corridor would benefit or improve connectivity with existing or planned transportation services of other modes;

(11) Whether the corridor connects at least 2 of the 100 most populated metropolitan areas;

(12) Whether the corridor would enhance the regional equity and geographic diversity of intercity passenger rail service;

(13) Whether the corridor is or would be integrated into the national rail passenger transportation system and would create benefits for other passenger rail routes and services; and

(14) Whether a passenger rail operator has expressed support for the corridor.

E. Service Development Plans

For each proposal selected for development under the Corridor ID Program, the Secretary shall partner with the proposing entity, relevant States, and Amtrak, as appropriate, to prepare a service development plan (or to update an existing service development plan). 49 U.S.C. 25101(d).

These service development plans include the following information: (1) A detailed description of the proposed intercity passenger rail service, including train frequencies, peak and average operating speeds, and trip times; (2) a corridor project inventory that identifies the capital projects necessary to achieve the proposed service and the order in which Federal funding will be sought; (3) a schedule and associated phasing of projects and related service initiation or changes; (4) project sponsors and other entities expected to participate in carrying out the plan; (5) a description of how the corridor would comply with Federal rail safety and security laws; (6) the locations of existing and proposed stations; (7) the needs for rolling stock and other equipment; (8) a financial plan; (9) a description of how the corridor would contribute to the development of a multi-State regional network of intercity passenger rail; (10) an intermodal plan describing how the new or improved corridor facilitates travel connections with other passenger transportation services; (11) a description of the anticipated environmental benefits of the corridor; and (12) a description of the corridor's impacts on highway and aviation congestion, energy consumption, land use, and economic development in the service area. 49 U.S.C. 25101(d)(1)–(12).

In partnering on the preparation of a service development plan, the Secretary must consult with: Amtrak; State and regional transportation authorities and local officials; representatives of employee labor organizations; host railroads; and other stakeholders as determined by the Secretary. 49 U.S.C. 25101(e).

In addition, every five years after the initial development of a service development plan, if at least 40% of the work to implement the plan has not been completed, then the plan's sponsor, in consultation with the Secretary, shall determine whether the plan should be updated. 49 U.S.C. 25101(f).

F. Project Pipeline

Within 1 year of establishing the program, and by February 1st of each year thereafter, the Secretary must submit a ''project pipeline'' report to Congress. 49 U.S.C. 25101(g). The project pipeline report: (1) Identifies intercity passenger rail corridors selected for development; (2) identifies capital projects for Federal investment, project applicants, and proposed Federal funding levels, as applicable; (3) specifies the order in which the Secretary would provide Federal financial assistance to projects that have been identified; (4) takes into consideration the appropriate sequence and phasing of projects; (5) takes into consideration the existing commitments and anticipated Federal, project applicant, sponsor, and other relevant funding levels for the next 5 fiscal years; (6) is prioritized based on the level of readiness of the corridor; and (7) reflects consultation with Amtrak. 49 U.S.C. 25101(g)(1)–(7).

G. Funding

FRA is authorized to use up to 5 percent of the funding made available for the Federal-State Partnership for Intercity Passenger Rail grants (Fed-State Partnership) program to carry out planning and development activities, including eligible activities related to the Corridor ID Program. 49 U.S.C. 24911(k). Such activities include: (1) Providing funding to public entities for the development of SDPs selected under the Corridor ID Program; (2) facilitating and providing guidance for intercity passenger rail systems planning; and (3) providing funding for the development and refinement of intercity passenger rail systems planning analytical tools and models. 49 U.S.C. 24911(k).

In addition, under the Fed-State Partnership program, when selecting projects for funding that are not located on the NEC, the Secretary must give preference to eligible projects that are identified in, and consistent with, a corridor inventory prepared under the Corridor ID Program. 49 U.S.C. 24911(d)(2)(A)(i). Similarly, under the Restoration and Enhancements Grants program, the Secretary must give priority to applications for routes selected under the Corridor ID Program and operated by Amtrak. 49 U.S.C. 22908(d)(10).

IV. Outreach

FRA has conducted, and intends to continue, extensive outreach to ensure the Corridor ID Program is positioned to successfully facilitate the development of intercity passenger rail corridors.

A. Request for Information

FRA published a Request for Information (RFI) in the **Federal Register** on February 7, 2022 seeking comments on the Corridor ID Program and how it can best serve stakeholders and the public in facilitating the development of intercity passenger rail corridors. FRA–2022–0006–0001. The RFI included a number of specific questions regarding the Corridor ID Program, including: Roles and responsibilities within the Corridor ID Program; service development plans; the project pipeline; the funding of program activities; readiness of proposals for selection into the Corridor ID Program; criteria for the selection of proposals; and the selectivity of the Corridor ID Program.

In response, FRA received over 400, many quite detailed, comments in connection with the RFI. These comments are invaluable to FRA and inform FRA's approach to the Corridor ID Program.

B. Listening Sessions

FRA conducted three listening sessions in connection with the Corridor ID Program. On February 16, 2022, FRA held a virtual listening session with entities who are eligible to submit proposals under the Corridor ID

Program. On February 17, 2022, FRA held a virtual listening session with host railroads. Also, on February 17, 2022, FRA held a virtual listening session with associations, advocacy groups, contractors, and other stakeholders interested in the Corridor ID Program. A total of 469 individuals registered to attend these three listening sessions.

At each of these listening sessions, FRA presented an overview of the statutory framework of the Corridor ID Program, and invited comments and statements on the Corridor ID Program and the focused topics presented in the RFI.

The listening sessions successfully generated many comments on the Program. While the comments were not uniform, represented a variety of perspectives, and addressed many aspects of the Corridor ID Program from its broad framework to its details, several themes emerged. These themes included the following, that the Corridor ID Program should: (1) Expand on the geographic scope of previous corridor development efforts in order to serve communities and regions that are not currently well-served by passenger rail service; (2) in addition to laying the foundation for a longer-term planning framework, also strive to deliver ''quick wins;'' (3) include multi-State and multi-project corridors; (4) be clear on the length of eligible corridors; (5) place relatively less emphasis on the selection criteria regarding non-Federal funding for operating costs; (6) be clear on how the Corridor ID Program relates to other FRA programs and requirements; (7) be clear on whether the corridor must be in a State rail plan; (8) provide multi-year funding; (9) provide ''tracks'' with different evaluation criteria to accommodate corridor proposals at different levels of readiness; (10) be clear on how a project that is not initially selected can join the Corridor ID Program at a later date; and (11) provide a clear timeline for application and selection.

V. Corridor ID Program Implementation

A. In General

FRA intends for the Corridor ID Program, as it grows and matures, to become the primary means for directing Federal financial support and technical assistance toward the development of proposals for new or improved intercity passenger rail services throughout the United States. Development activities under the Corridor ID Program will include the preparation of Service Development Plans, the identification of capital projects necessary to support a corridor, and the advancement of such projects, as appropriate, through preliminary engineering (PE) and the National Environmental Policy Act (NEPA) process, for the ultimate purpose of advancing the corridor for subsequent and immediate implementation (comprising final design and construction activities). Importantly, the selection of a corridor into the Corridor ID Program will represent a decision by FRA to provide financial assistance for the completion of these pre-implementation corridor development activities, subject to the successful completion of program requirements and the availability of funding. That said, FRA also intends to provide guidance, outreach, and technical assistance to entities that submit proposals that are not selected for the Corridor ID Program, in order to assist in the refinement of such proposals for future consideration.

While the Corridor ID Program itself will only encompass the pre-construction development of selected corridors—which may include planning, environmental review, preliminary engineering, and other corridor development activities—selection of corridors into the Corridor ID Program by FRA will reflect the agency's interest in the advancement of these corridors to implementation and operation. As such, an important consideration in selecting corridors will be the demonstration of a commitment on the part of the entity submitting the proposal, and the corridor's proposed capital project and service sponsors, to the future implementation and operation of the corridor (*e.g.,* documented support for the proposal from relevant legislative and executive government bodies, an established history of support for intercity passenger rail operations and capital investments, etc.). While this commitment may be preliminary when submitting a proposal, FRA expects that the commitment will grow and solidify as the corridor advances through development under the Corridor ID Program.

As detailed below under ''Next Steps,'' in the last quarter of calendar year 2022, FRA plans to issue a notice soliciting proposals from eligible entities to participate in the Corridor ID Program. That solicitation will provide detailed information on the Corridor ID Program's application requirements, in addition to other relevant information. FRA will consider proposals both for entirely undeveloped concepts for new or improved corridors, and for concepts that have been the subject of past or ongoing development efforts. For the latter, selection into the Corridor ID Program will provide the opportunity to complete or update the prior corridor development efforts, and to include capital projects necessary to implement those corridors in the Corridor ID Program project pipeline.

In keeping with the long-range orientation of the Corridor ID Program, FRA anticipates issuing subsequent solicitations for proposals at regular intervals to allow new corridors, when ready, to enter the Corridor ID Program. Such an approach will allow for a consistent flow of new corridors entering the Corridor ID Program for development, and fully-developed corridors (or implementation phases of corridors) exiting the Corridor ID Program with capital projects ready for construction and funding opportunities. Furthermore, in advance of the first solicitation of proposals FRA is encouraging eligible entities interested in submitting a corridor proposal to submit a comment in response to this Notice expressing such interest (see section VI. Expressions of Interest below). FRA intends to use these Expressions of Interest to assist in developing the initial solicitation of proposals, and to facilitate potential outreach, prior to the issuance of the initial solicitation, to entities that express an interest in submitting a proposal.

B. Proposals

The details of the required content for proposals to the Corridor ID Program will be set forth in FRA's forthcoming notice soliciting proposals. In general, FRA will seek: (1) Information regarding the basic characteristics of the corridor; (2) information necessary to assess the readiness of the corridor to enter into development under the Corridor ID Program; and (3) information necessary to assess a proposal against the Corridor ID Program's statutory selection criteria (see section III.D. Selection Criteria above).

In terms of the basic characteristics of a proposed corridor, a proposal will need to identify the key geographic travel markets (''corridor-defining markets'') which must be served for the corridor to fulfill its intended objectives. The proposal should also include high-level initial estimates, preferably expressed as ranges or options, of certain characteristics for the corridor, including: (1) Potential service frequencies and travel times between the corridor-defining markets; and (2) the potential geographic routes for the proposed corridor, particularly if the subject corridor is intended to operate over existing rail lines.

In general, proposals should not include information at a level of detail or specificity that overlaps with that of an SDP, as such information will be prepared in partnership with FRA as part of the subsequent development of the corridor under the Corridor ID Program. 49 U.S.C. 25101(d). However, for proposals that relate to corridors that have been the subject of prior development efforts (such as the preparation of an SDP) undertaken with FRA's direct participation, such proposals may reference the findings, recommendations, and conclusions of that earlier development work.

In regards to the readiness of the corridor for development under the Corridor ID Program, a proposal should demonstrate the existing level of commitment of the entity submitting the proposal, and the corridor's proposed capital project and service sponsors, to the future implementation and operation of the corridor, including the degree of coordination and agreement among these parties. FRA does not plan to require that a proposal demonstrate a commitment by host railroads over which the corridor would operate, as coordination and consultation with host railroads will be conducted as part of the preparation of an SDP under the Corridor ID Program. 49 U.S.C. 25101(e)(4). Furthermore, due to the significance that the operation of a service by Amtrak would have on the corridor development process (including the use and improvement of facilities of host railroads, ongoing operating and maintenance costs, and requirements regarding the provision of operating financial support by service sponsors), FRA also plans to request that proposals explicitly state whether or not the corridor is intended to be operated by Amtrak.

FRA also plans to request that proposals include information regarding: The legal, technical, and financial capability and capacity of the eligible entity and relevant partners to engage in the development of the corridor, as well as their ability to develop further such capabilities and capacities to support the future implementation and operation of the corridor; and the ability to provide the necessary future non-Federal share of funding for capital projects and ongoing operating financial support for the corridor. The ability to secure such future funding may be demonstrated by the corridor sponsor's past or current funding of intercity passenger rail capital improvements and operations. In addition, FRA plans to request that an entity submitting a corridor proposal demonstrate that funding has been secured for the non-Federal share of costs associated with the first stage of development of the proposal under the program (*i.e.,* the preparation, or updating, of an SDP, and the definition and identification of a preliminary range of reasonable alternatives for the immediate implementation phase or phases of the corridor—see ''Development Stages'' below).

Lastly, FRA recognizes that corridor proposals will vary widely in their complexity, risks, and requirements. As such, the required level of detail for a corridor proposal will vary based on the characteristics of the corridor. For example, the required content for proposals for more complex corridors (*e.g.,* proposing the construction of new rail lines, involving significant improvement to host railroad facilities, requiring significant increases in ongoing operating financial support by the service sponsor, etc.) will be more comprehensive than those for less complex corridors (*e.g.,* proposing incremental improvements to an existing corridor with few or no improvements to host railroad facilities, and little to no increased requirement for ongoing operating financial support by the service sponsor).

C. Selection

FRA will select corridors for participation in the Corridor ID Program based on an assessment of the readiness of the corridor to commence development under the Corridor ID Program (including the demonstrated level of commitment to the development, implementation, and operation of the corridor), and through the application of the statutory selection criteria. As noted above, the selection of a corridor will represent a key decision by FRA to provide financial assistance for pre-implementation activities supporting the development of the corridor under the Corridor ID Program (subject to the successful completion of program requirements and the availability of funding). FRA also intends to provide guidance to entities that submit proposals that are not selected in order to assist in the refinement of such proposals for future consideration.

While FRA intends the Corridor ID Program to support the development of many, varied intercity passenger rail corridors, FRA may limit its selection of corridors, particularly during the start of the program, based on several considerations. Such considerations may include the availability of Federal funding to implement corridors developed under the Corridor ID Program, the capacity of the intercity passenger rail industry as a whole to support the corridor development efforts, and a strategy to grow the Corridor ID Program at a sustainable rate.

D. Development Stages

As discussed, for selected corridors, FRA will partner with the entity that submitted the proposal, relevant States, and Amtrak, as appropriate, to complete the corridor development activities necessary to prepare the proposed corridor (or the independent implementation phases of a proposed corridor) for implementation. This corridor development work will be undertaken in two stages.

The first stage is the preparation of an SDP (or an update to an existing SDP), and the completion of the additional planning and engineering work required to fully define a preliminary range of reasonable alternatives for the capital projects identified as necessary to implement the corridor (or the initial implementation phase or phases of the corridor).

Following the successful completion of this first stage, the corridor (or the initial implementation phase or phases of the corridor) will advance to the second stage of development under the Corridor ID Program. The second stage is the completion of all additional corridor development work required to ready the corridor (or the initial phase or phases of implementing the corridor) for implementation. Such work will include the completion of PE and NEPA activities for the corridor, and other prerequisites to implement the service.

E. Service Development Plans

Under the Corridor ID Program, SDPs will represent the first major product of the corridor development process and will address all those topics described in section III.E. above. Furthermore, SDPs may be prepared under the Corridor ID Program as long-range corridor planning documents, with the option for the implementation of such a long-range plan to be pursued in multiple consecutive phases. In particular, SDPs may reflect two or more discrete implementation phases, with each phase associated with a specific geographic scope and set of service characteristics. Likewise, the corridor project inventory that is a major element of an SDP would be categorized by those projects required to implement each discrete phase. With this approach, FRA intends both to avoid a situation in which a corridor may be developed only as an ''all-or-nothing'' proposition, and to minimize the possibility that near-term implementation of a corridor

would conflict with the longer-term implementation of the corridor.

F. Project Pipeline

FRA will annually submit to Congress a project pipeline that addresses the topics described in section III.F. above, including the identification of capital projects necessary to implement corridors developed under the Corridor ID Program. These capital projects will consist of those ready for immediate implementation (*i.e.,* to advance towards the completion of final design and construction).

FRA recognizes that not all capital projects included within the corridor project inventory of an SDP—and particularly those projects associated with a corridor's later implementation phases—will be immediately advanced within the Corridor ID Program to prepare them for implementation. As such, FRA also plans to include in its annual report to Congress a separate list of those projects that are under active development (*i.e.,* projects conducting PE and NEPA work activities) for future advancement into the project pipeline.

G. Funding

As described above, funding for the Corridor ID Program is available. FRA will provide this funding through cooperative agreements with eligible entities, and will require not less than a 20 percent non-Federal share of eligible costs, consistent with the requirements of the Fed-State Partnership program.

FRA will provide such funding consistent with the two stages of project development for selected corridors described above. First, FRA will provide funding for the preparation of an SDP (or to update an existing SDP) and the completion of the additional planning and engineering work required to fully-define a preliminary range of reasonable alternatives for the capital projects identified as necessary to implement the corridor. Second, following the successful completion of the first stage, FRA will provide funding for applicable PE and NEPA work activities for the corridor, to ready them for implementation.

VI. Expressions of Interest

FRA encourages eligible entities interested in submitting a corridor proposal under the Corridor ID Program to submit a comment in docket number FRA–2022–0031 available at *https://www.regulations.gov.* Search by using the docket number and follow the instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this Notice, and should be limited to the following information: Name and contact information, a description of the entity submitting the expression of interest, and the endpoints of the corridor.

Note: All comments received, including any personal information, will be posted without change to the docket and will be accessible to the public at *https://www.regulations.gov.* You should not include information in your comment that you do not want to be made public. Input submitted online via *www.regulations.gov* is not immediately posted to the site. It may take several business days before your submission is posted.

VII. Next Steps

FRA anticipates publishing a notice requesting proposals to participate in the Corridor ID Program in the last quarter of the 2022 calendar year. That notice may include funding opportunities and will provide detailed procedural and substantive Corridor ID Program information.

In addition, in connection with the administration of the Corridor ID Program, FRA plans to provide guidance for intercity passenger rail planning, including guidance for intercity passenger rail corridors not selected by the Corridor ID Program, and to develop and refine intercity passenger rail planning analytical tools and models. Lastly, as the Corridor ID Program matures, FRA will likely develop additional guidance in support of the program.

Issued in Washington, DC.

Paul Nissenbaum,

Asociate Administrator, Office of Railroad Policy and Development.

[FR Doc. 2022–10250 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Nos. NHTSA–2021–0043 and NHTSA–2021–0072; Notice 1]

BMW of North America, LLC, and Mazda North American Operations, Receipt of Petitions for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petitions.

SUMMARY: BMW of North America, LLC (BMW), a subsidiary of BMW AG, Munich, Germany, and Mazda North American Operations (Mazda) have determined that certain replacement seat belt assemblies manufactured for installation in certain BMW, Mini, Rolls-Royce, and Mazda motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies.* BMW and Mazda, collectively referred to as ''the petitioners,'' filed the appropriate noncompliance reports and subsequently petitioned NHTSA for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of the petitioners' petitions.

DATES: Send comments on or before June 13, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and

will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jack Chern, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–0661.

SUPPLEMENTARY INFORMATION:

I. Overview

BMW has determined that certain replacement seat belt assemblies manufactured by Autoliv, ZF Friedrichshafen AG (ZF), and Joyson Safety Systems (JSS) for installation in certain MY 1990–2021 BMW, MY 2001–2021 Mini, and MY 2003–2021 Rolls-Royce motor vehicles do not fully comply with the requirements of paragraph S4.1(k) of FMVSS No. 209, *Seat Belt Assemblies* (49 CFR 571.209). BMW filed a noncompliance report dated May 5, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* BMW subsequently petitioned NHTSA on May 28, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Mazda has determined that certain replacement seat belt assemblies manufactured by Ashimori Industry Co. Ltd. (Ashimori), and JSS for installation in certain Model Year (MY) 2016–2021 Mazda 2, MY 2014–2021 Mazda 3, and MY 2020–2021 Mazda CX–30 motor vehicles do not fully comply with the requirements of paragraph S4.1(k) of FMVSS No. 209, *Seat Belt Assemblies* (49 CFR 571.209). Mazda filed a noncompliance report dated August 5, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Mazda subsequently petitioned NHTSA on September 1, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of the petitioners' petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Equipment Involved

BMW submitted that an unknown number of replacement seat belt assemblies manufactured by Autoliv, ZF, and JSS and sold to BMW as replacement equipment for installation in the following BMW, Mini, and Rolls-Royce vehicles manufactured between January 1, 1990, and April 28, 2021, are potentially involved:

BMW Models

- MY 2008–2013 1 Series;
- MY 2014–2021 2 Series;
- MY 1990–2021 3 Series;
- MY 2014–2021 4 Series;
- MY 1995–2021 5 Series;
- MY 2004–2020 6 Series;
- MY 1994–2021 7 Series;
- MY 2019–2021 8 Series;
- MY 2012–2021 X1;
- MY 2018–2021 X2;
- MY 2004–2021 X3;
- MY 2015–2021 X4;
- MY 1999–2021 X5;
- MY 2008–2021 X6;
- MY 2019–2021 X7;
- MY 2014–;2021 i3;
- MY 2014–2020 i8;
- MY 1996–2002 Z3;
- MY 2003–2021 Z4; and
- MY 2000–2003 Z8

Mini Models

- MY 2001–2021 Hardtop 2 Door;
- MY 2015–2021 Hardtop 4 Door;
- MY 2001–2021 Convertible;
- MY 2008–2021 Clubman;
- MY 2011–2021 Countryman;
- MY 2013–2016 Paceman;
- MY 2012–2015 Coupe; and
- MY 2012–2015 Roadster

Rolls-Royce Models

- MY 2003–2021 Phantom;
- MY 2003–2016 Convertible;
- MY 2003–2016 Coupe;
- MY 2010–2021 Ghost;
- MY 2013–2021 Wraith;
- MY 2016–2021 Dawn; and
- MY 2019–2021 Cullinan

Mazda submitted that approximately 7,402 replacement seat belt assemblies manufactured by Ashimori, between April 6, 2014, and July 27, 2021, and JSS between January 12, 2014, and May 6, 2021, are potentially involved. The seat belt assemblies were sold to Mazda as replacement equipment for installation in certain MY 2016–2021 Mazda 2, MY 2014–2021 Mazda 3, and MY 2020–2021 Mazda CX–30 motor vehicles.

III. Noncompliance

BMW and Mazda explain that the noncompliance is that the subject seat belt assemblies sourced to their respective dealerships for use or subsequent resale to dealership customers as replacement equipment do not fully comply with all applicable requirements specified in paragraph S4.1(k) and (l) of FMVSS No. 209. Specifically, certain replacement seat belt assemblies were sold without the required accompanying instruction sheet providing information regarding installation of the assembly in a motor vehicle and regarding the proper use and maintenance for the replacement assembly.

IV. Rule Requirements

Paragraphs S4.1(k) and (l) of FMVSS No. 209 include the requirements relevant to this petition. A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. A seat belt assembly or retractor must also be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components.

V. Summary of the Petitioners' Petition

The following views and arguments presented in this section, ''V. Summary of the Petitioners' Petitions,'' are the views and arguments provided by BMW and Mazda. They have not been evaluated by the Agency and do not reflect the views of the Agency. The petitioners describe the subject noncompliance and contend that the noncompliance is inconsequential as it relates to motor vehicle safety.

In their petitions, BMW and Mazda state that the seat belt assemblies can

only be obtained through their respective dealers by using their parts ordering system which would ensure that the correct seat belt assembly is ordered. Both petitioners describe the process of ordering the part through its systems and explain that specific and detailed information needs to be provided to verify and order the correct equipment. The petitioners further explain that the seat belt assemblies can only be installed in their intended application.

Both BMW and Mazda state that the information that would be found on the required accompanying instruction sheets is ''readily available'' from other sources. BMW explains that the installation instructions are free of charge to consumers who have already purchased replacement seat belt assemblies with missing instructions. Consumers can obtain the instructions, free of charge, from BMW's local dealer. Mazda explains that its usage and maintenance as well as installation instructions are provided at no charge. For further assistance, vehicle owners and third-party, independent repair facilities can contact Mazda's Customer Experience Center at 1–800–222–5500, Option #6 for help in accessing seat belt instructions. To expedite assistance, it is recommended to have the full seventeen-digit vehicle identification number ready.

According to Mazda, the subject seat belt assemblies meet the performance requirements, as prescribed by FMVSS No. 209, therefore, ''[t]here is no impact to performance, function, or occupant safety.'' Further, Mazda states it ''is not aware of any customer or field reports'' and BMW states that it is ''unaware of any complaints'' regarding the subject noncompliance. Mazda also states that it has not received any reports requesting installation instructions, which it believes ''to be indicative of the availability'' of the information from the aforementioned sources.

The petitioners cite the following inconsequential noncompliance petitions that NHTSA has granted in the past which the petitioners claim to support the granting of their petitions for the subject noncompliance:

- FCA US LLC 84 FR 20948 (May 13, 2019);
- Mitsubishi Motors North America, Inc., 77 FR 24762 (April 25, 2012);
- Bentley Motors, Inc., 76 FR 58343 (September 20, 2011);
- Hyundai Motor Company, 74 FR 9125 (March 2, 2009);
- Ford Motor Company, 73 FR 63051 (October 22, 2008);
- Ford Motor Company, 73 FR 11462 (March 3, 2008);
- Mazda North American Operations, 73 FR 11464 (March 3, 2008); and
- Subaru of America, Inc., 65 FR 67471 (November 9, 2000).

BMW states that as this issue became known, BMW Group communicated this topic across all of its brands (BMW, MINI, Rolls-Royce) both internally to the appropriate departments, and externally to BMW Group dealer (service, parts and accessories) departments and personnel. Internally, the parts system now contains prompts to ensure that instructions are provided to a consumer when they purchase a replacement seat belt assembly. Externally, these communications include the steps that dealers must follow to ensure that installation instructions are provided to a consumer during the aftersales purchase process. BMW says that installation instructions are now provided to consumers when they purchase replacement seat belt assemblies.

Mazda explains that it has previously petitioned NHTSA for a similar noncompliance in 2008 [1] and that it ''remains compliant with processes that were revised in response to the previous petition with existing plants and suppliers.'' Mazda states that the subject noncompliances occurred because it opened a new vehicle production plant in Mexico with seatbelt assemblies being supplied by the Mexico-based suppliers Ashimori & JSS which were ''entirely new business operations and processes.''

Mazda says that it has now ''implemented process changes'' to ensure prevention of future re-occurrences, Mazda is taking the following two actions: (i) Implementing a new process within the U.S. and Territories parts distribution centers and (ii) bolstering existing processes at the engineering and supplier levels.

(i) New process in U.S. distribution centers—The new process entails setting up automated alerts to Parts Compliance and Quality Assurance groups whenever new seat belt parts are established. Upon receiving the alerts, both Parts Compliance and Quality Assurance will verify with supplier(s) that the documentation requirement from FMVSS 209 has been followed and checked. Additionally, physical parts will be placed in quarantine until confirmation checks are completed that FMVSS 209 requirements have been met. Once confirmation is completed, parts will then be released for shipment to fill customer orders. The new process accounts for future changes in business operations and/or suppliers, regardless of their global locations, since all parts coming into U.S. and Territory parts distribution centers will be captured under this new process.

(ii) Bolstering existing process—Mazda's Supplier Quality Assurance (''SQA'') has put the following measures in place:

a. Clarification of FMVSS 209 requirements in engineering drawings.

b. Assure thorough understanding of FMVSS 209 requirement details with suppliers.

c. Redevelop replacement parts packing process procedures at suppliers by (1) Addition/correction of procedure manual contents, (2) Adding identification labels to parts delivery, and (3) operating training and reinforcement of education.

d. Strengthened audit procedures with suppliers when developing new service parts, including verifying packing process with evidence.

e. Redevelopment of logistics contractor procedures to add or correct process procedures, including inspections, to confirm inclusion of installation documents in individual parts packaging.

Mazda believes these additional actions will improve internal processes and ensure compliance with FMVSS 209 to prevent future reoccurrences.

The petitioners conclude their petitions by contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that their respective petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on these petitions only applies to the subject replacement seat belt assemblies that the petitioners no longer controlled at the time they determined that the noncompliance existed. However, any decision on these petitions does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant replacement seat belt

[1] *See* Mazda North American Operations, Grant of petition for Inconsequential Noncompliance; 73 FR 11464 (March 3, 2008).

assemblies under their control after the petitioners notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–10384 Filed 5–12–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Loans in Areas Having Special Flood Hazards

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 ''Loans in Areas Having Special Flood Hazards.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by June 13, 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, 1557–0326, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0326'' 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.

Written comments and recommendations for the proposed information collection should also 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.

On March 8, 2022, the OCC published a 60-day notice for this information collection, 87 FR 13043. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice 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.'' From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0326'' or ''Loans in Areas Having Special Flood Hazards.'' 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 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. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Loans in Areas Having Special Flood Hazards.

OMB Control No.: 1557–0326.

Type of Review: Regular.

Abstract: This information collection is required to evidence compliance with the requirements of the Federal flood insurance statutes with respect to lenders and servicers and set forth in OCC regulations at 12 CFR part 22. These provisions are required by the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended.[1] The information collection requirements in part 22 are as follows:

- *12 CFR 22.3—Requirement to Purchase Flood Insurance Where Available*—Under § 22.3(c)(3), national banks and Federal savings associations have the discretion to accept a flood insurance policy issued by a private insurer that is not issued under the National Flood Insurance Program (NFIP) and does not meet the definition of private flood insurance if, among other things, the policy provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the bank or savings association has documented its conclusion regarding sufficiency of the protection in writing. Under § 22.3(c)(4)(iv), national banks and Federal savings associations may accept a private policy issued by a mutual aid society if, among other things, the coverage provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the bank or savings association has documented its conclusion regarding sufficiency of the protection in writing.
- *12 CFR 22.5—Escrow Requirements*—With certain exceptions with respect to types of loans and size of institution, national banks, Federal savings associations, and their servicers must escrow flood insurance premiums and fees for all loans secured by properties located in a special flood hazard area made, increased, extended, or renewed on or after January 1, 2016. When escrow is required, the national bank or Federal savings associations must mail or deliver to the borrower a written notice informing the borrower that the bank or savings association is

[1] 42 U.S.C. 4001–4129.

required to escrow all premiums and fees for required flood insurance.

• *12 CFR 22.6(a)—Required Use of Standard Flood Hazard Determination Form*—A national bank or Federal savings association must use the Standard Flood Hazard Determination Form developed by FEMA when determining whether a property offered as collateral is or will be located in a special flood area.

• *12 CFR 22.6(b)—Retention of Standard Flood Hazard Determination Form*—A national bank or Federal savings association must retain a copy of the completed Standard Flood Hazard Determination Form for the period of time the bank or savings association owns the loan.

• *12 CFR 22.7—Notice of Forced Placement of Flood Insurance*—If a national bank or Federal savings association, or its loan servicer, determines during the period of time the bank or savings association owns the loan that the property securing the loan is not covered by adequate flood insurance, the bank or savings association, or its loan servicer, must notify the borrower that the borrower should obtain adequate flood insurance coverage at the borrower's expense in an amount at least equal to the minimum amount required under the regulation for the remaining term of the loan. If the borrower fails to purchase insurance, the bank or savings association, or its servicer, must purchase insurance on the borrower's behalf and may charge the borrower for the premiums and fees. The insurance provider must be notified to terminate any insurance purchased by an institution or servicer within 30 days of receipt of confirmation of a borrower's existing flood insurance coverage.

• *12 CFR 22.9(a) and (b)—Notice to Borrower and Servicer*—A national bank or Federal savings association making, increasing, extending, or renewing a loan secured by property located in a special flood hazard area must provide a written notice to the borrower and loan servicer (borrower notice). The borrower notice must include a warning that the property securing the loan is located in a special flood hazard area; a description of the flood insurance purchase requirements; a statement indicating that flood insurance is available under the NFIP, where applicable; a statement that flood insurance providing the same level of coverage may be available from private insurance companies; a statement that borrowers are encouraged to compare NFIP and private flood insurance policies; and a statement whether Federal disaster relief assistance may be available in the event of a declared Federal flood disaster.

• *12 CFR 22.9(d) and (e)—Record of Borrower and Servicer Receipt of Notice and Alternate Method of Notice*—A national bank or Federal savings association must retain a record of the receipt of the borrower notices by the borrower and the loan servicer for the period of time the bank or savings association owns the loan. In lieu of providing the borrower notice, a national bank or savings association may obtain a satisfactory written assurance from a seller or lessor that, within a reasonable time before completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The bank or savings association must retain a record of the written assurance from the seller or lessor for the period of time it owns the loan.

• *12 CFR 22.10—Notices to FEMA*—A national bank or savings association making, increasing, extending, renewing, selling, or transferring a loan secured by property located in a special flood hazard area must notify the Administrator of FEMA (or the Administrator's designee) of the identity of the loan servicer (notice of servicer), and must notify the Administrator of FEMA (or the Administrator's designee) of any change in the loan servicer (notice of servicer transfer) within 60 days after the effective date of such change.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,550.

Estimated Total Annual Burden: 121,069.

Frequency of Response: On occasion.

On March 8, 2022, the OCC published a 60-day notice for this information collection, 87 FR 13043. No comments were received. Comments continue to be solicited 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, Office of the Comptroller of the Currency.

[FR Doc. 2022–10365 Filed 5–12–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of five individuals 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.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On May 9, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. ADHIGUNA, Muhammad Dandi (a.k.a. ADHIGUNA LESMANA, Dandi; a.k.a. ADHIGUNA, Dandi Muhammad), Kayseri, Turkey; DOB 30 Jul 1996; POB Gresik, East Java, Indonesia; nationality Indonesia; Gender Male; Secondary sanctions risk: Section 1(b) of Executive Order 13224, as

amended by Executive Order 13886; Passport B 0547698 (Indonesia) (individual) [SDGT] (Linked To: SUSANTI, Dwi Dahlia).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, DWI DAHLIA SUSANTI, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. RAMADHANI, Dini, Kayseri, Turkey; DOB 10 Mar 1993; nationality Indonesia; Gender Female; Secondary sanctions risk: Section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport B 4286562 (Indonesia) (individual) [SDGT] (Linked To: SUSANTI, Dwi Dahlia).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, DWI DAHLIA SUSANTI, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. HERYADI, Rudi, Bogor, West Java, Indonesia; DOB 21 Sep 1973; POB Cirebon, West Java, Indonesia; nationality Indonesia; Gender Male; Secondary sanctions risk: Section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport B 2315612 (Indonesia) issued 15 Nov 2015 (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. KARDIAN, Ari, Cempakawarna Rt, Tasikmalaya, West Java, Indonesia; DOB 16 Feb 1990; POB Tasikmalaya, West Java, Indonesia; nationality Indonesia; Gender Male; Secondary sanctions risk: Section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport A 8799177 (Indonesia) expires 28 Aug 2019 (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

5. SUSANTI, Dwi Dahlia, Idlib, Syria; Kel. Sambonjaya, Kec. Mangkubumi, Tasikmalaya, Indonesia; DOB 28 Jul 1976; nationality Indonesia; Gender Female; Secondary sanctions risk: Section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport B 3306967 (Indonesia); Identification Number 197607281998032001 (Indonesia) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: May 9, 2022.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–10306 Filed 5–12–22; 8:45 am]

BILLING CODE 4810–AL–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. Additionally, OFAC is publishing updates to the identifying information of two persons currently included on the SDN List.

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 SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On May 8, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. AKIMOV, Andrey Igorevich (a.k.a. AKIMOV, Andrei Igorevich), Russia; DOB 22 Sep 1953; POB Leningrad, Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209; Tax ID No. 772140862280 (Russia); Chairman of the Management Board of Gazprombank (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(i) and 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," 86 FR 20249 (Apr. 15, 2021) (E.O. 14024) for operating or having operated in the financial services sector of the Russian Federation economy and 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. BELOUS, Aleksei Petrovich (a.k.a. BELOUS, Alexey), Luxembourg; DOB 1969; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

3. BORISENKO, Elena Adolfovna (a.k.a. BORISENKO, Elena Adolifovna), Moscow, Russia; DOB 21 Apr 1978; POB Leningrad, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

4. DMITRIEV, Vladimir Aleksandrovich, Moscow, Russia; DOB 25 Aug 1953; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

5. GAVRILENKO, Anatolii Anatolyevich (a.k.a. GAVRILENKO, Anatoli Anatolievich; a.k.a. GAVRILENKO, Anatoliy Anatolevich; a.k.a. GAVRILENKO, Anatoly), Moscow, Russia; DOB 1972; nationality Russia; Gender Male; Tax ID No. 771902996586 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

6. GAZARYAN, Yuriy Garunovich (a.k.a. GAZARYAN, Yuri Garunovich), Moscow, Russia; DOB 23 Jul 1974; POB Baku, Azerbaijan; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

7. KAMYSHEV, Denis Valentinovich, Russia; DOB Nov 1975; nationality Russia; alt. nationality United Kingdom; alt. nationality South Africa; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

8. KAPLUNNIK, Irina Aleksandrovna, Moscow, Russia; Bulgaria; DOB 1969; nationality Russia; alt. nationality Bulgaria; Gender Female (individual) [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

9. KHACHATUROV, Tigran Garikovich, Moscow, Russia; DOB 07 Feb 1979; POB Yerevan, Armenia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

10. KOMANOV, Viktor Alekseevich, Russia; DOB 1973; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

11. MATVEEV, Aleksei Anatolievich, Russia; DOB 1963; POB Leningrad, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

12. MILLER, Alexey Borisovich (a.k.a. MILLER, Alexei Borisovich), Moscow, Russia; DOB 31 Jan 1962; POB Saint-Petersburg, Russian Federation; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209 (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian

Federation economy and 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.

13. MURANOV, Aleksander Yurievich (a.k.a. MURANOV, Aleksandr Yurievich), Moscow, Russia; DOB 14 Jul 1958; nationality Russia; alt. nationality Armenia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

14. POPOVICH, Aleksei Valerievich (a.k.a. POPOVICH, Aleksey Valeryevich), Moscow, Russia; DOB 1987; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

15. PUZYRNIKOVA, Natalya Vladislavovna, Moscow, Russia; DOB 1979; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

16. ROSSEEV, Mikhail Nikolaevich (a.k.a. ROSSEYEV, Mikhail Nikolayevich), Moscow, Russia; DOB 06 Feb 1975; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

17. RUSANOV, Igor Valerievich, Moscow, Russia; DOB Apr 1970; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

18. RYSKIN, Vladimir Markovich, Moscow, Russia; DOB 1961; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

19. SADYGOV, Famil Kamil Ogly, Moscow, Russia; DOB 03 Mar 1968; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

20. SEREDA, Mikhail Leonidovich, Moscow, Russia; DOB 09 May 1970; POB Klintsi, Bryansk Oblast, Russia; nationality Russia; Gender Male; Tax ID No. 780602487039 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

21. SHAMALOV, Yurii Nikolaevich (a.k.a. SHAMALOV, Yuri Nikolaevich; a.k.a. SHAMALOV, Yury), Moscow, Russia; DOB 10 Jun 1970; POB Leningrad, Russia; nationality Russia; Gender Male; Tax ID No. 699134712 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

22. SOBOL, Alexander Ivanovich (a.k.a. SOBOL, Aleksandr Ivanovich), Russia; DOB 22 Jul 1969; alt. DOB 1969; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

23. STEPANOV, Aleksandr Mikhailovich, Moscow, Russia; DOB 1976; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

24. TYURIN, Vyacheslav Aleksandrovich (a.k.a. TYURIN, Vachelav), Moscow, Russia; DOB 1960; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

25. VINOKUROV, Vladimir Nikolaevich, Moscow, Russia; DOB 1959; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

26. YELISEYEV, Ilya Vladimirovich (a.k.a. ELISEEV, Iliya Vladimirovich), Moscow, Russia; DOB 19 Dec 1965; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

27. ZAUERS, Dmitrii Vladimirovich (a.k.a. ZAUERS, Dmitri Vladimirovich; a.k.a. ZAUERS, Dmitry Vladimirovich), Moscow, Russia; DOB 1979; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and 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.

28. ALYMOVA, Natalya Andreevna (Cyrillic: АЛЫМОВА, Наталья Андреевна), Russia; DOB 27 Feb 1979; POB Moscow, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(C) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of Public Joint Stock Company Sberbank of Russia, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

29. BURIKO, Alexandra Yurevna (Cyrillic: БУРИКО, Александра Юрьевна), Russia; DOB 06 Jun 1977; POB Moscow, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(C) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of Public Joint Stock Company Sberbank of Russia, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

30. GOLODETS, Olga Yuryevna (Cyrillic: ГОЛОДЕЦ, Ольга Юрьевна) (a.k.a. GOLODETS, Olga Yurevna; a.k.a. GOLODETS, Olga Yurievna), Russia; DOB 01 Jun 1962; POB Moscow, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(C) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior

executive officer, or member of the board of directors of Public Joint Stock Company Sberbank of Russia, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

31. KUZNETSOV, Stanislav Konstantinovich (Cyrillic: КУЗНЕЦОВ, Станислав Константинович), Russia; DOB 25 Jul 1962; POB Leipzig, Germany; nationality Russia; Gender Male (individual) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(C) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of Public Joint Stock Company Sberbank of Russia, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

32. MALTSEV, Sergey Aleksandrovich (Cyrillic: МАЛЬЦЕВ, Сергей Александрович), Russia; DOB 28 Feb 1973; POB Solikamsk, Perm, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(C) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of Public Joint Stock Company Sberbank of Russia, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

33. POPOV, Anatoliy Leonidovich (Cyrillic: ПОПОВ, Анатолий Леонидович) (a.k.a. POPOV, Anatoly), Russia; DOB 05 Dec 1974; POB Novosibirsk, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(C) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of Public Joint Stock Company Sberbank of Russia, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

34. TSAREV, Kirill Aleksandrovich (Cyrillic: ЦАРЁВ, Кирилл Александрович), Russia; DOB 25 Sep 1978; POB St. Petersburg, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to sections 1(a)(i) and 1(a)(iii)(C) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of Public Joint Stock Company Sberbank of Russia, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

35. ZLATKIS, Bella Ilyinichna (Cyrillic: ЗЛАТКИС, Белла Ильинична) (a.k.a. ZLATKIS, Bella Ilinichna), Russia; DOB 05 Jul 1948; POB Moscow, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to sections 1(a)(i) and 1(a)(iii)(C) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of Public Joint Stock Company Sberbank of Russia, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

Entities

1. LIMITED LIABILITY COMPANY PROMTEKHNOLOGIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ПРОМТЕХНОЛОГИЯ) (a.k.a. LLC PROMTEKHNOLOGIYA (Cyrillic: ООО ПРОМТЕХНОЛОГИЯ); a.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU PROMTEKHNOLOGIYA; a.k.a. OOO PROMTEKHNOLOGIYA; a.k.a. PROMTECHNOLOGIA LLC; a.k.a. "ORSIS"; a.k.a. "PROMTECHNOLOGIES"; a.k.a. "PROMTEHNOLOGYA"), 14 Podyomnaya St., Housing 8, Moscow 109052, Russia; 19 Smirnovskaya St., Moscow, Russia; Ul. Krzhizhanovskogo, D. 29, K. 2, Antresol 1, Pomeschenie IV, Komnata 1, Moscow 117218, Russia; Tax ID No. 7708696860 (Russia); Government Gazette Number 772701001 (Russia); Registration Number 1097746084908 (Russia) [RUSSIA-EO14024].

Designated pursuant to Section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

2. AGROPROMYSHLENNY KOMPLEKS VORONEZHSKI OOO (a.k.a. APK VORONEZHSKII; a.k.a. VORONEZHSKI OOO), Ul Molodezhnaya D.1A, Kuzminskoye 601769, Russia; Organization Established Date 04 Jul 1994; Organization Type: Mixed farming; Tax ID No. 3306009951 (Russia); Registration Number 1053300906900 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or

indirectly, Joint Stock Company Moscow Industrial Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. ANNINSKII ELEVATOR OOO, Ul. Engelsa D.1, Anna 396254, Russia; Organization Established Date 06 Dec 2006; Organization Type: Post-harvest crop activities; Tax ID No. 3016051334 (Russia); Registration Number 1063016048083 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK).

   Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Moscow Industrial Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. AUDITKONSALT OOO, Ul Velozavodskaya D 6, Moscow 115280, Russia; Organization Established Date 13 Apr 2006; Organization Type: Management consultancy activities; Tax ID No. 7725567505 (Russia); Registration Number 1067746493605 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK).

   Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Moscow Industrial Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. AZOVSKAYA ZERNOVAYA KOMPANIYA OOO, Ul. Engelsa D. 14, Kabinet 4, Azov 346780, Russia; Organization Established Date 18 Apr 2016; Organization Type: Post-harvest crop activities; Tax ID No. 6140004060 (Russia); Registration Number 1166196071238 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK).

   Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Moscow Industrial Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. BELINVESTSTROI OOO, B-R Svyato-Troitskii D. 38, Office 8, Belgorod 308009, Russia; Organization Established Date 06 Mar 2008; Organization Type: Construction of buildings; Tax ID No. 9715263396; Registration Number 1083123003842 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK).

   Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Moscow Industrial Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. DVE STOLITSY OOO, Ul. Chermyanskaya D. 3, Kom. 3 Floor 1, Moscow 127081, Russia; Organization Established Date 21 Jun 2016; Tax ID No. 9715263396 (Russia); Registration Number 1167746583751 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK).

   Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Moscow Industrial Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. EKSPLUATIRUYUSHCHAYA KOMPANIYA TSENTR OOO, PR-KT A.A.Kadyrova D. 40, LIT. A, Pomeshch. 9, Groznyy 364024, Russia; Organization Established Date 11 Aug 2020; Organization Type: Real estate activities on a fee or contract basis; Tax ID No. 2014022294 (Russia); Registration Number 1202000004403 (Russia) [RUSSIA-EO14024] (Linked To: KONTRAKT OOO).

   Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Kontrakt OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

9. KONTRAKT OOO, Ul. Avtozavodskaya D. 14, Moscow 115280, Russia; Organization Established Date 07 Sep 2006; Tax ID No. 7725581394 (Russia); Registration Number 5067746473537 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK).

   Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Moscow Industrial Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

10. LADOGA OOO, Ul. Vyatskaya D. 49, Str. 15, Kom. 10A, Moscow 127015, Russia; Organization Established Date 21 Jun 2016; Organization Type: Short term accommodation activities; Tax ID No. 7743160455; Registration Number 1167746583740 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK).

    Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Moscow Industrial Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. NEKOMMERCHESKAYA ORGANIZATSIYA FOND KHIMICHESKOE RAZORUZHENIE I KONVERSIYA (a.k.a. FOUNDATION CHEMICAL DISARMAMENT & CONVERSION; a.k.a. FOUNDATION CHEMICAL

DISARMAMENT AND CONVERSION; a.k.a. NKO FOND KHIMRAZORUZHENIE), Ul. Pravdy D.21, Str.1, Moscow 125865, Russia; Organization Established Date 06 Apr 1998; Tax ID No. 7726275181 (Russia); Registration Number 1037739149491 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Moscow Industrial Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK (a.k.a. JOINT STOCK COMMERCIAL BANK MOSCOW INDUSTRIAL BANK; a.k.a. JSC MOSCOW INDUSTRIAL BANK (Cyrillic: АО МОСКОВСКИИ ИНДУСТРИАЛЬНЫИ БАНК); a.k.a. MOSCOW INDUSTRIAL BANK PJSCB; f.k.a. MOSKOVSKI INDUSTRIALNY BANK PUBLICHNOE AKTSIONERNOE OBSHCHESTVO; a.k.a. MOSKOVSKIJ INDUSTRIALNYJ BANK PJSCB; a.k.a. MOSKOVSKY INDUSTRIALNY BANK; f.k.a. PUBLIC JOINT STOCK COMPANY MOSCOW INDUSTRIAL BANK), Ordzhonikidze Street 5, Moscow 115419, Russia; SWIFT/BIC MINNRUMM; BIK (RU) 044525600; Organization Established Date 22 Nov 1990; Target Type Financial Institution; Tax ID No. 7725039953 (Russia); Government Gazette Number 09317135 (Russia); Legal Entity Number 2534006SJ05GGKETEY75 (Russia); Registration Number 1027739179160 (Russia) [RUSSIA-EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(vii) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

13. JOINT STOCK COMPANY NTV BROADCASTING COMPANY (a.k.a. AO TELEKOMPANIYA NTV), ul. Akademika Koroleva d. 12, Moscow 127427, Russia; ul. Argunovskaya d. 5, Moscow 129075, Russia; Organization Established Date 1993; Tax ID No. 7703191457 (Russia); Registration Number 1027739667218 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

14. JOINT STOCK COMPANY CHANNEL ONE RUSSIA (a.k.a. AO PERVYI KANAL (Cyrillic: АО ПЕРВЫЙ КАНАЛ); a.k.a. JOINT STOCK COMPANY CHANNEL ONE; a.k.a. JSC CHANNEL ONE), Akademika Koroleva D.12, Moscow 127427, Russia; Tax ID No. 7717039300 (Russia); Registration Number 1027700222330 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

15. TELEVISION STATION RUSSIA-1 (Cyrillic: ТЕЛЕКАНАЛ РОССИЯ-1) (a.k.a. ROSSIJA 1; a.k.a. ROSSIYA-1 (Cyrillic: РОССИЯ-1); a.k.a. RUSSIA-1), 5th Yamskogo Polya street, 19-21, building 1, Begovoy, Moscow, Russia (Cyrillic: Ямского Поля 5-я улица, 19-21, стр. 1, Беговой, Москва, Russia); Organization Established Date 13 May 1991; Target Type Government Entity [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

B. On May 8, 2022, OFAC updated the entries on the SDN List for the following persons, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authority listed below.

1. JOINT STOCK COMPANY SEVERNIY PRESS (a.k.a. AO SEVERNYI PRESS; a.k.a. JSC SEVERNY PRESS; a.k.a. SEVERNY PRESS AO), Ul. Tallinskaya . 7, Saint Petersburg 195196, Russia; Organization Established Date 24 Feb 1992; Tax ID No. 6444009038 (Russia); Registration Number 1146444000010 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN GRANIT-ELECTRON).

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    JOINT STOCK COMPANY SEVERNIY PRESS (a.k.a. AO SEVERNYI PRESS; a.k.a. JSC SEVERNY PRESS; a.k.a. SEVERNY PRESS AO), Ul. Tallinskaya D. 7, Saint Petersburg 195196, Russia; Organization Established Date 24 Feb 1992; Tax ID No. 6444009038 (Russia); Registration Number 1146444000010 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN GRANIT-ELECTRON).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Granit-Electron, a person whose property and interests are blocked pursuant to E.O. 14024.

2. AFONIN, Yuriy Vyacheslavovich (Cyrillic: АФОНИН, Юрий Вячеславович) (a.k.a. AFONIN, Yuri Vyacheslavovich; a.k.a. AFONIN, Yuri Vyacheslavovich; a.k.a. AFONIN, Yury Vyacheslavovich), Russia; DOB 22 Mar 1977; POB Tula, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

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AFONIN, Yuriy Vyacheslavovich (Cyrillic: АФОНИН, Юрий Вячеславович) (a.k.a. AFONIN, Yuri Vyacheslavovich; a.k.a. AFONIN, Yury Vyacheslavovich), Russia; DOB 22 Mar 1977; POB Tula, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of 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.

Dated: May 9, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–10320 Filed 5–12–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Office of General Counsel (OGC).

ACTION: Rescindment of a system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Veterans Affairs (VA), is giving notice of its intent to rescind the Privacy Act system of records. ''Claimant Private Relief Legislative Files–VA'' (06VA026), from its existing inventory. During a review of VA system of records notices, it was determined that this system of records notice is no longer necessary as the records in the system, which reported the introduction, documentation, and passage of private relief bills on behalf of Veterans, their beneficiaries, and their dependents, are covered under the General Counsel Legal Automation Workload System (GCLAWS)–VA (144VA026) system of records notice. This rescindment will promote the overall streamlining and management of the VA Privacy Act system of records.

DATES: Comments on this rescindment notice must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the rescindment will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Claimant Private Relief Legislative Files–VA'' (06VA026). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: For submitting general questions about the discontinued system please direct correspondence to OGC Management, Planning and Analysis, Knowledge Management at: *OGCMPAKM@va.gov* and Sharon Weiner, 810 Vermont Ave. NW, Washington, DC 20420; telephone (202) 316–7157 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, VA is rescinding the 06VA026, Claimant Private Relief Legislative Files, system of records notice because it is no longer needed as the records are covered under VA 144VA026, General Counsel Legal Automation Workload System (GCLAWS) (September 19, 2007). Private relief legislation has been used to bring relief to those who have suffered a bona fide loss but have no recourse through the existing legal system at that time. The system includes bills, Congressional reports, agency reports, testimony, and copies of remarks made in Congress in support of the bill. Most of the files contain legislation granting individuals relief in situations that currently would be handled through the statutory process for administrative error and equitable relief (described at 38 U.S.C. 503) or the submission of a claim pursuant to the Federal Tort Claims Act and there are no longer any files maintained in connection with this system.

Rescinding the, Claimant Private Relief Legislative Files–VA (06VA026) system of records notice will have no adverse impacts on individuals as any legacy information associated with 06VA026 inadvertently maintained will be located within General Counsel Legal Automation Workload System (GCLAWS)–VA (144VA026) and any newly filed private relief bills will also be maintained within (GCLAWS). This rescindment will also promote management and streamlining of VA Privacy Act systems of records.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on May 9, 2022 for publication.

Dated: May 10, 2022.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Claimant Private Relief Legislative Files–VA'' (06VA026).

HISTORY:

73 FR 74575 last published on December 8, 2008.

[FR Doc. 2022–10385 Filed 5–12–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Friday,
No. 93 May 13, 2022

Part II

Securities and Exchange Commission

17 CFR Parts 210, 229, 230, et al.
Special Purpose Acquisition Companies, Shell Companies, and Projections; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 230, 232, 239, 240, 249, and 270

[Release Nos. 33–11048; 34–94546; IC–34549; File No. S7–13–22]

RIN 3235–AM90

Special Purpose Acquisition Companies, Shell Companies, and Projections

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing rules intended to enhance investor protections in initial public offerings by special purpose acquisition companies (''SPACs'') and in subsequent business combination transactions between SPACs and private operating companies. Specifically, we are proposing specialized disclosure requirements with respect to, among other things, compensation paid to sponsors, conflicts of interest, dilution, and the fairness of these business combination transactions. The proposed new rules and amendments to certain rules and forms under the Securities Act of 1933 and the Securities Exchange Act of 1934 would address the application of disclosure, underwriter liability, and other provisions in the context of, and specifically address concerns associated with, business combination transactions involving SPACs as well as the scope of the Private Securities Litigation Reform Act of 1995. Further, we are proposing a rule that would deem any business combination transaction involving a reporting shell company, including a SPAC, to involve a sale of securities to the reporting shell company's shareholders and are proposing to amend a number of financial statement requirements applicable to transactions involving shell companies. In addition, we are proposing to update our guidance regarding the use of projections in Commission filings as well as to require additional disclosure regarding projections when used in connection with business combination transactions involving SPACs. Finally, we are proposing a new safe harbor under the Investment Company Act of 1940 that would provide that a SPAC that satisfies the conditions of the proposed rule would not be an investment company and therefore would not be subject to regulation under that Act.

DATES: Comments should be received on or before June 13, 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
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–13–22 on the subject line; 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 S7–13–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also 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 from comment submissions. You should submit only information that you wish to make available publicly.

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 our 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: Charles Kwon, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430; or with respect to proposed Rules 140a and 145a under the Securities Act, Adam Turk, Office of Chief Counsel, Division of Corporation Finance, at (202) 551–3500; with respect to proposed Rule 15–01 of Regulation S–X, Ryan Milne, Office of Chief Accountant, Division of Corporation Finance, at (202) 551–3400; with respect to the proposed amendments relating to projections disclosure and tender offer rules, Daniel Duchovny, Office of Mergers & Acquisitions, Division of Corporation Finance, at (202) 551–3440; and with respect to proposed Rule 3a–10 under the Investment Company Act, Rochelle Kauffman Plesset, Seth Davis, or Taylor Evenson, Senior Counsels; Lisa Reid Ragen, Branch Chief; or Thoreau Bartmann, Assistant Director, Chief Counsel's Office, Division of Investment Management, at (202) 551–6825; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment new 17 CFR 210.15–01 (Rule 15–01 of Regulation S–X), new 17 CFR 229.1601 through 229.1610 (subpart 1600 of Regulation S–K), new 17 CFR 230.140a (Securities Act Rule 140a), new 17 CFR 230.145a (Securities Act Rule 145a), and new 17 CFR 270.3a–10 (Investment Company Act Rule 3a–10). We are also proposing for public comment amendments to:

Commission reference	CFR citation (17 CFR)
Securities Act of 1933 (''Securities Act''): [1]	
Rule 137	230.137
Rule 138	230.138
Rule 139	230.139
Rule 163A	230.163A
Rule 164	230.164
Rule 174	230.174
Rule 405	230.405
Rule 419	230.419

[1] 15 U.S.C. 77a *et seq.*

Commission reference	CFR citation (17 CFR)
Rule 430B	230.430B
Rule 437a	230.437a
Form S–1	239.11
Form F–1	239.31
Form S–4	239.25
Form F–4	239.34
Securities Exchange Act of 1934 (''Exchange Act''): [2]	
Rule 12b–2	240.12b–2
Rule 14a–6	240.14a–6
Rule 14c–2	240.14c–2
Schedule 14A	240.14a–101
Schedule TO	240.14d–100
Form 20–F	249.220f
Form 8–K	249.308
Regulation S–K (17 CFR 229.10 through 229.1406):	
Item 10	229.10
Item 601	229.601
Regulation S–T (17 CFR 232.10 through 232.903):	
Rule 405	232.405
Regulation S–X (17 CFR 210.1–01 through 210.13–02):	
Rule 1–02	210.1–02
Rule 3–01	210.3–01
Rule 3–02	210.3–02
Rule 3–05	210.3–05
Rule 3–14	210.3–14
Rule 8–02	210.8–02
Rule 10–01	210.10–01
Rule 11–01	210.11–01

Table of Contents

[2] 15 U.S.C. 78a *et seq.*

I. Introduction

Special purpose acquisition companies first began to emerge in the 1990s as an alternative to blank check companies regulated pursuant to Rule 419 under the Securities Act.[3] In response to widespread fraud and abuse in blank check offerings, Congress passed the Securities Enforcement Remedies and Penny Stock Reform Act of 1990,[4] which required the Commission to adopt rules governing registration statements filed by blank check companies offering penny stock.[5] In response, the Commission adopted comprehensive disclosure and other requirements for blank check offerings in Rule 419.[6] Following the adoption of Rule 419, securities offerings by SPACs, which are not subject to the rule's requirements but have many similar features, began to appear, with the number of these offerings fluctuating over the years.[7] In the past two years, however, the U.S. securities markets have experienced an unprecedented surge in the number of initial public offerings by SPACs, with SPACs raising more than $83 billion in such offerings in 2020 and more than $160 billion in such offerings in 2021.[8] In 2020 and 2021, more than half of all initial public offerings were conducted by SPACs.

A SPAC is typically a shell company[9] that is organized for the purpose of merging with or acquiring one or more unidentified private operating companies (a ''de-SPAC transaction'') within a certain time frame (often two years) and that conducts a firm commitment underwritten initial public offering of $5 million or more in units consisting of redeemable shares and warrants.[10] A SPAC is organized and managed by its sponsor, which is usually compensated through an amount equal to a percentage (often 25 percent) of the SPAC's initial public offering proceeds (in the form of discounted shares and warrants) to be received upon the completion of a de-SPAC transaction.[11] Although SPACs are not subject to the requirements of Rule 419,[12] they are typically structured to operate under similar, though usually less stringent, conditions in order to attract investors and to comply with exchange listing requirements.[13]

Following its initial public offering, a SPAC generally places all or substantially all of the offering proceeds into a trust or escrow account,[14] and the SPAC's shares and warrants are typically registered under Section 12(b) of the Exchange Act and then begin trading on a national securities exchange.[15] If a SPAC does not complete a de-SPAC transaction within the time frame specified in its governing instruments, the SPAC may seek an extension of the time frame from its shareholders or may dissolve and liquidate, with the sponsor not earning the ''promote'' and the assets held in the trust or escrow account returned on a pro rata basis to its shareholders.[16]

[3] The term ''blank check company'' is defined in 17 CFR 230.419(a)(2) as a development stage company that has no specific business plan or purpose or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, and that is issuing ''penny stock,'' as defined in 17 CFR 240.3a51–1 (Exchange Act Rule 3a51–1).

[4] Public Law 101–429, 104 Stat. 931 (Oct. 15, 1990).

[5] *Id.* at sec. 508; Section 7(b) of the Securities Act.

[6] *Blank Check Offerings,* Release No. 33–6932 (Apr. 13, 1992) [57 FR 18037 (Apr. 28, 1992)]. Rule 419 requires a blank check company to meet certain disclosure and investor protection requirements in registered offerings of securities.

[7] Between 2011 and 2021, the average number of initial public offerings by SPACs registered under the Securities Act per year was 98, with the highest number of such offerings (613) in 2021 and the lowest number of such offerings (9) in 2012. In 2008, both the New York Stock Exchange and Nasdaq adopted rules to permit the listing of SPACs on these exchanges for the first time. *See, e.g.,* Release No. 34–57785 (May 6, 2008) [73 FR 27597 (May 13, 2008)] and Release No. 34–58228 (July 25, 2008) [73 FR 44794 (July 31, 2008)].

[8] By comparison, SPACs raised a total of $13.6 billion in initial public offerings in 2019 and a total of $10.8 billion in initial public offerings in 2018. As used in this release, ''initial public offering'' refers to a securities offering registered under the Securities Act by an issuer that was not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act immediately prior to the registration.

[9] The term ''shell company'' is defined in Securities Act Rule 405 and Exchange Act Rule 12b–2 as a registrant, other than an asset-backed issuer, that has: (1) No or nominal operations; and (2) either: (i) No or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.

[10] The descriptions included in this release of common features currently seen in SPACs and SPAC transaction structures are based, in part, on reviews by the Commission staff of SPAC filings with the Commission. The terms ''private operating company'' and ''target company'' are used interchangeably in this release, unless otherwise indicated. We are proposing to define the term ''target company'' for purposes of the requirements applicable to SPACs. *See infra* Section II.A.

[11] This sponsor compensation is often referred to as the sponsor's ''promote'' or ''founder shares,'' which usually amounts to around 20% of the total shares of a SPAC after its initial public offering. The underwriting fees in a SPAC's initial public offering are typically between 5% and 5.5% of the offering proceeds, of which 3.5% is also usually conditioned on the completion of the de-SPAC transaction.

[12] Issuers that raise more than $5 million in a firm commitment underwritten initial public offering are excluded from the definition of ''blank check company'' in Rule 419, and thus are not subject to the requirements of the rule, because they are not selling ''penny stock,'' as defined in Exchange Act Rule 3a51–1. The definition of ''penny stock'' in Exchange Act Section 3(a)(51) and Rule 3a51–1 encompasses any equity security except those excluded under the rule, such as an NMS stock, as defined in 17 CFR 242.600(b)(55), that meets certain criteria; securities issued by a registered investment company; and securities of an issuer that has net tangible assets in excess of $2 million, or $5 million if the issuer has been in continuous operation for less than three years, or average revenue of at least $6 million for the last three years. In 1993, the Commission issued guidance stating that issuers may aggregate the proceeds of a firm commitment underwritten initial public offering in order to exceed the $5 million net tangible assets test in Rule 3a51–1(g)(1). *See Penny Stock Definition for Purposes of Blank Check Rule,* Release No. 33–7024 (Oct. 25, 1993) [58 FR 58099 (Oct. 29, 1993)]. SPACs often have provisions in their governing instruments that prohibit them from being ''penny stock'' issuers. As used in this release, the term ''SPAC'' excludes those issuers that are subject to Rule 419. In Dec. 2020, the Commission received a rulemaking petition (''Rulemaking Petition'') requesting that the Commission adopt rule amendments to permit SPACs to conduct initial public offerings on a best-efforts basis without being subject to Rule 419. *See* Rulemaking Petition from Loeb & Loeb LLP, File No. 4–768 (Dec. 21, 2020), *available at: https://www.sec.gov/rules/petitions/2020/petn4-768.pdf.* As of the date of this release, we have not received any comment letters in response to the Rulemaking Petition.

[13] These conditions are generally market driven, and are typically set forth in their governing instruments and/or contractual arrangements, or are pursuant to the laws of the state or country of organization or the listing standards of national securities exchanges. *See, e.g.,* NYSE Listed Company Manual Section 102.06 and Nasdaq Listing Rule IM–5101–2. For example, Section 102.06 of the NYSE Listed Company Manual requires, among other things, that at least 90% of the initial public offering proceeds, together with the proceeds of any other concurrent sales of equity securities, be held in a trust account controlled by an independent custodian until the consummation of a business combination with a fair market value equal to at least 80% of the net assets held in the trust, with the time period to consummate the de-SPAC transaction not to exceed three years. In contrast, under Rule 419, a blank check company must, among other things, complete a merger or acquisition within 18 months after the effective date of its registration statement and must place the offering proceeds and the securities sold in the offering in an escrow or trust account until the completion of the merger or acquisition, which precludes trading in the blank check company's securities until after the merger or acquisition is completed.

[14] The assets in the trust or escrow account are typically invested in U.S. government securities and money market funds that invest in U.S. government securities. *See infra* Section VI.

[15] The shares and warrants usually begin trading as a unit, with a unit frequently consisting of a common share and a fraction of a warrant, and are traded separately after a certain period. The warrants often become exercisable one year after the SPAC's initial public offering or upon the completion of a de-SPAC transaction.

[16] Exchange rules require a listed SPAC to complete a de-SPAC transaction within a specified

If, on the other hand, a SPAC identifies a candidate for a business combination transaction, the shareholders of the SPAC have the opportunity to either: (1) Redeem their shares prior to the business combination and receive a pro rata amount of the initial public offering proceeds held in the trust or escrow account, or (2) remain a shareholder of the company after the business combination.[17] To offset shareholder redemptions and to fund larger de-SPAC transactions, SPACs often conduct additional private capital-raising transactions, typically in the form of private investment in public equity (PIPE) transactions.[18] De-SPAC transactions often result in the former SPAC's shareholders owning a minority interest in the post-business combination company, with the former private operating company's shareholders and PIPE investors owning a majority interest in the post-business combination company following these transactions.[19]

Shareholder approval is often required in de-SPAC transactions, and, in such cases, a SPAC provides its shareholders with a proxy statement on Schedule 14A, or an information statement on Schedule 14C if it is not soliciting proxies from its shareholders.[20] If a SPAC or the target company is registering an offering of its securities (or the securities of a new holding company) to be issued in the de-SPAC transaction, then a registration statement on Form S–4 or F–4 would be filed for the securities offering. If no registration statement or proxy or information statement is required, then the SPAC disseminates a tender offer statement (Schedule TO) for the redemption offer to its security holders with information about the target company.[21] Regardless of how the de-SPAC transaction is structured, the operations of the private company are conducted by the post-business combination company following the consummation of a de-SPAC transaction, with the shareholders of the private company now owning shares in a publicly listed company.

De-SPAC transactions can be viewed as a way for private operating companies to become public reporting companies under the Exchange Act and obtain a listing on a national securities exchange while avoiding certain of the safeguards for investors and conventions of the typical initial public offering process.[22] From the perspective of the shareholders and management of a private operating company, some of the purported advantages of combining with a SPAC compared to conducting an underwritten initial public offering could include: Greater pricing certainty in merger negotiations; a relatively shorter time frame in becoming a public company; and the perceived freedom to use projections in connection with de-SPAC transactions, with reduced liability exposure.[23] De-SPAC transactions also offer private operating companies an infusion of capital from the SPAC,[24] as well as potentially greater share liquidity for the post-business combination company based on the existing trading market for the SPAC's securities.[25]

Although the basic structure of SPACs has existed since the 1990s, the recent surge in SPAC offerings and the increasing use of de-SPAC transactions as a mechanism for private operating companies to access the U.S. public securities markets have caused some market observers to express concerns about various aspects of the SPAC structure.[26] For example, some commentators have raised concerns regarding the amount of sponsor compensation and other costs and their dilutive effects on a SPAC's shareholders.[27] A number of commentators have also pointed to the nature of the sponsor compensation (*i.e.,* dependent on the completion of a de-SPAC transaction) as a potential conflict of interest in the SPAC structure

timeframe not to exceed 36 months after its initial public offering. *See, e.g.,* NYSE Listed Company Manual Section 102.06.and Nasdaq Listing Rule IM–5101–2.

[17] According to a study of SPAC initial public offerings between 2010 and 2018, an average of 54.4% and a median of 57.1% of shares issued in an initial public offering by a SPAC during this period were redeemed prior to the completion of a de-SPAC transaction. Usha R. Rodrigues and Michael Stegemoller, *SPACs: Insider IPOs* (SSRN Working Paper, 2021). Another analysis found that, between July 1, 2021 and Dec. 1, 2021, mean and median SPAC redemption rates were 55% and 66%, respectively. Michael Klausner, Michael Ohlrogge, and Emily Ruan, *A Sober Look at SPACs,* 39 Yale J. on Regul. 228 (2022). *See infra* Section IX.C.1.a.4. for a discussion of shareholder redemptions based on analysis by the Division of Economic and Risk Analysis (DERA) of available data.

[18] The parties to a de-SPAC transaction often negotiate a minimum cash condition pursuant to which a SPAC must have a specified minimum amount of cash at the closing of the de-SPAC transaction, which could include funds in the trust or escrow account, the proceeds from PIPE transactions, and other sources. When a SPAC conducts a PIPE transaction in connection with a de-SPAC transaction, the post-business combination company generally files a Securities Act registration statement following the de-SPAC transaction to register the resale of the securities purchased in the PIPE transaction.

[19] According to one study, of the 47 SPAC mergers that occurred between Jan. 2019 and June 2020, SPAC shareholders, including the sponsor, held a median of 35% of the merged company after a de-SPAC transaction (of which the sponsor held a median of 12% of the merged company), with the remaining 65% of the merged company held by other parties including the target company's shareholders and PIPE investors. Klausner, Ohlrogge, and Ruan, *supra* note 17.

[20] 17 CFR 240.14a–2 (Exchange Act Rule 14a–2) and 17 CFR 240.14c–2 (Exchange Act Rule 14c–2).

[21] The Commission has promulgated rules under the Exchange Act setting forth filing, disclosure, and dissemination requirements in connection with tender offers. *See, e.g.,* Regulations 14D and 14E and Exchange Act Rule 13e–4. When an issuer conducts a tender offer, the issuer may be required to file and disseminate a Schedule TO pursuant to Rule 13e–4. The redemption rights in a SPAC context generally have indicia of being a tender offer, such as a limited period of time for the SPAC security holders to request redemption of their securities. The Commission staff, however, has not insisted that SPACs comply with the tender offer rules when a SPAC files a Schedule 14A or 14C in connection with the approval of a de-SPAC transaction or an extension of the timeframe to complete a de-SPAC transaction and conducts the solicitation in accordance with Regulation 14A or 14C, as the federal proxy rules mandate substantially similar disclosures and applicable procedural protections as required by the tender offer rules. However, this staff position does not apply when a SPAC does not file a Schedule 14A or 14C in connection with the de-SPAC transaction or an extension. SPACs that do not file a Schedule 14A or 14C, such as SPACs that are foreign private issuers, have generally filed and disseminated Schedules TO for the redemptions of their securities and complied with the procedural requirements of the tender offer rules. In these circumstances, the staff has taken the position that the Schedule TO should include the same financial and other information as is required in Schedule 14A or 14C for a de-SPAC transaction. *See infra* Section II.F.4 for a discussion of proposed Item 1608 of Regulation S–K and Section IV.A. for a discussion of proposed Rule 145a under the Securities Act, which would affect when a SPAC may be required to file a Form S–4 or F–4 in connection with a de-SPAC transaction.

[22] *See infra* note 119.

[23] *See, e.g.,* Klausner, Ohlrogge, and Ruan, *supra* note 17; Rodrigues and Stegemoller, *supra* note 17; Minmo Gahng, Jay R. Ritter, and Donghang Zhang, *SPACs* (SSRN Working Paper, 2021).

[24] Typically, much of this cash comes from PIPE investors around the time of the de-SPAC transaction and not from investors in the SPAC's initial public offering. *See, e.g.,* Klausner, Ohlrogge, and Ruan, *supra* note 17.

[25] However, one study found evidence of illiquidity in SPAC shares, with relatively thin trading volume particularly during the period before the announcement of a proposed de-SPAC transaction. Rodrigues and Stegemoller, *supra* note 17.

[26] For example, in May 2021, the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets of the House Financial Services Committee held a hearing on ''Going Public: SPACs, Direct Listings, Public Offerings, and the Need for Investor Protections,'' which included testimony on, among other things, misaligned incentives in the SPAC structure, disclosure issues with respect to SPACs, and the use of projections in de-SPAC transactions. A webcast of the hearing is available at: *https://financialservices.house.gov/events/eventsingle.aspx?EventID=407753.*

[27] *See* Testimony of Stephen Deane, CFA Institute, before the Investor Protection, Entrepreneurship, and Capital Markets Subcommittee of the U.S. House Committee on Financial Services, May 24, 2021 (''Deane Testimony''), *https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-wstate-deanes-20210524.pdf. See also* Amrith Ramkumar, *SPAC Insiders Can Make Millions Even When the Company They Take Public Struggles,* The Wall Street Journal, Apr. 25, 2021.

that could lead sponsors to enter into de-SPAC transactions that are unfavorable to unaffiliated shareholders of the SPACs without performing robust due diligence in connection with these transactions, when the alternative is to liquidate the SPACs and return the initial public offering proceeds to the shareholders.[28] Other commentators have criticized stock exchange listing rules under which SPAC shareholders have voted in favor of proposed de-SPAC transactions while still redeeming their shares prior to the closing of the transactions.[29] A number of studies have found that returns are relatively poor for investors in companies following a de-SPAC transaction.[30]

In addition, some commentators have expressed concerns regarding the adequacy of the disclosures provided to investors in these transactions in terms of explaining the potential benefits, risks and effects for investors, as well as the potential benefits for the sponsor and other affiliates of the SPAC.[31] One of these commentators also expressed the view that the disclosure about the private operating company provided through the de-SPAC transaction process may be less complete and less reliable than that provided by an issuer in a traditional initial public offering.[32] Other commentators have criticized the use of projections in de-SPAC transactions that, in their view, have appeared to be unreasonable, unfounded or potentially misleading, particularly where the target company is an early stage company with no or limited sales, products, and/or operations,[33] as well as the lack of a named underwriter in these transactions that would typically perform traditional gatekeeping functions, such as due diligence, and would be subject to liability under Section 11 of the Securities Act for untrue statements of material facts or omissions of material facts.[34] In response to a number of these and other issues, the Commission staff has provided guidance relating to SPACs on five occasions since December 2020.[35]

In September 2021, the Commission's Investor Advisory Committee[36] issued preliminary recommendations regarding SPACs and expressed concerns about whether sponsors and target companies have engaged in regulatory arbitrage by using de-SPAC transactions as a path to the public markets. In addition, the Investor Advisory Committee expressed concerns about potential conflicts of interest between sponsors and retail investors, and the effectiveness of the disclosures provided in these transactions.[37] Among other things, the Investor Advisory Committee recommended that the Commission ''regulate SPACs more intensely'' through an enhanced focus on and stricter enforcement of existing disclosure rules in areas such the sponsor's role in a SPAC, the process and risks in identifying and assessing target companies, PIPE financing terms, and de-SPAC transaction due diligence, as well as application of the Plain English disclosure rules.[38] The Investor Advisory Committee also recommended that the Commission prepare and publish a report analyzing the parties involved in SPAC transactions at

[28] *See, e.g.,* Klausner, Ohlrogge, and Ruan, *supra* note 17; Rodrigues and Stegemoller, *supra* note 17; Gahng, Ritter, and Zhang, *supra* note 23; letter dated Feb. 16, 2021 from Americans for Financial Reform and Consumer Federation of America to the House Financial Services Committee (''AFR Letter''); Deane Testimony; Testimony of Andrew Park, Americans for Financial Reform, before the Investor Protection, Entrepreneurship, and Capital Markets Subcommittee of the U.S. House Committee on Financial Services, May 24, 2021 (''Park Testimony''), *https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-wstate-parka-20210524.pdf.*

[29] *See* Mira Ganor, *The Case for Non-Binary, Contingent, Shareholder Action,* 23 U. Pa. J. Bus. L. 390 (2021); Rodrigues and Stegemoller, *supra* note 17. We note that exchange listing rules only explicitly require that, when a shareholder vote on a business combination is held, the public shareholders voting against a business combination have a right to redeem shares. *See, e.g.,* Nasdaq Listing Rule IM–5101–2 (stating, in part, that ''public Shareholders voting against a business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated'').

[30] *See, e.g.,* Lora Dimitrova, *Perverse Incentives of Special Purpose Acquisition Companies, the ''Poor Man's Private Equity Funds,''* Journal of Accounting and Economics (2017); Johannes Kolb and Tereza Tykvová, *Going Public via Special Purpose Acquisition Companies: Frogs Do Not Turn Into Princes, Journal of Corporate Finance* (2016); Klausner, Ohlrogge, and Ruan, *supra* note 17; Gahng, Ritter, and Zhang, *supra* note 23; Chen Lin, Fangzhou Lu, Roni Michaely, and Shihua Qin, *SPAC IPOs and Sponsor Network Centrality* (SSRN Working Paper, 2021). *See also* Testimony of Scott Kupor, Andreessen Horowitz, before the Investor Protection, Entrepreneurship, and Capital Markets Subcommittee of the U.S. House Committee on Financial Services, May 24, 2021, *https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-wstate-kupors-20210524.pdf;* Alexander Osipovich and Dave Michaels, *Investors Flock to SPACs, Where Risks Lurk and Track Records Are Poor,* The Wall Street Journal, Nov. 13, 2020.

[31] *See, e.g.,* AFR Letter; Testimony of Professor Usha R. Rodrigues, University of Georgia School of Law, before the Investor Protection, Entrepreneurship, and Capital Markets Subcommittee of the U.S. House Committee on Financial Services, May 24, 2021 (''Rodrigues Testimony''), *https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-wstate-rodriguesu-20210524.pdf.* A number of recent SEC actions have highlighted disclosures about the private operating company that are allegedly incomplete, inaccurate, and materially misleading. *See, e.g., In the Matter of Momentus, Inc., Stable Road Acquisition Corp., SRC–NI Holdings, LLC, and Brian Kabot,* Release No. 33–10955, 34–92391 (July 13, 2021); *In the Matter of Nikola Corp.,* Release No. 33–11018, 34–93838 (Dec. 21, 2021); *SEC* v. *Akazoo S.A.,* Case No. 1:20–cv–08101 (S.D.N.Y. filed Sept. 30, 2020); *SEC* v. *Hurgin, et al.,* Case No. 1:19–cv–05705 (S.D.N.Y. filed June 18, 2019).

[32] *See* AFR Letter.

[33] *See, e.g.,* Michael Dambra, Omri Even-Tov, and Kimberlyn George, *Should SPAC Forecasts be Sacked?* (SSRN Working Paper, 2022); AFR Letter; Park Testimony; Rodrigues and Stegemoller, *supra* note 17. *See also* Heather Somerville and Eliot Brown, *SPAC Startups Made Lofty Promises. They Aren't Working Out.,* The Wall Street Journal, Feb. 25, 2022.

[34] *See* AFR Letter; Deane Testimony; Rodrigues Testimony. *See also* John C. Coffee Jr., *Gatekeeper Failure and Reform: The Challenge of Fashioning Relevant Reforms,* 84 B. U. L. Rev. 301 (2004) and John C. Coffee, Jr., *Gatekeepers: The Professions and Corporate Governance* (2006).

[35] *See CF Disclosure Guidance: Topic No. 11—Special Purpose Acquisition Companies* (Division of Corporation Finance, Dec. 22, 2020); *Staff Statement on Select Issues Pertaining to Special Purpose Acquisition Companies* (Division of Corporation Finance, Mar. 31, 2021); *Public Statement on Financial Reporting and Auditing Considerations of Companies Merging with SPACs* (Office of Chief Accountant, Mar. 31, 2021); *Public Statement on SPACs, IPOs and Liability Risk under the Securities Laws* (Division of Corporation Finance, Apr. 8, 2021); and *Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies (''SPACs'')* (Division of Corporation Finance and Office of Chief Accountant, Apr. 12, 2021). This guidance and other staff statements (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

[36] The Investor Advisory Committee was established by Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), Public Law 111–203, 124 Stat. 1376 (2010), to advise and consult with the Commission on regulatory priorities, issues, and initiatives.

[37] *See* Recommendations of the Investor Advisory Committee Regarding Special Purpose Acquisition Companies (Sept. 9, 2021) (''IAC Recommendations''), *available at: https://www.sec.gov/spotlight/investor-advisory-committee-2012/20210909-spac-recommendation.pdf.* The Dodd-Frank Act authorizes the Investor Advisory Committee to submit findings and recommendations for review and consideration by the Commission. The Commission then issues a public statement assessing the finding or recommendation and disclosing the Commission's intended action, if any, in regard to the finding or recommendation. *See* Section 911(g) of the Dodd-Frank Act.

[38] 17 CFR 230.421(d) (Securities Act Rule 421(d)) requires registrants to write the prospectus cover page, prospectus summary, and risk factors sections of prospectuses using plain English principles, including the use of short sentences; definite, concrete, everyday language; active voice; tabular presentation of complex information whenever possible; no legal or business jargon; and no multiple negatives. *Plain English Disclosure,* Release No. 33–7497 (Jan. 28, 1998) [63 FR 6370 (Feb. 6, 1998)].

various stages and the compensation and incentives of these parties.

Also in September 2021, the Commission's Small Business Capital Formation Advisory Committee [39] held a panel discussion on initial public offerings, direct listings, and SPACs.[40] The panelists expressed their views on a range of topics related to SPACs, including the factors behind the significant growth of the SPAC market over the past two years, the potential benefits of SPACs to the public markets, the potential benefits of enhanced disclosure requirements applicable to SPACs, and perceived issues surrounding the use of projections in de-SPAC transactions. The panel discussion also addressed the costs embedded in the SPAC structure and the dilutive effects of these costs on non-redeeming shareholders, as well as the poor market-adjusted returns of companies, on average, following de-SPAC transactions.[41]

Having considered these and other perspectives on the SPAC market, we are of the view that greater transparency and more robust investor protections could assist investors in evaluating and making investment, voting, and redemption decisions with respect to these transactions. Accordingly, we are proposing new rules and rule amendments to enhance existing disclosure requirements and investor protections in initial public offerings by SPACs and in de-SPAC transactions. A number of the rules and amendments we are proposing are intended to improve the usefulness and clarity of the information provided to investors so that they can make better informed decisions as to whether to purchase securities in SPAC initial public offerings, to purchase or sell SPAC securities in secondary trading markets, and in voting, investment and redemption decisions in connection with de-SPAC transactions.

The proposed rules and amendments, if adopted, could help the SPAC market function more efficiently by improving the relevance, completeness, clarity, and comparability of the disclosures provided by SPACs at the initial public offering and de-SPAC transaction stages, and by providing important investor protections to strengthen investor confidence in this market. In developing these proposals, we have considered the recommendations and views discussed above, as well as the Commission staff's experience in reviewing disclosures in SPAC initial public offerings and de-SPAC transactions.

Specifically, we are proposing to add new Subpart 1600 of Regulation S–K that would set forth specialized disclosure requirements in connection with initial public offerings by SPACs and in connection with de-SPAC transactions. In new Subpart 1600, we are proposing to, among other things:

- Require additional disclosures about the sponsor of the SPAC, potential conflicts of interest, and dilution;
- Require additional disclosures on de-SPAC transactions, including a requirement that the SPAC state (1) whether it reasonably believes that the de-SPAC transaction and any related financing transaction are fair or unfair to investors, and (2) whether it has received any outside report, opinion, or appraisal relating to the fairness of the transaction; and
- Require certain disclosures on the prospectus cover page and in the prospectus summary of registration statements filed in connection with SPAC initial public offerings and de-SPAC transactions.

In addition, in view of the increasing number of private companies using de-SPAC transactions to become publicly-traded reporting companies, we are proposing amendments to provide procedural protections and to align the disclosures provided, as well as the legal obligations of companies, in de-SPAC transactions more closely with those in traditional initial public offerings. Specifically, we are proposing to:

- Amend the registration statement forms and schedules filed in connection with de-SPAC transactions to require additional disclosures about the private operating company;
- Require that disclosure documents in de-SPAC transactions be disseminated to investors at least 20 calendar days in advance of a shareholder meeting or the earliest date of action by consent, or the maximum period for disseminating such disclosure documents permitted under the laws of the jurisdiction of incorporation or organization if such period is less than 20 calendar days;
- Deem a private operating company in a de-SPAC transaction to be a co-registrant of a registration statement on Form S–4 or Form F–4 when a SPAC files such a registration statement for a de-SPAC transaction, such that the private operating company and its signing persons would be subject to liability under Section 11 of the Securities Act as signatories to the registration statement;
- Amend the definition of smaller reporting company to require a re-determination of smaller reporting company status following the consummation of a de-SPAC transaction; and
- Define ''blank check company'' to encompass SPACs and certain other blank check companies for purposes of the Private Securities Litigation Reform Act of 1995 (PSLRA) [42] such that the safe harbor for forward-looking statements under the PSLRA would not be available to SPACs, including with respect to projections of target companies seeking to access the public markets through a de-SPAC transaction.

Underwriters play a critical role in the securities offering process as gatekeepers to the public markets. In light of this important role, we are proposing a new rule, Securities Act Rule 140a, that would deem anyone who has acted as an underwriter of the securities of a SPAC and takes steps to facilitate a de-SPAC transaction, or any related financing transaction or otherwise participates (directly or indirectly) in the de-SPAC transaction to be engaged in a distribution and to be an underwriter in the de-SPAC transaction. By affirming the underwriter status of SPAC IPO underwriters in connection with de-SPAC transactions, the proposed rule should better motivate SPAC underwriters to exercise the care necessary to ensure the accuracy of the disclosure in these transactions by affirming that they are subject to Section 11 liability for that information.

In addition, private companies have historically used shell companies with Exchange Act reporting obligations in various forms of transactions, including SPACs, to become a public company without undergoing a traditional initial public offering. In many cases, such shell company shareholders may not receive a Securities Act registration statement containing disclosures about the private company that is entering the public market for the first time. Due to the significant increase in the use of reporting shell company business combination transactions as a means to

[39] The Small Business Capital Formation Advisory Committee was established by Section 2 of the SEC Small Business Advocate Act of 2016, Public Law 114–284, 130 Stat. 1447 (2016), to provide advice to the Commission on the Commission's rules, regulations, and policies relating to (1) capital raising by emerging, privately held small businesses and public companies with less than $250 million in public market capitalization; (2) trading in their securities; and (3) public reporting and corporate governance requirements applicable to these companies.

[40] The panelists were Isabelle Freidheim, Michael Klausner, David Ni, and Phyllis Newhouse.

[41] *See* Transcript of SEC Small Business Capital Formation Advisory Committee (Sept. 27, 2021), *available at: https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-092721.pdf.*

[42] Public Law 104–67, 109 Stat. 737 (1995).

enter the U.S. capital markets, and in an effort to provide reporting shell company shareholders with more consistent Securities Act protections regardless of transaction structure, we are proposing to add new Rule 145a that would deem any business combination of a reporting shell company, involving another entity that is not a shell company, to involve a sale of securities to the reporting shell company's shareholders.[43]

Further, we are proposing new Article 15 of Regulation S–X, as well as related amendments, to more closely align the financial statement reporting requirements in business combinations involving a shell company and a private operating company with those in traditional initial public offerings. This is consistent with our view that the manner in which a company goes public should not generally result in substantially different financial statement disclosures being provided to investors.

We are also proposing amendments intended to enhance the reliability of projections disclosure in Commission filings, as well as additional requirements when projections are disclosed in connection with de-SPAC transactions. The proposed amendments to Item 10(b) of Regulation S–K would address broader concerns regarding the use of projections generally, while proposed Item 1609 of Regulation S–K would address concerns specific to de-SPAC transactions.

Finally, as the SPAC market has grown dramatically in recent years, some SPACs have sought to operate in novel ways that suggest a need for SPACs and their sponsors to increase their focus on evaluating when a SPAC could be an investment company and thus subject to the requirements under the Investment Company Act of 1940 (''Investment Company Act'').[44] We are concerned that SPACs may fail to recognize when their activities raise the investor protection concerns addressed by the Investment Company Act. To assist SPACs in focusing on, and appreciating, when they may be subject to investment company regulation, we are proposing a new safe harbor under the Investment Company Act. The proposed rule would provide a safe harbor from the definition of ''investment company'' under Section 3(a)(1)(A) of the Investment Company Act for SPACs that satisfy certain conditions that limit a SPAC's duration, asset composition, business purpose and activities.[45]

We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposed new rules and amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Proposed New Subpart 1600 of Regulation S–K

We are proposing to add new Subpart 1600 to Regulation S–K to set forth specialized disclosure requirements applicable to SPACs regarding the sponsor, potential conflicts of interest, and dilution, and to require certain disclosures on the prospectus cover page and in the prospectus summary.[46] Proposed Subpart 1600 would also require enhanced disclosure for de-SPAC transactions, including a fairness determination requirement. We are proposing to amend a number of forms and schedules used by SPACs for initial public offerings and de-SPAC transactions to require the information set forth in proposed Subpart 1600.[47] To the extent that the disclosure requirements in proposed Subpart 1600 address the same subject matter as the existing disclosure requirements of the forms or schedules, the requirements of proposed Subpart 1600 would be controlling.[48] The following table summarizes the proposed items in Subpart 1600, as described more fully below:[49]

Item	Summary description	Principal objective(s)	Applicable forms and schedules
Item 1601, *Definitions*	Definitions for the terms ''special purpose acquisition company,'' ''de-SPAC transaction,'' ''target company,'' and ''SPAC sponsor''.	Establish the scope of the issuers and transactions subject to the requirements of Subpart 1600.	Forms S–1, F–1, S–4, and F–4; Schedules 14A, 14C, and TO.
Item 1602, *Registered offerings by special purpose acquisition companies*.	Require certain information on the prospectus cover page and in the prospectus summary of registration statements for offerings by SPACs other than de-SPAC transactions. Require enhanced dilution disclosure in these registration statements.	Enhance the clarity and readability of prospectuses in SPAC initial public offerings and the disclosures relating to dilution in these prospectuses.	Forms S–1 and F–1.

[43] Throughout this release, we use ''shell company'' in lieu of the phrase ''shell company, other than a business combination related shell company.'' The term ''business combination related shell company'' is defined in Securities Act Rule 405 and Exchange Act Rule 12b–2 as a shell company that is: ''(1) Formed by an entity that is not a shell company solely for the purpose of changing the corporate domicile of that entity solely within the United States; or (2) Formed by an entity that is not a shell company solely for the purpose of completing a business combination transaction (as defined in 17 CFR 230.165(f)) among one or more entities other than the shell company, none of which is a shell company.'' For purposes of proposed Rule 145a (*see infra* Section IV.A.), the term ''reporting shell company'' is defined as a company, other than an asset-backed issuer as defined in Item 1101(b) of Regulation AB, that has: (1) No or nominal operations; (2) either: (i) No or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets; and (3) an obligation to file reports under Section 13 or Section 15(d) of the Exchange Act. We similarly use ''reporting shell company'' in lieu of the phrase ''reporting shell company, other than a business combination related shell company'' throughout this release.

[44] 15 U.S.C. 80a–1 *et seq.*

[45] *See infra* Section VI for a discussion of proposed Rule 3a–10.

[46] The proposed requirements in new Subpart 1600 would, to an extent, codify and standardize some of the disclosures already commonly provided by SPACs.

[47] *See* the proposed amendments to Forms S–1, F–1, S–4, and F–4, and Schedules 14A and TO. While we are not proposing amendments to Schedule 14C, the disclosure contemplated by proposed Subpart 1600 would be required in Schedule 14C pursuant to Item 1 of Schedule 14C, which states that a Schedule 14C must include the information called for by all of the items of Schedule 14A, with limited exceptions, to the extent each item would be applicable to any matter to be acted upon at a shareholder meeting if proxies were to be solicited in connection with the meeting. If the securities to be issued in a de-SPAC transaction are registered on a form other than Form S–4 or F–4, such as Form S–1 or F–1, but would be authorized to be registered on Form S–4 or F–4, the proposed requirements of Form S–4 or F–4, as applicable, in regard to de-SPAC transactions would apply in that context.

[48] Proposed General Instruction L.1. to Form S–4; Proposed General Instruction I.1. to Form F–4; Proposed Item 14(f)(1) to Schedule 14A; Proposed General Instruction K to Schedule TO. We are also proposing to re-designate existing General Instruction K to Schedule TO as General Instruction L to the schedule.

[49] The information in this table is not comprehensive and is intended only to summarize the proposed items of Subpart 1600. This table should be read together with the complete text of this release.

Item	Summary description	Principal objective(s)	Applicable forms and schedules
Item 1603, *SPAC sponsor; conflicts of interest*.	Require certain disclosure regarding the sponsor and its affiliates and any promoters of SPACs and disclosure regarding conflicts of interest between the sponsor or its affiliates or promoters and unaffiliated security holders.	Provide investors with a more complete understanding of the role of sponsors and their conflicts of interest.	Forms S–1, F–1, S–4, and F–4; Schedules 14A, 14C and TO.
Item 1604, *De-SPAC transactions*	Require certain information on the prospectus cover page and in the prospectus summary of registration statements for de-SPAC transactions. Require enhanced dilution disclosure in these registration statements.	Enhance the clarity and readability of prospectuses in de-SPAC transactions and disclosures relating to dilution in these prospectuses.	Forms S–4 and F–4; Schedules 14A, 14C, and TO.
Item 1605, *Background of and reasons for the de-SPAC transaction; terms of the de-SPAC transaction; effects*.	Require disclosure on the background, material terms and effects of a proposed de-SPAC transaction.	Provide investors with a more complete understanding of the background of and motivations behind a proposed de-SPAC transaction.	Forms S–4 and F–4; Schedules 14A, 14C, and TO.
Item 1606, *Fairness of the de-SPAC transaction and any related financing transaction*.	Require disclosure on whether a SPAC reasonably believes that a de-SPAC transaction and any related financing transactions are fair or unfair to investors, as well as a discussion of the bases for this reasonable belief.	Provide investors with additional information regarding a proposed de-SPAC transaction and address concerns regarding potential conflicts of interest and misaligned incentives.	Forms S–4 and F–4; Schedules 14A, 14C, and TO.
Item 1607, *Reports, opinions, appraisals and negotiations*.	Require disclosure on whether a SPAC or its sponsor has received a report, opinion or appraisal from an outside party regarding the fairness of a de-SPAC transaction or any related financing transaction.	Provide investors with additional information underlying a fairness determination by a SPAC.	Forms S–4 and F–4; Schedules 14A, 14C, and TO.
Item 1608, *Tender offer filing obligations in de-SPAC transactions**.	Require additional disclosures in a Schedule TO filed in connection with a de-SPAC transaction.	Align the information provided in such a Schedule TO with the information provided in other filings in connection with a de-SPAC transaction.	Schedule TO.
Item 1609, *Financial projections in de-SPAC transactions***.	Require additional disclosures regarding financial projections disclosed in a disclosure document for a de-SPAC transaction.	Provide investors with additional information regarding the use of projections in connection with a de-SPAC transaction.	Forms S–4 and F–4; Schedules 14A, 14C, and TO.
Item 1610, *Structured data requirement****.	Require information disclosed pursuant to Subpart 1600 to be tagged in a structured, machine-readable data language.	Provide investors and other market participants with information that is more readily available and more easily accessible for aggregation, comparison, filtering, and other analysis.	Forms S–1, F–1, S–4, and F–4; Schedules 14A, 14C, and TO.

Notes:
* Proposed Item 1608 is discussed in Section II.F.4.
** Proposed Item 1609 is discussed in Section V.B.2.
*** Proposed Item 1610 is discussed in Section II.G.

A. Definitions

For purposes of proposed new Subpart 1600, we are proposing Item 1601 to define the term ''special purpose acquisition company'' to mean a company that has indicated that its business plan is to (1) register a primary offering of securities that is not subject to the requirements of Rule 419; [50] (2) complete a de-SPAC transaction within a specified time frame; and (3) return all remaining proceeds from the registered offering and any concurrent offerings to its shareholders if the company does not complete a de-SPAC transaction within the specified time frame.[51] While the proposed definition does not include certain features common to SPACs, such as the listing of the SPAC's securities on a national securities exchange [52] or the issuance of redeemable securities, the proposed definition incorporates the key defining features of the issuers that in our view should be subject to the disclosure and procedural requirements of Subpart 1600, while remaining sufficiently broad to take into account potential variations in the SPAC structure and the possibility that SPACs may continue to evolve. In particular, the proposed definition would encompass issuers that would otherwise be subject to Rule 419's investor protection requirements but for the fact that the issuer is not issuing ''penny

[50] Blank check companies subject to Rule 419 must comply with a comprehensive set of disclosure and investor protection requirements under the rule and would not be subject to the requirements applicable to SPACs under the proposed rules. *See supra* notes 6 and 13.

[51] Proposed Item 1601(b).

[52] In this regard, we note that the securities of SPACs were not listed on national securities exchanges until the 2000s.

stock.'' [53] At the same time, the proposed definition does not include criteria such as listing on a national securities exchange, certain requirements that are applicable to exchange-traded SPACs,[54] or the issuance of redeemable securities, as these criteria would result in an overly narrow definition by including transactional terms that have not applied to every SPAC offering in the past or that could change as the SPAC market continues to evolve.

The term ''de-SPAC transaction'' would be defined as a business combination such as a merger, consolidation, exchange of securities, acquisition of assets, or similar transaction involving a SPAC and one or more target companies (contemporaneously, in the case of more than one target company).[55] The term ''target company'' would be defined as an operating company, business, or assets.[56] As proposed, these definitions are intentionally broad and, taken together, would encompass more typical transactions such as the acquisition of one or more private operating companies by a SPAC, as well as less common transactions that may or may not be permitted under exchange listing rules but for which the proposed enhanced disclosure and procedural requirements described below may be appropriate because they raise the same investor protection concerns.[57]

The term ''SPAC sponsor'' would be defined as the entity and/or person(s) primarily responsible for organizing, directing or managing the business and affairs of a SPAC, other than in their capacities as directors or officers of the SPAC as applicable.[58] Although a sponsor of a SPAC may perform a variety of functions within the SPAC's structure, the proposed definition encompasses activities that, based on the staff's experience reviewing SPAC filings and public commentary, are commonly associated with sponsors of SPACs. We are proposing to define this term broadly so that the appropriate entities or persons are subject to the proposed enhanced disclosure requirements applicable to the sponsors of a SPAC.[59]

Request for Comment

1. Should we define the term ''special purpose acquisition company'' as proposed? Does the proposed definition provide a workable approach to determining which issuers would be subject to the requirements of proposed Subpart 1600? Should we define this term differently? If so, how? For example, are there certain other common characteristics of SPACs that should be included in the definition, such as redemption rights, exchange listing, the placing of initial public offering proceeds in a trust or escrow account, and/or that the de-SPAC transaction must meet a minimum fair market value (*e.g.,* at least 80%) of the value of the proceeds in the trust or escrow account? Should we include a reference to ''shell company'' in the definition?

2. Should we define ''de-SPAC transaction'' as proposed? Should the scope of the proposed definition instead be tied to de-SPAC transactions that are permitted under exchange listing standards? [60]

3. Should we define the term ''SPAC sponsor'' as proposed? Does the proposed definition reflect those activities commonly associated with a SPAC's sponsor? Would the proposed definition encompass persons or entities that are not commonly considered to be sponsors of a SPAC? If so, how should we revise the definition to avoid scoping in such persons or entities? In regard to natural persons, should we exclude from the scope of the definition the activities performed by natural persons in their capacities as directors and/or officers of the SPAC, as proposed?

4. Should we define the term ''target company'' as proposed? Is this definition sufficiently clear? Would this definition, in combination with the other proposed definitions, be overly broad and encompass transactions that should not be treated as de-SPAC transactions?

5. Are there other terms that we should define in proposed Subpart 1600? If so, which terms and how should we define them?

6. With respect to the proposed definition of ''special purpose acquisition company,'' is it clear what ''has indicated that its business plan'' is intended to convey? Should we require registrants to affirmatively state in filings whether they are a special purpose acquisition company? For example, should we amend Form S–1, Form F–1, Form S–4, and/or Form F–4 to add to the registration statement cover page of these forms a check box for issuers to indicate whether they are special purpose acquisition companies? Should we also amend Schedule 14A, Schedule 14C and Schedule TO to include this check box on the cover pages of these schedules?

B. Sponsors

The sponsor's role is critical to the success of a SPAC. At the earliest stage, the sponsor typically organizes and manages the SPAC, including appointing the initial directors and officers of the SPAC, and provides the initial capital for the SPAC's operations prior to its initial public offering.[61] In subsequent stages, among other things, the sponsor may work with one or more investment banks in preparing for the SPAC's initial public offering and may place the proceeds from the offering into a trust or escrow account. Following the initial public offering, the sponsor typically identifies potential candidates for a business combination transaction, negotiates the transaction to acquire the target private operating company and promotes the transaction to the SPAC's shareholders. As discussed above, the value of the sponsor's compensation is

[53] *See supra* note 12.

[54] *See infra* note 57.

[55] Proposed Item 1601(a).

[56] Proposed Item 1601(d).

[57] The proposed definitions would apply to both exchange-traded SPACs and SPACs traded in the over-the-counter market. Some transactions encompassed by the proposed definitions may not be permitted under exchange listing rules for SPACs, and nothing in this release is intended to indicate that such transactions are or should be permitted under the exchanges' SPACs listing rules or that exchange listing requirements should not, at a minimum, apply to SPACs seeking an exchange listing. The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Furthermore, Section 6(b)(5) of the Exchange Act requires exchange listing rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. The Commission has also stated that listing standards are of significant importance to investors that may rely on the status an exchange listing ascribes to a security. *See, e.g.,* Release No. 34–57785 (May 6, 2008) [73 FR 27597, 27599 (May 13, 2008)] (SR–NYSE–2008–17) (order approving initial and continued listing standards for NYSE exchange-listed SPACs).

[58] Proposed Item 1601(c). In regard to natural persons, we are proposing to exclude from the scope of the definition of ''SPAC sponsor'' the activities performed by natural persons in their capacities as directors and/or officers of the SPAC to avoid overlap with existing disclosure requirements relating to directors and officers. *See infra* Section II.B. for a discussion of the activities of a sponsor.

[59] Proposed Item 1603.

[60] *See supra* notes 13 and 16.

[61] *See* proposed Item 1601(c) for the proposed definition for ''SPAC sponsor.'' There is often an identity of interest between the sponsor and the SPAC's officers and directors, in that the same persons may work for both the sponsor and the SPAC in different capacities. In many instances, SPACs will not hold a public election for directors until the de-SPAC transaction or thereafter. Some SPACs provide that only the founder shares may vote in director elections until the de-SPAC transaction.

usually contingent on the completion of a de-SPAC transaction.[62]

In view of the central role of the sponsor in a SPAC's activities, we are proposing Item 1603(a) to require additional disclosure about the sponsor, its affiliates and any promoters[63] of the SPAC in registration statements and schedules filed in connection with SPAC registered offerings and de-SPAC transactions, including disclosure on the following:

- The experience, material roles, and responsibilities of these parties, as well as any agreement, arrangement or understanding (1) between the sponsor and the SPAC, its executive officers, directors or affiliates, in determining whether to proceed with a de-SPAC transaction and (2) regarding the redemption of outstanding securities;
- The controlling persons of the sponsor and any persons who have direct and indirect material interests in the sponsor, as well as an organizational chart that shows the relationship between the SPAC, the sponsor, and the sponsor's affiliates;
- Tabular disclosure of the material terms of any lock-up agreements with the sponsor and its affiliates; and
- The nature and amounts of all compensation that has or will be awarded to, earned by, or paid to the sponsor, its affiliates and any promoters for all services rendered in all capacities to the SPAC and its affiliates, as well as the nature and amounts of any reimbursements to be paid to the sponsor, its affiliates and any promoters upon the completion of a de-SPAC transaction.[64]

Proposed Item 1603(a)'s disclosure requirements are intended to provide a SPAC's prospective investors and existing shareholders with detailed information relating to the sponsor that could be important in understanding and analyzing a SPAC, including how the rights and interests of the sponsor, its affiliates, and any promoters may differ from, and may conflict with, those of public shareholders.[65] Given that a SPAC does not conduct an operating business, information about the background and experience of the sponsor is often important in assessing a SPAC's prospects for success and may be a relevant factor in the market value of a SPAC's securities.[66] To the extent that a sponsor's activities and arrangements with a SPAC are carried out through, or in conjunction with, the sponsor's affiliates and any promoters of the SPAC, we are proposing to require corresponding disclosure with respect to these affiliates and promoters. In addition, enhanced disclosure on the sponsor's compensation and the sponsor's agreements, arrangements, or understandings may be helpful to a SPAC's prospective investors and existing shareholders in considering whether to acquire or redeem the SPAC's securities, and in evaluating the potential risks and merits of a proposed de-SPAC transaction because it could highlight additional motivations for completing a de-SPAC transaction.

While proposed Item 1603 calls for detailed disclosure about the sponsor, its experience and its rights and interests, we note that some of this information is already being provided, to an extent, by SPACs. Codifying and amplifying these existing disclosure practices would help ensure that issuers provide consistent and comprehensive information across transactions, so that investors can make more informed investment, voting and redemption decisions.

Request for Comment

7. Should we require additional information regarding sponsors of SPACs pursuant to Item 1603(a), as proposed? If so, should we also require disclosure regarding the sponsor's affiliates and any promoters of the SPAC, as proposed?

8. Should we require disclosure about the experience and material roles and responsibilities of the sponsor, its affiliates and any promoters of the SPAC in directing and managing the SPAC's activities, as proposed? How would investors use this information?

9. Should we require more or less information about the sponsor's compensation and reimbursements? Should we require this disclosure only when the amounts exceed a *de minimis* threshold? If so, what should the *de minimis* threshold be?

10. Should we require additional disclosure about the sponsor's agreements, arrangements, or understandings in determining whether to proceed with a de-SPAC transaction and regarding the redemption of outstanding securities of the SPAC, as proposed?

11. Should we require disclosure about the controlling persons of the sponsor and any persons who have direct and indirect material interests in the sponsor, as proposed? Should we take a different approach than requiring disclosure on persons with ''material interests'' in the sponsor? Should we consider requiring additional disclosure on the controlling persons of entities that own or control the sponsor? Should we require an organizational chart that shows the relationship among the SPAC, the sponsor, and the sponsor's affiliates, as proposed? Would both narrative disclosure and an organizational chart be helpful to investors?

12. Should we require disclosure of the material terms of any lock-up agreements with the sponsor and its affiliates as proposed? Would the proposed requirement to provide this disclosure in a tabular format be helpful to investors? Should we instead require this disclosure in a non-tabular format?

13. Is there additional information regarding sponsors that should be disclosed? Should we require more or less information about the sponsor depending on the size or other characteristics of a SPAC?

14. Should additional disclosure be required regarding affiliated entities involved in the SPAC's operations?

C. Conflicts of Interest

Within a SPAC's structure, there may be a number of potential or actual conflicts of interest between the sponsor and public investors that could influence the actions of the SPAC. A notable example is the potential conflict of interest stemming from the contingent nature of the sponsor's compensation, whereby the sponsor and its affiliates have significant financial incentives to pursue a business combination transaction even though the transaction could result in lower returns for public shareholders than liquidation of the SPAC or an alternative transaction.[67] Other conflicts of interest may arise when a sponsor is a sponsor of multiple SPACs and

[62] *See* text accompanying *supra* notes 14–16.

[63] The term ''promoter'' is defined in Securities Act Rule 405 and Exchange Act Rule 12b–2.

[64] This would include, for example, fees and reimbursements in connection with lease, consulting, support services, and management agreements with entities affiliated with the sponsor, as well as reimbursements for out-of-pocket expenses incurred in performing due diligence or in identifying potential business combination candidates.

[65] Proposed Item 1603(a) would operate in addition to existing disclosure requirements that may be applicable to a SPAC's arrangements with its sponsor such as Item 701 of Regulation S–K, which requires disclosure about, among other things, the terms of any private securities transactions between a SPAC and its sponsor within the past three years, and Item 404 of Regulation S–K, which requires disclosure about certain related party transactions.

[66] *See, e.g.,* Lin, Lu, Michaely, and Qin, *supra* note 30; Andrea Pawliczek, A. Nicole Skinner, and Sarah L.C. Zechman, *Signing Blank Checks: The Roles of Reputation and Disclosure in the Face of Limited Information* (SSRN Working Paper, 2021).

[67] *See, e.g.,* Usha Rodrigues and Mike Stegemoller, *Exit, Voice, and Reputation: The Evolution of SPACs,* 37 Del. J. Corp. L. 849 (2013).

manages several different SPACs at the same time; when a sponsor and/or its affiliates hold financial interests in, or have contractual obligations to, other entities; or when a SPAC enters into a business combination with a private operating company affiliated with the sponsor, the SPAC, or the SPAC's founders, officers, or directors. Further, a SPAC's officers often do not work full-time at the SPAC, may work for both the sponsor and the SPAC, and/or may have responsibilities at other companies, which may impact such officers' ability to devote adequate time and attention to the activities of the SPAC and may influence their decision to proceed with a particular de-SPAC transaction. These potential conflicts of interest could be particularly relevant for investors to the extent that they arise when a SPAC and its sponsor are evaluating and deciding whether to recommend a business combination transaction to shareholders, especially as the SPAC nears the end of the period to complete such a transaction under, *e.g.,* its governing instruments or the proposed safe harbor under the Investment Company Act,[68] if adopted, and the sponsor may be under pressure to find a target and complete the de-SPAC transaction on less favorable terms or face losing the value of its securities in the SPAC.

We are proposing Item 1603(b) to require disclosure of any actual or potential material conflict of interest between (1) the sponsor or its affiliates or the SPAC's officers, directors, or promoters, and (2) unaffiliated security holders. This would include any conflict of interest in determining whether to proceed with a de-SPAC transaction and any conflict of interest arising from the manner in which a SPAC compensates the sponsor or the SPAC's executive officers and directors, or the manner in which the sponsor compensates its own executive officers and directors. In addition, we are proposing Item 1603(c) to require disclosure regarding the fiduciary duties each officer and director of a SPAC owes to other companies. Such disclosure could allow investors to assess whether and to what extent officers or directors may have to navigate a conflict of interest consistent with their obligations under the laws of the jurisdiction of incorporation or organization, may be compelled to act in the interest of another company or companies that compete with the SPAC for business combination opportunities, or may have their attention divided such that it may affect their decision-making with respect to the SPAC.

The proposed disclosure requirements would provide a SPAC's shareholders and prospective investors with a more complete understanding of any actual or potential material conflicts of interest associated with the SPAC and the benefits that may be realized by the sponsor and its affiliates and any promoters arising from these conflicts of interest. Such disclosure could allow investors to more accurately assess the potential risk associated with the conflicts of interest in a SPAC. Further, disclosure about the fiduciary duties a SPAC's officers and directors owe to other companies could allow the SPAC's shareholders and prospective investors to better assess the actions of these officers and directors in managing the SPAC's activities and in determining to proceed with a proposed de-SPAC transaction.

Request for Comment

15. Should we require disclosure with respect to material conflicts of interest that may arise in connection with de-SPAC transactions, as proposed? Should we include a materiality threshold, as proposed? Is it clear what would constitute an actual or potential material conflict of interest, or is further guidance or specification needed? For example, are there other specific conflicts of interest that we should identify in the rule?

16. Would the proposed disclosure requirements adequately inform investors as to potential material conflicts of interest? Are there approaches that could minimize potential boilerplate or duplicative disclosure? Should we require that this disclosure be presented in a tabular format?

17. Is there any additional information that we should require regarding conflicts of interest? For example, should we also require a description of any policies and procedures used or to be used to minimize potential or actual conflicts of interest? Should we require disclosure of how the board of directors assesses and manages such conflicts, in particular where directors themselves have conflicts of interest?

18. Should SPACs be required to provide additional disclosure regarding material conflicts of interest in Exchange Act reports following their initial public offerings? For example, should periodic reports require that any changes in previously disclosed conflicts of interest be reported? Should we require disclosure about material conflicts of interest relating to both the SPAC and the identified target company in the Form 8–K that is required to be filed in connection with the announcement of a de-SPAC transaction?

19. Should we require disclosure about any fiduciary duties each officer and director of a SPAC owes to other companies, as proposed? How would investors use this information? Should we require additional or different disclosure regarding these fiduciary duties? Would this requirement potentially result in the disclosure of information that is not relevant to SPAC investors? Should this disclosure requirement be focused instead on material conflicts of interests arising from these fiduciary duties to other companies? Should we require that this disclosure be provided in a tabular format? Should we consider other approaches to this disclosure?

D. Dilution

We are proposing Items 1602(a)(4), 1602(c) and 1604(c) to require additional disclosure about the potential for dilution in (1) registration statements filed by SPACs, including those for initial public offerings, and (2) de-SPAC transactions. Proposed Item 1602(c) would be applicable to all registered offerings by a SPAC other than a de-SPAC transaction, while proposed Item 1604(c) would be applicable to all de-SPAC transactions. We are also proposing Item 1602(a)(4) to require simplified tabular dilution disclosure on the prospectus cover page in registered offerings by a SPAC on Form S–1 or F–1 other than for de-SPAC transactions.

There are a number of potential sources of dilution in a SPAC's structure, including dilution resulting from shareholder redemptions, sponsor compensation, underwriting fees, outstanding warrants and convertible securities, and PIPE financings. This dilution may be particularly pronounced for the shareholders of a SPAC who do not redeem their shares prior to the consummation of the de-SPAC transaction and who may not realize or appreciate that these costs are disproportionately borne by the non-redeeming shareholders.[69] According to one study, the median dilutive impact of sponsor compensation, underwriting fees, warrants, and rights equaled 50.4% of the cash raised in a SPAC initial public offering.[70] Further, several

[68] *See infra* Section VI.

[69] For example, the dilutive impact of underwriting fees deferred until the completion of a de-SPAC transaction and the number of shares received by the sponsor is not required to be disclosed in a manner that takes into account the additional dilution caused by redemptions.

[70] Klausner, Ohlrogge, and Ruan, *supra* note 17.

commentators have asserted that the complexity of the disclosures in these transactions makes it difficult for investors to understand the dilutive impact of sponsor compensation on the SPAC's non-redeeming shareholders.[71]

In light of the potential for significant dilution embedded within the typical SPAC structure, enhanced disclosure regarding dilution could enable investors in a SPAC initial public offering and subsequent purchasers of SPAC shares to better understand the potential impact upon them of the various dilutive events that may occur over the lifespan of the SPAC.[72] We are therefore proposing to require dilution disclosure in registration statements filed by SPACs other than for de-SPAC transactions that would require a description of material potential sources of future dilution following a SPAC's initial public offering, as well as tabular disclosure of the amount of potential future dilution from the public offering price that will be absorbed by non-redeeming SPAC shareholders, to the extent quantifiable.[73] This proposed disclosure would be in addition to the disclosure already required under Item 506 of Regulation S–K.[74]

In addition, we are proposing to require simplified tabular dilution disclosure incorporating a range of potential redemption levels on the prospectus cover page of SPAC registration statements on Forms S–1 and F–1.[75] In providing disclosure pursuant to Item 506, SPACs currently provide prospective investors with estimates of dilution as a function of the difference between the initial public offering price and the pro forma net tangible book value per share after the offering. These estimates often include an assumption that the maximum allowable number of shares eligible will be redeemed prior to the de-SPAC transaction.[76] While this information can be useful, investors may benefit from a more detailed and prominent tabular presentation of this dilution disclosure that shows various potential levels of redemption, not just the upper bound on dilution attributable to redemptions. We are therefore proposing to require that registration statements on Form S–1 or Form F–1 filed by SPACs, including for an initial public offering, include on the prospectus cover page a simplified dilution table, in the following format, which would present the reader with an estimate of the remaining pro forma net tangible book value per share at quartile intervals up to the maximum redemption threshold:

REMAINING PRO FORMA NET TANGIBLE BOOK VALUE PER SHARE

Offering price of ____	25% of maximum redemption	50% of maximum redemption	75% of maximum redemption	Maximum redemption

The proposed Item 1602(a)(4) dilution disclosure would be calculated in a manner consistent with the methodologies and assumptions more fully articulated in the disclosures provided pursuant to Item 506 elsewhere in the prospectus. If the initial public offering includes an overallotment option, the table would need to include separate rows showing remaining pro forma net tangible book value per share with the exercise and without the exercise of the over-allotment option. We are also proposing to require that SPACs provide a cross-reference to the more detailed dilution disclosure later in the prospectus when providing this tabular disclosure on the prospectus cover page.

In regard to de-SPAC transactions, investors could benefit from clearer dilution disclosure that takes into account the unique characteristics of the SPAC structure, including any terms negotiated with the target private operating company, as well as the potential for additional financing from PIPE investors. At the time of a de-SPAC transaction, investors are making a decision as to whether to remain a shareholder of the post-business combination company going forward. Apart from the operating success of the post-business combination company, dilution is likely to have a significant impact on the value of a shareholder's continued investment in the company. We are therefore proposing Item 1604(c) to require disclosure of each material potential source of additional dilution that non-redeeming shareholders may experience at different phases of the SPAC lifecycle by electing not to redeem their shares in connection with the de-SPAC transaction.[77]

For example, to the extent material, this disclosure would need to explain that, when a SPAC's shareholders retain their warrants after redeeming their shares prior to the de-SPAC transaction, the non-redeeming shareholders and the post-business combination company may face potential additional dilution. Proposed Item 1604(c)(1) would also require a sensitivity analysis in a tabular format that shows the amount of potential dilution under a range of reasonably likely redemption levels and quantifies the increasing impact of dilution on non-redeeming shareholders as redemptions increase. We are also proposing to require disclosure of a description of the model, methods, assumptions, estimates, and parameters

[71] *See, e.g.,* AFR Letter; Klausner, Ohlrogge, and Ruan, *supra* note 17; Michael Klausner, Michael Ohlrogge, and Harald Halbhuber, *SPAC Disclosure of Net Cash Per Share* (SSRN Working Paper, 2022).

[72] In this regard, we note that the initial purchasers in SPAC initial public offerings often resell or redeem their shares prior to the completion of the de-SPAC transaction. *See, e.g.,* Benjamin Mullin and Amrith Ramkumar, *BuzzFeed Suffers Wave of SPAC Investor Withdrawals Before Going Public,* The Wall Street Journal, Dec. 2, 2021. *See also supra* note 17.

[73] Proposed Item 1602(c).

[74] Under Item 506, a company is required to provide disclosure regarding dilution when (1) the company is not subject to the reporting requirements of the Exchange Act and is registering an offering of common equity securities where there is substantial disparity between the public offering price and the effective cash cost to officers, directors, promoters, and affiliated persons of common equity acquired by them in transactions during the past five years, or which they have the right to acquire; or (2) the company is registering an offering of common equity securities and the company has had losses in each of its last three fiscal years and there is a material dilution of the purchasers' equity interest. In the first instance, a company must provide a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In both instances, Item 506 requires disclosure of the net tangible book value per share before and after the distribution; the amount of the increase in such net tangible book value per share attributable to the cash payments made by purchasers of the shares being offered; and the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

[75] Proposed Item 1602(a)(4).

[76] In practice, redemption rates rarely reach this level.

[77] Depending on the circumstances, material potential sources of additional disclosure may include dilution from sponsor compensation, underwriting fees, outstanding warrants and convertible securities, and financing transactions (including PIPE transactions).

necessary to understand the sensitivity analysis disclosure.

Request for Comment

20. Should we require disclosure of material potential sources of future dilution in registration statements filed by SPACs for initial public offerings and in disclosure documents for de-SPAC transactions, as proposed? How would investors benefit from this additional disclosure? Should we require other information either in addition to, or in lieu of, the proposed dilution disclosure, such as disclosure of the cumulative amount of dilution that non-redeeming shareholders may experience or the amount of net cash underlying each share at the time of a de-SPAC transaction? If so, should we require that this disclosure be presented in a tabular format? Should we provide additional explanation on how to calculate the amount of dilution for purposes of these disclosure requirements? Should we provide further guidance about disclosures that SPACs should consider making to help non-affiliated shareholders understand the potential for dilution and the consequences of dilution for non-affiliated shareholders?

21. Should we also consider requiring enhanced dilution disclosure in other Commission filings? If so, what additional information should we require in this context? How would investors use this additional dilution disclosure?

22. Should we require simplified tabular disclosure regarding dilution on the prospectus cover page of a Form S–1 or Form F–1, as proposed? Should we require additional or less information, or alternative information, in the tabular disclosure? For example, would a tabular presentation of cash remaining per non-redeemed share in lieu of a tabular presentation of remaining pro forma net tangible book value per share be useful to investors? Should we consider adding a similar requirement to provide simplified tabular disclosure (1) in the prospectus summary of a Form S–1 or F–1 or (2) on the prospectus cover page and/or in the prospectus summary of a Form S–4 or Form F–4 for a de-SPAC transaction? If so, what information should be included in such tabular disclosure? Are there other ways to present the potential for dilution to investors in a more accessible format?

23. Should we require, in disclosure documents for de-SPAC transactions, a sensitivity analysis in a tabular format, as proposed? Should we consider additional or alternative approaches to this disclosure requirement?

24. Are there any significant challenges in providing the proposed enhanced dilution disclosure at the initial public offering stage or at the de-SPAC transaction stage?

25. Should we consider additional amendments that would highlight or simplify dilution disclosure so that it is more clear and accessible for investors?

E. Prospectus Cover Page and Prospectus Summary Disclosure

In response to concerns raised about the complexity of disclosures in Securities Act registration statements filed by SPACs for initial public offerings and for de-SPAC transactions,[78] we are proposing Item 1602 to require that certain information be included on the prospectus cover page and in the prospectus summary using plain English principles.[79] Given the unique nature of SPAC offerings and the potential risks they present to investors, investors could benefit from requiring the issuer to highlight certain disclosures on the cover page and in the prospectus summary, in a form that can be more easily read and understood.

1. Prospectus Cover Page

Item 501(b) of Regulation S–K sets forth disclosure requirements for the outside front cover page of prospectuses, such as the name of the registrant, title and amount of securities being offered, and the offering price of the securities. In regard to registered offerings (including initial public offerings) by SPACs other than de-SPAC transactions, we are proposing Item 1602(a) to require information on the prospectus cover page in plain English about, among other things, the time frame for the SPAC to consummate a de-SPAC transaction, redemptions, sponsor compensation, dilution (including simplified tabular disclosure), and conflicts of interest. In regard to de-SPAC transactions, we are proposing Item 1604(a) to require that SPACs include information on the prospectus cover page in plain English about, among other things, the fairness of the de-SPAC transaction, material financing transactions, sponsor compensation and dilution, and conflicts of interest.

Investors should benefit from having these significant aspects of SPAC offerings and de-SPAC transactions disclosed prominently on the prospectus cover page in plain English,[80] in addition to the information otherwise required under Item 501 of Regulation S–K. Although most SPACs already provide much of the proposed information on prospectus cover pages, the proposed rules would standardize this information across all registration statements filed by SPACs for initial public offerings and for de-SPAC transactions.

2. Prospectus Summary

Item 503 of Regulation S–K requires a brief summary of the information in the prospectus where the length or complexity of the prospectus makes a summary useful. While the information that should be included in a prospectus summary will depend on the particular offering and issuer, a prospectus summary should provide disclosure in clear language of the most significant aspects of the transaction being registered.[81] In light of the often complex disclosure in registration statements filed by SPACs, a requirement that SPACs present certain information in the prospectus summary in plain English should help investors more easily to identify and assess those aspects of the transaction that are likely to be important in their investment, voting, and redemption decisions.[82]

In regard to registered offerings other than de-SPAC transactions, we are proposing Item 1602(b) to require that SPACs include the following information in the prospectus summary in plain English:

- The process by which a potential business combination candidate will be identified and evaluated;
- Whether shareholder approval is required for the de-SPAC transaction;
- The material terms of the trust or escrow account, including the amount of gross offering proceeds that will be placed in the trust;
- The material terms of the securities being offered, including redemption rights;
- Whether the securities being offered are the same class as those held by the sponsor and its affiliates;
- The length of the time period during which the SPAC intends to

[78] *See, e.g.,* IAC Recommendations, *supra* note 37 (expressing concerns ''relating to the effectiveness of disclosure about the risks, economics and mechanics of SPACs as a result of the complexity of these transactions and the staggered nature of the disclosure process''); Rodrigues Testimony; Klausner, Ohlrogge, and Ruan, *supra* note 17.

[79] *See* Securities Act Rule 421(d). *See supra* note 38.

[80] *Id.*

[81] *See* Instruction to Item 503(a) and 17 CFR 230.421(b) (Securities Act Rule 421(b)).

[82] In the context of asset-backed offerings, the Commission previously specified that certain information be included on the prospectus cover page and in the prospectus summary. *See* Items 1102 and 1103 of Regulation S–K. *Asset-Backed Securities,* Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506 (Jan. 7, 2005)]. *See also* Item 3 of Form S–4 and Item 3 of Form F–4 (specifying that certain information be included in the prospectus summary).

consummate a de-SPAC transaction, and its plans if it does not do so, including, whether and how the time period may be extended, the consequences to the sponsor of not completing an extension of this time period, and whether shareholders will have voting or redemption rights with respect to an extension of time to consummate a de-SPAC transaction;

- Any plans to seek additional financing and how such additional financing might impact shareholders;
- Tabular disclosure of sponsor compensation and the extent to which material dilution may result from such compensation; and
- Material conflicts of interest.

Based on the Commission staff's experience in reviewing registration statements filed by SPACs, we believe these topics are among those that investors are likely to find most important when considering an investment in the SPAC prior to the identification of a potential business combination candidate.

In regard to registered de-SPAC transactions, we are proposing Item 1604(b) to require that registrants include the following information in the prospectus summary in plain English:

- The background and material terms of the de-SPAC transaction;
- The fairness of the de-SPAC transaction;
- Material conflicts of interest;
- Tabular disclosure on sponsor compensation and dilution;
- Financing transactions in connection with de-SPAC transactions; and
- Redemption rights.

Based on the Commission staff's experience in reviewing registration statements for de-SPAC transactions, we believe investors would find this information, in particular those topics that illuminate potential conflicts of interest and the overall fairness of the proposed transaction, important when making an investment decision at the de-SPAC transaction stage.

Request for Comment

26. Would requiring certain information in regard to SPAC offerings on the prospectus cover page and in the prospectus summary make it easier for investors to review and understand the disclosures in these registration statements? Are there other ways we could make these registration statements easier for investors to understand?

27. Should we require the proposed cover page disclosures for SPAC initial public offerings and de-SPAC transactions? Is there other information that we should require to be included on the cover page, either in addition to, or in lieu of, the information proposed to be required? Conversely, are there any proposed additional cover page disclosures that we should not adopt?

28. Should we require the inclusion of the proposed specified information in the prospectus summary? Is there other information that we should require to be included in the prospectus summary?

29. Is the subset of the disclosure under proposed Item 1605 that we are proposing to require to be more prominently presented on the prospectus cover page and in the prospectus summary via proposed Items 1604(a) and (b) the most informative or otherwise important information for purposes of the prospectus cover page and the prospectus summary? Should any additional disclosure provided pursuant to proposed Item 1605 be added to or replace an existing element of the information proposed to be required on the prospectus cover page or in the prospectus summary?

30. Are there other changes we should consider in regard to the prospectus cover page and prospectus summary? For example, should we impose any additional formatting requirements, such as the use of tables or bullet points, for certain information in the prospectus summary? Would such formatting requirements improve the clarity of this disclosure?

F. Disclosure and Procedural Requirements in De-SPAC Transactions

We are proposing specialized disclosure and procedural requirements in de-SPAC transactions so that investors can better understand and evaluate the merits of a prospective de-SPAC transaction.[83] The proposed rules would require: (1) Additional disclosures on the background of and reasons for the transaction; (2) a statement from the SPAC as to whether it reasonably believes that the de-SPAC transaction and any related financing transaction are fair or unfair to unaffiliated security holders; (3) disclosure on any outside report, opinion, or appraisal relating to the fairness of the transaction; and (4) additional information in a Schedule TO filed in connection with a de-SPAC transaction, as well as clarify the need to comply with the procedural requirements of the tender offer rules when filing such a Schedule TO.[84]

1. Background of and Reasons for the De-SPAC Transaction; Terms and Effects

In order to provide investors with a more complete understanding of the de-SPAC transaction, we are proposing Item 1605 of Regulation S–K which would require disclosure of the background, material terms, and effects of the de-SPAC transaction, including:

- A summary of the background of the de-SPAC transaction, including, but not limited to, a description of any contacts, negotiations, or transactions that have occurred concerning the de-SPAC transaction;[85]
- A brief description of any related financing transaction, including any payments from the sponsor to investors in connection with the financing transaction;
- The reasons for engaging in the particular de-SPAC transaction and for the structure and timing of the de-SPAC transaction and any related financing transaction;
- An explanation of any material differences in the rights of security holders of the post-business combination company as a result of the de-SPAC transaction;[86] and
- Disclosure regarding the accounting treatment and the federal income tax consequences of the de-SPAC transaction, if material.[87]

[83] As discussed above, a SPAC is required to provide its shareholders with a proxy statement on Schedule 14A if shareholder approval is required in a de-SPAC transaction. If a SPAC is registering an offering of its shares to be issued in the de-SPAC transaction, the SPAC generally files a registration statement on Form S–4 or F–4. Alternatively, if shareholder approval is required but the SPAC is not soliciting proxies from its shareholders, the SPAC is required to provide an information statement on Schedule 14C. Otherwise, if no registration statement, proxy statement or information statement is required, the SPAC must disseminate a Schedule TO (tender offer statement) to its shareholders. *See* Section IV.A. for a discussion of proposed Rule 145a, which would affect when a SPAC may be required to file a Form S–4 or F–4 in connection with a de-SPAC transaction.

[84] In addition, we are proposing new rules applicable to business combinations involving shell companies more generally, which would include de-SPAC transactions. *See infra* Section IV.

[85] For example, this disclosure could encompass whether any portion of the underwriting fees in connection with a SPAC's initial public offering is contingent upon the SPAC's completion of a de-SPAC transaction and whether the underwriter in the SPAC's initial public offering has provided additional services to the SPAC following the initial public offering, such as locating potential target companies, providing financial advisory services, acting as a placement agent for PIPE transactions, and/or arranging debt financing. For a discussion of the role of the underwriter in connection with a de-SPAC transaction, *see infra* Section III.F.

[86] This proposed disclosure requirement is intended to address situations where the shares of a SPAC are being exchanged for shares of a new holding company or the target company in a de-SPAC transaction.

[87] Proposed Items 1605(a) and (b). This disclosure would be required in any Form S–4 or F–4 or Schedule 14A, 14C, or TO filed in connection with a de-SPAC transaction. We note that registrants are

Continued

These disclosure requirements are modeled, in part, on Item 1004(a)(2) and Item 1013(b) of Regulation M–A [88] and are intended to provide investors with, among other things, an enhanced basis upon which to evaluate a SPAC's reasons for proposing a de-SPAC transaction and for choosing a particular structure and financing for the transaction, through a specialized disclosure rule tailored to SPACs that would address disclosure issues more specific to de-SPAC transactions. These proposed requirements would also help promote consistent disclosure, which would allow for greater comparability of these disclosures across de-SPAC transactions. As proposed, Item 1605(b) would require a reasonably detailed discussion of the reasons for, and the structure and timing of, a proposed de-SPAC transaction, which could include a discussion of the key events and activities in identifying the target private operating company and in negotiating the terms of the merger or acquisition, as well as the material factors considered by a SPAC's board of directors in approving the terms of the proposed de-SPAC transaction and in recommending shareholder approval of the transaction.

In addition, we are proposing Item 1605(c) to require disclosure of the effects of the de-SPAC transaction and any related financing transaction on the SPAC and its affiliates, the sponsor and its affiliates, the private operating company and its affiliates, and unaffiliated security holders of the SPAC. Such disclosure could allow investors to better assess whether the transactions have been structured in a manner that would benefit one of these parties in particular or that would be to the detriment of other parties. As proposed, the disclosure must provide a reasonably detailed discussion of both the benefits and detriments to non-redeeming shareholders of the de-SPAC transaction and any related financing transaction, with such benefits and detriments quantified to the extent practicable.[89] For example, if the sponsor's interests and returns may differ from those of public investors in regard to a prospective de-SPAC transaction, the disclosure should describe and quantify, to the extent practicable, dollar amounts or prospective returns the sponsor and its affiliates stand to gain or lose that are dependent on the completion of the transaction.

We are also proposing Item 1605(d) to require disclosure of the SPAC's sponsors', officers' and directors' material interests in the de-SPAC transaction or any related financing transaction, including any fiduciary or contractual obligations to other entities and any interest in, or affiliation with, the private operating company that is the target of the de-SPAC transaction. This proposed disclosure requirement is intended to address, among other things, the concern that a sponsor may be proposing a de-SPAC transaction that will produce benefits or detriments that are not fully disclosed to investors.[90]

Under Item 403 of Regulation S–K, SPACs currently provide tabular disclosure regarding the beneficial ownership of its equity or voting securities, as applicable, by management and beneficial owners of more than 5% of a class of voting securities.[91] The proposed disclosure requirement in Item 1605(d) would be broader than Item 403, and would require disclosure of any material interests that the sponsor and the SPAC's officers and directors have in a de-SPAC transaction or any related financing transaction, including fiduciary or contractual obligations to other entities as well as any interest in, or affiliation with, the target company. The proposed disclosure requirement would also encompass material interests that are non-pecuniary in nature that may nevertheless affect the decision to proceed with a prospective de-SPAC transaction or related financing transaction. In the context of a de-SPAC transaction, this disclosure could help investors, when making an investment, voting or redemption decision with respect to the de-SPAC transaction, to assess whether, on balance, the benefits of the de-SPAC transaction justify the detriments, and particularly whether the sponsor is motivated to complete a de-SPAC transaction by interests not held by all investors.

Proposed Item 1605(e) would require disclosure of whether or not security holders are entitled to any redemption or appraisal rights, and if so, a summary of the redemption or appraisal rights.[92] Under the proposed rules, SPACs would be required to disclose, among other things, whether shareholders may redeem their shares regardless of whether they vote in favor of or against a proposed de-SPAC transaction, or abstain from voting, and whether shareholders have the right to redeem their securities at the time of any extension of the time period to complete a de-SPAC transaction. If there are no redemption or appraisal rights available for security holders who object to the de-SPAC transaction, the proposed rules would require disclosure of any other rights that may be available to security holders under the law of the jurisdiction of organization. These disclosures would help investors better assess the impact of any redemption or appraisal rights on a proposed de-SPAC transaction, including whether the existence of such rights might lead some investors to redeem their securities after voting in favor of a de-SPAC transaction.[93]

Request for Comment

31. Would the proposed disclosure requirements provide investors with important information regarding the background of and reasons for a de-SPAC transaction? Is there any additional information about the background of and reasons for the de-SPAC transaction that we should require to be disclosed? Are there any additional or alternative requirements that we should consider to further

already subject to similar disclosure requirements in Schedules 14A and 14C and in Forms S–4 and F–4. These proposed disclosure requirements are intended to complement these existing requirements by setting forth specialized disclosure requirements that are specific to de-SPAC transactions.

[88] 17 CFR 229.1000 through 229.1016. Regulation M–A is a subpart (the 1000 series) of Regulation S–K. Item 1004(a)(2) sets forth disclosure requirements regarding the material terms of mergers or similar transactions, and Item 1013(b) requires disclosure of alternative means considered by the subject company or affiliate in the context of a going-private transaction. In our view, these rules are appropriate models for the proposed specialized disclosure requirements for de-SPAC transactions, in that Item 1004(a)(2) sets forth disclosure requirements for mergers generally and the same potential for self-interested transactions exists in de-SPAC transactions as in going-private transactions.

[89] Proposed Item 1605(c).

[90] *See, e.g.,* IAC Recommendations, *supra* note 37 (stating that ''there may be financial arrangements that constitute conflicts of interest that are not fully disclosed or understood by investors''); Rodrigues and Stegemoller, *supra* note 17; Klausner, Ohlrogge, and Ruan, *supra* note 17; Deane Testimony.

[91] Under Item 403, beneficial ownership is determined in accordance with 17 CFR 240.13d–3(d)(1) (Exchange Act Rule 13d–3(d)(1)), pursuant to which a person is generally deemed to be the beneficial owner of securities that the person has the right to acquire within 60 days.

[92] This proposed disclosure requirement would build upon, and be in addition to, the existing disclosure requirement in Item 202 of Regulation S–K (Description of registrant's securities). Under Item 202, SPACs are currently required to disclose the redemption provisions of their capital stock being registered, such as whether redemptions would be required under certain circumstances at the SPAC's option, *e.g.,* whether a SPAC may require the redemption of warrants held by public shareholders for nominal consideration if the underlying shares trade above a certain threshold price.

[93] One commentator has observed that SPAC shareholders may vote in favor of a proposed de-SPAC transaction while redeeming their shares prior to the closing of the transaction, such that the vote is decoupled from any economic interest in the post-business combination company. Rodrigues and Stegemoller, *supra* note 17. *See also supra* note 29.

improve the disclosures about de-SPAC transactions?

32. Should we adopt the proposed disclosure requirements with respect to the effects of the de-SPAC transaction and any related financing transaction, as proposed? Should we require additional or alternative disclosure regarding the effects of the de-SPAC transaction and any related financing transaction?

33. Should we require disclosure with respect to material interests in a prospective de-SPAC transaction or any related financing transaction held by the sponsor and the SPAC's officers and directors, as proposed? Should we require additional or alternative disclosure regarding the interests of these parties in the de-SPAC transaction?

34. Should we require disclosure regarding whether or not security holders are entitled to any redemption or appraisal rights and a summary of any such rights, as proposed? Is there additional or alternative disclosure about redemption or appraisal rights that we should require?

35. Would the disclosure requirements in proposed Item 1605 result in duplicative disclosures? If so, are there alternative approaches that we should consider to avoid this result?

2. Fairness of the De-SPAC Transaction

To address concerns regarding potential conflicts of interest and misaligned incentives in connection with the decision to proceed with a de-SPAC transaction and to assist investors in assessing the fairness of a particular de-SPAC transaction to unaffiliated investors,[94] we are proposing Item 1606(a) to require a statement from a SPAC as to whether it reasonably believes that the de-SPAC transaction and any related financing transaction are fair or unfair to the SPAC's unaffiliated security holders, as well as a discussion of the bases for this statement.[95] We are proposing to require that this statement encompass both the de-SPAC transaction and any related financing transaction so that the fairness determination would require consideration of the combined effects of both transactions, which are often dependent on each other, on unaffiliated security holders. As proposed, a SPAC would be required to include this statement in any Forms S–4 and F–4 or Schedules 14A, 14C, and TO filed in connection with a de-SPAC transaction.[96] Proposed Item 1606(a) would also require disclosure on whether any director voted against, or abstained from voting on, approval of the de-SPAC transaction or any related financing transaction, and if so, identification of the director and, if known after making a reasonable inquiry, the reasons for the vote against the transaction or abstention.

Under proposed Item 1606(b), a SPAC would be required to discuss in reasonable detail the material factors upon which a reasonable belief regarding the fairness of a de-SPAC transaction and any related financing transaction is based and, to the extent practicable, the weight assigned to each factor. These factors would include but not be limited to: The valuation of the private operating company; the consideration of any financial projections; any report, opinion, or appraisal obtained from a third party; and the dilutive effects of the de-SPAC transaction and any related financing transaction on non-redeeming shareholders. Together, these proposed disclosures are intended to help investors assess the reasonableness of the SPAC's stated belief about the fairness of the transaction.

To provide additional context for understanding the process by which a SPAC determined to proceed with a de-SPAC transaction, we are proposing Items 1606(c), (d), and (e), which would require disclosure on whether:

- The de-SPAC transaction or any related financing transaction is structured so that approval of at least a majority of unaffiliated security holders is required;
- A majority of directors who are not employees of the SPAC has retained an unaffiliated representative to act solely on behalf of unaffiliated security holders for purposes of negotiating the terms of the de-SPAC transaction or any related financing transaction and/or preparing a report concerning the fairness of the de-SPAC transaction or any related financing transaction; and
- The de-SPAC transaction or any related financing transaction was approved by a majority of the directors of the SPAC who are not employees of the SPAC.

Request for Comment

36. Should we adopt Item 1606 as proposed?

37. Should we require a statement from the SPAC as to whether it reasonably believes that the de-SPAC transaction and any related financing transaction are fair or unfair to unaffiliated security holders, as proposed? Should the scope of the fairness determination include both the de-SPAC transaction and any related financing transaction, as proposed? Should the fairness determination be as to the SPAC's security holders as a whole, rather than to the SPAC's unaffiliated security holders? The factors enumerated in proposed Item 1606(b) in determining fairness include, but are not limited to, the valuation of the target company, the consideration of any financial projections, any report, opinion, or appraisal described in Item 1607 of Regulation S–K, and the dilutive effects described in Item 1604(c) of Regulation S–K. Is there any additional or alternative information that should be disclosed in connection with the SPAC's fairness determination?

38. Should we include an instruction to Item 1606 that a statement that the SPAC has no reasonable belief as to the fairness or unfairness of the de-SPAC transaction or any related financing transaction to unaffiliated security holders will not be considered sufficient disclosure in response to Item 1606(a), as proposed?

39. What are the potential benefits and costs of the statement that would be required by proposed Item 1606(a)? Would the costs of complying with this disclosure requirement discourage SPAC initial public offerings or discourage private operating companies from pursuing business combinations with SPACs?

40. Should we require registrants to disclose whether any director voted against, or abstained from voting on, the approval of a de-SPAC transaction or any related financing transaction, as well as the reasons for such vote or abstention, as proposed? Are there additional or alternative disclosures that we should require in this regard?

41. Should we require registrants to discuss in reasonable detail the material factors and, to the extent practicable, the weight assigned to each factor

[94] *See supra* note 28. *See also* Michael Klausner and Michael Ohlrogge, *SPAC Governance: In Need of Judicial Review* (SSRN Working Paper, 2021).

[95] In this regard, we are proposing an instruction to Item 1606 that a ''statement that the special purpose acquisition company has no reasonable belief as to the fairness or unfairness of the de-SPAC transaction or any related financing transaction to unaffiliated security holders will not be considered sufficient disclosure in response to [Item 1606(a)].'' As proposed, a SPAC would not be required to disclose that a de-SPAC transaction and any related financing transaction are fair but rather would be required to state its reasonable belief as to the fairness or unfairness of the transaction as well as the bases for this statement.

[96] We have modeled certain of the proposed requirements in Item 1606 and Item 1607 (*see infra* Section II.F.3.), on the disclosures required in going-private transactions subject to 17 CFR 240.13e–3 (Exchange Act Rule 13e–3). *See* Items 1014 and 1015 of Regulation M–A. In our view, the disclosure requirements in Rule 13e–3 provide an appropriate model for the proposed requirements with respect to de-SPAC transactions, in that the conflicts of interests and misaligned incentives inherent in going-private transactions are similar to those often present in de-SPAC transactions.

underlying the fairness determination, as proposed? Are there additional or alternative factors that should be specified in the proposed rule to enhance an investor's understanding of the fairness determination?

42. How would investors use disclosure about whether the approval of at least a majority of unaffiliated security holders is required and whether the de-SPAC transaction or any related financing transaction was approved by a majority of non-employee directors of the SPAC? How would investors use disclosure about whether a representative has been retained to represent the investors in the negotiations of the de-SPAC transaction?

3. Reports, Opinions, and Appraisals

In addition, we are proposing Item 1607 to require disclosure about certain reports, opinions, or appraisals from outside parties.[97] Proposed Item 1607(a) would require disclosure about whether or not the SPAC or its sponsor has received any report, opinion, or appraisal obtained from an outside party relating to the consideration or the fairness of the consideration to be offered to security holders or the fairness of the de-SPAC transaction or any related financing transaction to the SPAC, the sponsor or security holders who are not affiliates.[98] This requirement would provide additional transparency about whether a SPAC's board of directors and/or its sponsor have access to information underlying a fairness determination that shareholders could find useful in making voting, investment, and redemption decisions in connection with the de-SPAC transaction.[99]

To assist investors in considering the usefulness and reliability of any outside party report, opinion or appraisal described in response to proposed Item 1607(a), as well as any negotiation or report by an unaffiliated representative acting solely on behalf of unaffiliated security holders described in response to proposed Item 1606(d), proposed Item 1607(b) would require disclosure of:

- The identity, qualifications, and method of selection of the outside party and/or unaffiliated representative;
- Any material relationship between (1) the outside party, its affiliates, and/or unaffiliated representative, and (2) the SPAC, its sponsor and/or their affiliates, that existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of the relationship; [100]
- Whether the SPAC or the sponsor determined the amount of consideration to be paid to the private operating company or its security holders, or the valuation of the private operating company, or whether the outside party recommended the amount of consideration to be paid or the valuation of the private operating company; and
- A summary concerning the negotiation, report, opinion or appraisal, which would be required to include a description of the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the SPAC or its sponsor; and any limitation imposed by the SPAC or its sponsor on the scope of the investigation.

Finally, proposed Item 1607(c) would require all such reports, opinions or appraisals to be filed as exhibits to the Form S–4, Form F–4, and Schedule TO for the de-SPAC transaction or included in the Schedule 14A or 14C for the transaction, as applicable.

Request for Comment

43. Should we require disclosure regarding reports, opinions, or appraisals from an outside party, as proposed? Is there any additional or alternative information that we should require with respect to these reports, opinions, or appraisals? Is there any proposed information that should not be required?

44. Should we require that the reports, opinions or appraisals be filed as exhibits to the Form S–4, Form F–4, or Schedule TO for the de-SPAC transaction or included in the Schedule 14A or Schedule 14C for the transaction, as proposed? Should we require instead that such reports, opinions, or appraisals be made available for inspection and copying upon written request? Should we require the filing of board books and other written materials presented to the board in connection with the reports, opinions, or appraisals, as is the case with going-private transactions? Are there other means by which investors should be able to access such report, opinion, or appraisal, such as posting on a website?

45. As proposed, filers would be required to include a summary of the report, opinion, or appraisal and file such report, opinion, or appraisal as an exhibit to the filing. Would investors benefit from having both the summary and the actual report, opinion, or appraisal disclosed, or would one or the other item of disclosure be sufficient?

4. Proposed Item 1608 of Regulation S–K

We are proposing Item 1608 of Regulation S–K to codify a staff position that a Schedule TO filed in connection with a de-SPAC transaction should contain substantially the same information about a target private operating company that is required under the proxy rules and that a SPAC must comply with the procedural requirements of the tender offer rules when conducting the transaction for which the Schedule TO is filed, such as a redemption of the SPAC securities. Redemption rights offered by a SPAC to its security holders in connection with the de-SPAC transaction or an extension of the timeframe to complete a de-SPAC transaction generally have indicia of being a tender offer, but the Commission staff has not objected if a SPAC does not comply with the tender offer rules when the SPAC files a Schedule 14A or 14C in connection with a de-SPAC transaction or an extension and complies with Regulation 14A or 14C, because the federal proxy rules would generally mandate substantially similar disclosures and applicable procedural protections as required by the tender offer rules.[101] Proposed Item 1608, if adopted, would not affect the availability of this staff position for those SPACs that file Schedule 14A or 14C for their de-SPAC transactions or extensions. SPACs that are unable to avail themselves of this position and file a Schedule TO (such as foreign private issuers [102]), however, would be subject

[97] As noted above, we have modeled the proposed requirements in Item 1607 on the disclosures required in going-private transactions subject to Exchange Act Rule 13e–3. See Item 1015 of Regulation M–A.

[98] Though currently not a routine practice in de-SPAC transactions, SPACs often obtain fairness opinions in connection with de-SPAC transactions involving an affiliated private operating company.

[99] For example, the proposed rule would require a SPAC to disclose whether or not the SPAC or its sponsor has received a fairness opinion or valuation report from a financial advisor.

[100] For example, this disclosure could include whether the compensation for a financial advisor's fairness opinion is conditioned on the completion of the de-SPAC transaction or whether the amount of compensation due the financial advisor may include a bonus or may be increased depending on the ultimate financial terms of the de-SPAC transaction.

[101] *See supra* note 21.

[102] ''Foreign private issuer'' is defined in Securities Act Rule 405 and Exchange Act Rule 3b–4(c). A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50% of its outstanding voting securities held of record by U.S. residents and (2) any of the following: (i) A majority of its officers and directors are citizens or residents of the United States, (ii) more than 50 percent of its assets are located in the United States, or (iii) its business is principally administered in the United States.

to the requirements of proposed Item 1608 of Regulation S–K, which would codify the staff's view regarding the information required to be included in a Schedule TO filed for a SPAC redemption and clarify the need to comply with the procedural requirements of the tender offer rules.[103]

Proposed Item 1608 would require a SPAC that files a Schedule TO pursuant to Exchange Act Rule 13e–4(c)(2) for any redemption of securities offered in connection with a de-SPAC transaction to include disclosures required by specified provisions of Forms S–4 and F–4, and Schedule 14A, as applicable. Proposed Item 1608 would specify and standardize the information required in a Schedule TO that is filed in connection with a de-SPAC transaction so that it is consistent with the information required by the proposed amendments to Forms S–4 and F–4 and Schedule 14A. As a result, SPAC shareholders who are not solicited for their votes to approve a de-SPAC transaction (in a solicitation subject to Regulation 14A) would nevertheless receive the same information about the target private operating company that could be material to their redemption decisions.[104] Proposed Item 1608 would clarify that SPACs that file a Schedule TO for a redemption also must comply with the procedural requirements of Rule 13e–4 and Regulation 14E (such as the requirement to keep the redemption period open for at least 20 business days). This proposed codification would eliminate any potential ambiguity as to the SPAC's obligation to provide the tender offer rules' procedural protections to the SPAC security holders who are considering whether to redeem their securities.

Request for Comment

46. Should we adopt Item 1608 as proposed?

47. Is there any additional or alternative information that we should require in proposed Item 1608 when a Schedule TO is filed in connection with a de-SPAC transaction?

48. Are there any requirements of Rule 13e–4 and Regulation 14E that should not apply to SPACs that file a Schedule TO for the redemption of the SPAC securities?

49. Are there any other provisions of Rule 13e–4 or Regulation 14E that should be amended to ensure that SPAC security holders are provided with the information material to their decision on whether to redeem their SPAC securities or to address other issues arising from the SPAC redemption process? For example, should we amend Exchange Act Rule 14e–5, which generally prohibits a bidder or its affiliates from making purchases outside of a tender offer, to permit a sponsor's purchases of SPAC securities outside of the redemption offer as long as certain conditions are satisfied (such as requiring disclosures of the sponsor's purchases and limiting the purchase price to no more than the price offered through the redemption offer), *e.g.,* in a manner consistent with the Division of Corporation Finance's Tender Offers and Schedules Compliance and Disclosure Interpretation 166.01 (Mar. 22, 2022)? [105]

50. As noted above, the staff has taken the position that a SPAC filing a Schedule 14A or 14C in connection with a de-SPAC transaction or an extension of the time frame to complete a de-SPAC transaction would not need to file a Schedule TO or otherwise comply with the tender offer rules, including the procedural requirements of the tender offer rules, such as the all-holders requirement. Should we codify this position? Should we reconsider this position?

G. Structured Data Requirement

We are proposing to require SPACs to tag all information disclosed pursuant to Subpart 1600 of Regulation S–K in a structured, machine-readable data language. Specifically, we are proposing to require SPACs to tag the disclosures required under Subpart 1600 in Inline XBRL in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.[106] The proposed requirements would include detail tagging of the quantitative disclosures and block text tagging of the narrative disclosures that would be required under Subpart 1600.

In 2009, the Commission adopted rules requiring operating companies to submit the information from the financial statements (including footnotes and schedules thereto) included in certain registration statements and periodic and current reports in a structured, machine-readable data language using eXtensible Business Reporting Language (''XBRL'').[107] In 2018, the Commission adopted modifications to these requirements by requiring issuers to use Inline XBRL, which is both machine-readable and human-readable, to reduce the time and effort associated with preparing XBRL filings and improve the quality and usability of XBRL data for investors.[108]

Requiring Inline XBRL tagging of the Subpart 1600 disclosures would benefit investors by making SPAC disclosures more readily available and easily accessible to investors and other market participants for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine readable data language such as ASCII or HTML. This would enable automated extraction and analysis of granular SPAC disclosures, allowing investors and other market participants to more efficiently perform large-scale analysis and comparison of SPAC disclosures across SPAC transactions and time periods, including information on sponsor compensation and material conflicts of interest. At the same time, we do not expect the incremental compliance burden associated with tagging the additional information to be unduly burdensome, because SPACs subject to the proposed

[103] The staff has historically expressed the view that the same information about the target company that would be required in a Schedule 14A should be included in such a Schedule TO, in view of the requirements of Item 11 of Schedule TO and Item 1011(c) of Regulation M–A and the importance of this information in making a redemption decision. Item 11 of Schedule TO states ''Furnish the information required by Item 1011(a) and (c) of Regulation M–A.'' Item 1011(c) of Regulation M–A states ''Furnish such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.''

[104] Proposed Item 1608 would also be consistent with exchange listing rules regarding the use of Schedule TO in de-SPAC transactions. *See, e.g.,* Nasdaq Listing Rule IM–5101–2(e) and NYSE Listed Company Manual Section 102.06(c).

[105] This staff interpretation is available at: *https://www.sec.gov/divisions/corpfin/guidance/cdi-tender-offers-and-schedules.htm.*

[106] This tagging requirement would be implemented by including a cross-reference to Rule 405 of Regulation S–T in Subpart 1600 of Regulation S–K, and by revising 17 CFR 232.405(b) of Regulation S–T to include the proposed SPAC-related disclosures. A corresponding Note and Instruction would also be added to Schedules 14A and TO, respectively. Pursuant to Rule 301 of Regulation S–T, the EDGAR Filer Manual is incorporated by reference into the Commission's rules. In conjunction with the EDGAR Filer Manual, Regulation S–T governs the electronic submission of documents filed with the Commission. Rule 405 of Regulation S–T specifically governs the scope and manner of disclosure tagging requirements for operating companies and investment companies, including the requirement in 17 CFR 232.405(a)(3) to use Inline XBRL as the specific structured data language to use for tagging the disclosures.

[107] *Interactive Data to Improve Financial Reporting,* Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] (''2009 Financial Statement Information Adopting Release'') (requiring submission of an Interactive Data File to the Commission in exhibits to such reports). *See also Interactive Data to Improve Financial Reporting,* Release No. 33–9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)].

[108] *Inline XBRL Filing of Tagged Data,* Release No. 33–10514 (June 28, 2018) [83 FR 40846, 40847 (Aug. 16, 2018)]. Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. *Id.* at 40851.

tagging requirements would be subject to similar Inline XBRL requirements in other Commission filings.[109] However, because issuers (including SPACs) are not required to tag any filings until after they have filed a periodic report on Form 10–Q, 20–F, or 40–F, the proposed tagging requirement for disclosures in SPAC IPO registration statements would accelerate the tagging obligations (and related compliance burdens) of SPACs compared to those of other filers.[110] Enhancing the usability of the SPAC initial public offering disclosures through a tagging requirement is of particular importance given the unique nature of SPAC offerings and the potential risks they present to investors.

Request for Comment

51. Should we require SPACs to tag the disclosures required by Subpart 1600 of Regulation S–K, as proposed? Are there any changes we should make to ensure accurate and consistent tagging? If so, what changes should we make?

52. Should we modify the scope of the Subpart 1600 disclosures required to be tagged? For example, should we require tagging of quantitative disclosures only? Should we limit the tagging requirement to only those disclosures required in de-SPAC transactions?

53. Where an item in Subpart 1600 requests that a registrant provide a tabular presentation without specifying a particular format for the table, or data points to include in the table, such as the proposed disclosure related to SPAC sponsor compensation, dilution of unaffiliated shareholders, and the related sensitivity analysis, should we instead require specific elements in the tabular presentation? If we do not propose a specific tabular presentation or required elements, would detail tagging provide useful data for investors and other market participants?

54. Should we require SPACs to use a different structured data language to tag the Subpart 1600 disclosures? If so, what structured data language should we require, and why?

55. We have not proposed exemptions or different requirements from the proposed structured data requirement for foreign private issuers, smaller reporting companies,[111] or emerging growth companies.[112] Should we exempt or provide different requirements from some or all of the proposed structured data requirements for these or other classes of registrants?

III. Aligning De-SPAC Transactions With Initial Public Offerings

As discussed above, private operating companies have increasingly turned to de-SPAC transactions as a means of accessing public securities markets and becoming public reporting companies. As the SPACs that were part of the unprecedented growth in the SPAC market in 2020 and 2021 continue to identify target private operating companies and consummate de-SPAC transactions, it is likely that a significant proportion of companies in the coming years that enter the U.S. public securities markets will do so through de-SPAC transactions.

A private operating company's path to the public markets through a de-SPAC transaction usually commences when a SPAC begins considering it as a potential business combination candidate. After agreeing to the terms of the business combination, the SPAC typically files a Form 8–K announcing the transaction that includes limited information on the material terms of the business combination agreement.[113] This announcement is usually followed by a disclosure document (a Securities Act registration statement, proxy statement, or information statement) filed by the SPAC that includes more extensive information about the private operating company.[114] SPACs use a variety of legal structures to effect de-SPAC transactions, and the particular transaction structure and the consideration used can affect (1) the Commission filings required for the transaction,[115] (2) which entity will have a continuing Exchange Act reporting obligation following the transaction,[116] and (3) the disclosures provided in connection with the transaction.[117]

After the completion of the de-SPAC transaction, the post-business combination company is required to file a Form 8–K within four business days that includes even more information about the private operating company that is equivalent to the information that a new reporting company would be required to provide when filing a Form

[109] *Id.*

[110] *See* 17 CFR 229.601(b)(101)(i)(A).

[111] *See infra* Section III.D.

[112] Section 101(a) of the JOBS Act amended Section 2(a) of the Securities Act [15 U.S.C. 77b(a)] and Section 3(a) of the Exchange Act [15 U.S.C. 78c(a)] to define an ''emerging growth company'' as an issuer with less than $1 billion in total annual gross revenues during its most recently completed fiscal year, as such amount is indexed for inflation every five years by the Commission. If an issuer qualifies as an EGC on the first day of its fiscal year, it maintains that status until the earliest of (1) the last day of the fiscal year of the issuer during which it has total annual gross revenues of $1.07 billion or more; (2) the last day of its fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to an effective registration statement; (3) the date on which the issuer has, during the previous three-year period, issued more than $1 billion in nonconvertible debt; or (4) the date on which the issuer is deemed to be a ''large accelerated filer'' (as defined in Exchange Act Rule 12b–2). *See* Section 2(a)(19) of the Securities Act [15 U.S.C. 77b(a)(19)]; Section 3(a)(80) of the Exchange Act [15 U.S.C. 78c(a)(80)]; and *Inflation Adjustments and Other Technical Amendments under Titles I and II of the JOBS Act,* Release No. 33–10332 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)].

[113] A SPAC is required to file a Form 8–K that provides certain disclosures regarding the business combination agreement if the agreement is a material definitive agreement not made in the ordinary course of business. See Item 1.01 of Form 8–K.

[114] The disclosure document may be a Form S–4 or F–4, Schedule 14A or Schedule TO, depending on, among other things, whether shareholder approval is required and whether the SPAC is registering an offering of shares to be issued in the transaction.

[115] SPACs may use cash, securities, or a combination of both to acquire a target company in a de-SPAC transaction, and the form of consideration is a factor in determining whether a registration statement, proxy or information statement, or tender offer statement is required to be filed in connection with a de-SPAC transaction. Additionally, the SPAC, the target company or a new holding company may issue securities in a de-SPAC transaction, which may necessitate the filing of a registration statement on Form S–4 or F–4 for the transaction.

[116] For example, when a holding company is formed to acquire both the private operating company and the SPAC, and the holding company files a registration statement for the de-SPAC transaction, generally the holding company would continue as the registrant with the Exchange Act reporting obligation following the transaction. In these situations, the private operating company would be the holding company's predecessor, as the term is used in Regulation S–X, with respect to the financial statements and possibly the accounting acquirer under generally accepted accounting principles as used in the United States (''U.S. GAAP''), with the equity ownership percentage in the combined company held by the former owners of the private operating company and the degree to which former management of the private operating company continues with the combined company among the factors that could impact the accounting acquirer determination under U.S. GAAP. Under the proposed amendments to Regulation S–X, the SPAC would be an acquired business. *See infra* Section IV.B.

[117] The disclosures required in connection with a de-SPAC transaction are determined by the applicable disclosure form (Form S–4 or F–4, Schedule 14A or 14C, or Schedule TO) and which entity is filing the form. Under the proposed amendments, companies would not be subject to the same disclosure requirements in every de-SPAC transaction structure. For example, if the SPAC is a domestic registrant and a new holding company is a foreign issuer, and the private operating company meets the criteria to be a foreign private issuer, the holding company (the company filing the de-SPAC transaction filing) would also qualify as a foreign private issuer. Foreign private issuer status would permit the foreign holding company to file a Form F–4 for the de-SPAC transaction and apply the foreign private issuer disclosure regime. In contrast, if a de-SPAC transaction is structured so that (1) a domestic SPAC is the company issuing securities as the acquiring entity of the foreign private operating company, (2) there is no foreign holding company, and (3) the SPAC makes the de-SPAC transaction filing, the registrant would continue to be a domestic issuer and follow domestic reporting rules until the next determination date for foreign private issuer status.

10 under the Exchange Act.[118] The result is that investors may receive disclosures about the future public company that differ from, or are not provided in the same manner as, the information disclosed in a Form S–1 or F–1 filed in connection with a traditional initial public offering. Additionally, some of the investor protections afforded in a traditional initial public offering are not available or are more attenuated when a private operating company becomes a public company through a de-SPAC transaction.[119]

In light of the increasingly common reliance on de-SPAC transactions as a vehicle for private operating companies to access the U.S. public securities markets, we are proposing a number of new rules and amendments to existing rules to align more closely the treatment of private operating companies entering the public markets through de-SPAC transactions with that of companies conducting traditional initial public offerings. In our view, a private operating company's method of becoming a public company should not negatively impact investor protection. Accordingly, the proposed new rules and amendments are intended to provide investors with disclosures and liability protections comparable to those that would be present if the private operating company were to conduct a traditional firm commitment initial public offering.

These proposed new rules and amendments would (1) more closely align the non-financial statement disclosure requirements with respect to the private operating company in disclosure documents for a de-SPAC transaction with the disclosure required in a Form S–1 or F–1 for an initial public offering; [120] (2) require a minimum dissemination period for disclosure documents in de-SPAC transactions; (3) treat the private operating company as a co-registrant of the Form S–4 or Form F–4 for a de-SPAC transaction when a SPAC is filing the registration statement; (4) require a re-determination of smaller reporting company status following the consummation of a de-SPAC transaction; (5) amend the definition of ''blank check company'' for PSLRA purposes such that the safe harbor for forward-looking information would not apply to projections in filings by SPACs and certain other blank check companies that are not penny stock issuers; and (6) provide, in a Commission rule, that underwriters in a SPAC initial public offering are deemed to be underwriters in a subsequent de-SPAC transaction under certain circumstances.

A. Aligning Non-Financial Disclosures in De-SPAC Disclosure Documents

In regard to non-financial statement disclosures, we are proposing that, if the target company in a de-SPAC transaction is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, disclosure with respect to such company pursuant to the following items in Regulation S–K would be required in the registration statement or schedule filed in connection with the de-SPAC transaction: (1) Item 101 (description of business); (2) Item 102 (description of property); (3) Item 103 (legal proceedings); (4) Item 304 (changes in and disagreements with accountants on accounting and financial disclosure); (5) Item 403 (security ownership of certain beneficial owners and management, assuming the completion of the de-SPAC transaction and any related financing transaction); [121] and (6) Item 701 (recent sales of unregistered securities).[122] If the private operating company is a foreign private issuer,[123] the proposed rules would include the option of providing disclosure relating to the private operating company in accordance with Items 3.C, 4, 6.E, 7.A, 8.A.7, and 9.E of Form 20–F, consistent with disclosure that could be provided by these entities in an initial public offering.[124]

The proposed additional information is already required to be included in a Form 8–K due within four business days of the completion of the de-SPAC transaction, such that registrants currently should already be preparing this information in anticipation of this Form 8–K filing in connection with a de-SPAC transaction.[125] Aligning the disclosure requirements in de-SPAC transactions in this manner with those in initial public offerings would mandate that this additional information about the private operating company be provided to shareholders before they make voting, investment, or redemption decisions in connection with the proposed transactions.[126] As proposed, this information would also be available to investors prior to the inception of trading of the post-business

[118] Form 10 is the long-form registration statement to register a class of securities under Section 12(b) or 12(g) of the Exchange Act. *See* Items 2.01(f), 5.01(a)(8), and 9.01(c) of Form 8–K. By the time the Form 8–K with Form 10 information is filed, the securities of the post-business combination company have often already begun trading on a national securities exchange with a new ticker symbol, in that the securities of the SPAC generally trade on an exchange until the consummation of the de-SPAC transaction, after which the securities of the post-business combination company generally commence trading on the following business day.

[119] For example, a private company engaged in a traditional initial public offering is generally more limited in its ability to make communications about its offering prior to the filing of a Securities Act registrations statement on Form S–1 than companies engaged in a business combination transaction that will be registered on Form S–4 or F–4. De-SPAC transactions also often lack named underwriters that perform due diligence and other traditional gatekeeping functions, and it may be more difficult for investors to trace their purchases to the registered de-SPAC transaction for purposes of establishing a Section 11 claim for material misstatements or omissions in de-SPAC disclosure documents.

[120] We are also proposing to more closely align the financial statement disclosure requirements with respect to the private operating company in any business combination involving a shell company with the disclosure required in a Form S–1 for an initial public offering, which would encompass de-SPAC transactions. *See infra* Section IV.B.

[121] We note that Item 18(a)(5) of Form S–4 currently requires disclosure pursuant to Item 403 regarding the target company and a SPAC's principal shareholders, through Item 6 of Schedule 14A, in a Form S–4 that includes a proxy seeking shareholder approval of the de-SPAC transaction.

[122] Proposed General Instruction L.2. to Form S–4; Proposed General Instruction I.2. to Form F–4; Proposed Item 14(f) of Schedule 14A; Proposed General Instruction K to Schedule TO. We note that disclosure pursuant to Item 303 (management's discussion and analysis of financial condition and results of operations) of Regulation S–K is already required with respect to a non-reporting target company in Forms S–4 and F–4 and in Schedules 14A and 14C for a de-SPAC transaction. As proposed, disclosure pursuant to Item 701 of Regulation S–K would be required in Part I (information required in the prospectus) of Form S–4 and Form F–4, whereas in Form S–1, the Item 701 disclosure requirement appears under Part II (information not required in prospectus) of the form.

[123] *See supra* note 102.

[124] Disclosure requirements for foreign private issuers differ from domestic registrants, including the absence of quarterly reporting requirements, the use of different forms with different disclosure provisions, and an ability to present financial statements in accordance with IFRS instead of U.S. GAAP. In addition, foreign private issuers are not required to file current reports on Form 8–K using the Form 8–K disclosure criteria; rather, they can furnish current reports on Form 6–K applying the disclosure requirements of that Form. *See Foreign Issuer Reporting Enhancements,* Release 33–8959 (Sep. 23, 2008) [73 FR 58300 (Oct. 6, 2008)].

[125] This Form 8–K is required to include the same information that would be required for a newly reporting company when filing a Form 10 under the Exchange Act. *See* Items 2.01(f), 5.01(a)(8), and 9.01(c) of Form 8–K. In this regard, we note that these items of Form 8–K each provide that if any disclosure required by these items has been previously reported, the registrant may identify the filing in which that disclosure is included instead of including that disclosure in the Form 8–K.

[126] In this regard, we note that many, but not all, Forms S–4 and F–4 and Schedules 14A and 14C that are filed in connection with de-SPAC transactions contain information about the target company as proposed. The proposed amendments, if adopted, would require that this information be provided in all de-SPAC transactions subject to the specialized disclosure requirements in Subpart 1600.

combination company's securities on a national securities exchange, rather than being required in a Form 8–K due within four business days of the completion of the de-SPAC transaction. Further, if this disclosure is included in a Form S–4 or Form F–4, any material misstatements or omissions contained therein would subject the issuers and other parties to liability under Sections 11 and 12 of the Securities Act, which would align with the protections afforded to investors under the Securities Act for disclosures provided in a Form S–1 or F–1 for an initial public offering.

Request for Comment

56. Should we require additional information regarding the private operating company in disclosure documents filed in connection with a de-SPAC transaction, as proposed? Would these additional disclosures provide investors with a better understanding of the private operating company's operations and related risks? Should we require more or less disclosure regarding the private operating company in the registration statements or schedules filed in connection with de-SPAC transactions?

57. What are the benefits of providing this information earlier to investors when they are making voting, investment, and redemption decisions in connection with a de-SPAC transaction or at or before the commencement of trading in the post-business combination company's securities on a securities exchange? Would it be unduly burdensome to provide this additional information regarding the private operating company at this earlier point in time?

58. Should a private operating company that would qualify as a foreign private issuer have the option of providing disclosure in accordance with certain items of Form 20–F, as proposed?

59. Should we require additional or less information in proposed Item 1608 and Schedule TO when a SPAC files a Schedule TO in connection with a de-SPAC transaction? For example, should we require disclosure regarding management's discussion and analysis of financial condition and results of operations (Item 303 of Regulation S–K) pursuant to Item 1608 or Schedule TO?

60. Should the proposed disclosure requirements with respect to the private operating company be scaled to take into account the size, nature, or certain characteristics of the company?

B. Minimum Dissemination Period

In addition to the need for enhanced disclosure in de-SPAC transactions, we recognize the importance of ensuring that SPAC shareholders have adequate time to analyze the information presented in these transactions. There is currently no federally mandated period in business combination transactions to provide security holders with a minimum amount of time to consider proxy statement or other disclosures.[127] In view of the unique circumstances surrounding de-SPAC transactions, we are proposing to amend Exchange Act Rules 14a–6 and 14c–2, as well as to add instructions to Forms S–4 and F–4,[128] to require that prospectuses and proxy and information statements filed in connection with de-SPAC transactions be distributed to shareholders at least 20 calendar days in advance of a shareholder meeting or the earliest date of action by consent, or the maximum period for disseminating such disclosure documents permitted under the applicable laws of the SPAC's jurisdiction of incorporation or organization if such period is less than 20 calendar days.[129] As stated above, SPACs are organized for the purpose of completing a de-SPAC transaction within a certain time frame, and as a SPAC approaches the end of this period, there is less time available for a SPAC to find a candidate for a business combination transaction, prepare and file the appropriate de-SPAC disclosure documents with the Commission, disseminate such documents to its shareholders, receive the requisite shareholder approval when applicable, and consummate the de-SPAC transaction. Although the laws of a SPAC's jurisdiction of incorporation or organization may require the SPAC to send a notice to its shareholders at least a specified number of days before the shareholder meeting to approve a proposed business combination transaction, such notices are generally limited to information regarding the time, place, and purpose of the meeting, along with a copy or summary of the business combination agreement.[130] They do not generally require a minimum period of time for dissemination of any other information about the transaction (including any proxy statements or other materials required by the federal securities laws) to shareholders.[131] Similarly, such requirements do not exist in exchange listing standards.[132] Without a minimum period for dissemination of prospectuses, proxy statements, and other materials before a shareholder meeting (or action by consent), a SPAC and its sponsor may have incentives to provide prospectuses or proxy or information statements for a de-SPAC transaction to the SPAC's security holders within an abbreviated time frame, leaving the security holders with relatively little time to review what are often complex disclosure documents for these transactions.

We are proposing a minimum 20-calendar day dissemination period for prospectuses and proxy and information statements that, in our view, would provide an important investor protection.[133] We recognize that SPACs are often required under their governing

[127] In Form S–4 and Form F–4, however, there is a minimum 20-business day period requirement in sending a prospectus to security holders prior to a security holder meeting that is applicable when a registrant incorporates by reference information about the registrant or the company being acquired into the form. General Instruction A.2 of Form S–4 and General Instruction A.2 of Form F–4.

[128] Proposed General Instruction L.3. to Form S–4; Proposed General Instruction I.3. to Form F–4.

[129] The proposed amendments would be applicable to Forms S–4 and F–4 and Schedules 14A and 14C. We are not proposing to amend the 20 business day period when a Schedule TO is filed in connection with a de-SPAC transaction. *See supra* Section II.F.4.

[130] *See, e.g.,* DEL. CODE ANN. tit. 8, sec. 251(c) (2022) (stating, in part, that ''[d]ue notice of the time, place and purpose of the meeting shall be given to each holder of stock, whether voting or nonvoting, of the corporation at the stockholder's address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting [to vote on an agreement of merger or consolidation]'').

[131] *See* R. Franklin Balotti, *et al.,* Delaware Law of Corporations and Business Organizations, § 9.16 (4th ed. 2022 & Supp. 2022) (''[t]he only statutory requirements for the notice of the meeting are that it state the time, place and purpose of the meeting and that the notice contain a copy of the merger agreement or a summary of the agreement . . . [i]n practice, of course, many such meetings will be governed by the federal proxy rules, which require that a full proxy statement be submitted to the stockholders.'').

[132] Although both the NYSE and Nasdaq generally require that listed companies solicit proxies and provide proxy statements for all shareholder meetings, neither requires a minimum number of days between when proxy materials are provided to shareholders and when the meeting is held. Instead, for example, NYSE Listed Company Manual Section 402.03 simply ''recommends that a minimum of 30 days be allowed between the record and meeting dates so as to give ample time for the solicitation of proxies.''

[133] The proposed 20-calendar day period is the same length of time as the 20-day advance disclosure period in 17 CFR 13e–3(f)(1) (Exchange Act Rule 13e–3(f)(1)). In adopting a 20-day advance disclosure requirement for dissemination of documents in connection with going private transactions, the Commission stated this requirement was intended to provide reasonable assurance that the information required to be disclosed to security holders would be disseminated sufficiently far in advance of the transactions to permit security holders to make ''an unhurried and informed'' decision. *Going Private Transactions by Public Companies or Their Affiliates,* Release No. 33–6100 (Aug. 2, 1979) [44 FR 46736 (Aug. 8, 1979)].

instruments and applicable exchange listing rules to complete de-SPAC transactions within a certain time frame and that relying on the safe harbor we are proposing under the Investment Company Act would also limit the time frame in which to announce and complete a de-SPAC transaction.[134] Nevertheless, given the complexity of the SPAC structure, the conflicts of interest that are often present in this structure and the effects of dilution on non-redeeming shareholders, the proposed 20-calendar day period would establish a minimum time period for shareholders to review prospectuses and proxy and information statements in de-SPAC transactions (subject to the carve-out discussed below),[135] so that they have sufficient time to consider the disclosures and to make more informed voting, investment and redemption decisions.[136] In the event that the laws of a SPAC's jurisdiction of incorporation or organization have a provision applicable to the dissemination of prospectuses and proxy and information statements required under the federal securities laws, we are proposing to include a provision that would require a registrant to satisfy the maximum dissemination period permitted under the applicable law of such jurisdiction when this period is less than 20 calendar days to avoid conflicting with such a requirement.[137]

Request for Comment

61. Should we require a minimum dissemination period for prospectuses and proxy or information statements in de-SPAC transactions as proposed? Is a 20–day period necessary or appropriate to enable shareholders to review and consider these disclosure documents relating to a de-SPAC transaction? Should this 20 calendar day period be longer or shorter? Should the minimum dissemination period be based on business days (*e.g.,* 20 business days) instead of calendar days as proposed?

62. Would there be timing concerns on the part of SPACs in meeting the proposed minimum 20-day dissemination period? Should we include an exception for the applicable laws of the SPAC's jurisdiction of incorporation or organization, as proposed? Should we include other exceptions to the proposed minimum 20-day dissemination period?

63. Would additional guidance be helpful in determining how to apply this proposed requirement?

64. Are there additional or alternative requirements we should adopt in connection with the dissemination of disclosure documents in a de-SPAC transaction?

C. Private Operating Company as Co-Registrant to Form S–4 and Form F–4

Under Section 6(a) of the Securities Act, each ''issuer'' must sign a Securities Act registration statement.[138] The Securities Act broadly defines the term ''issuer'' to include every person who issues or proposes to issue any securities.[139] Currently, when a SPAC offers and sells its securities in a registered de-SPAC transaction, only the SPAC, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and at least a majority of its board of directors (or persons performing similar functions) are required to sign the registration statement for the transaction. In these situations, the private operating company, for which the de-SPAC transaction effectively serves as its initial public offering, and its officers and directors do not sign the registration statement that contains disclosure about the private operating company's business and financial results and thereby may avoid liability as signatories to the registration statement under Section 11 of the Securities Act, unlike if the private operating company had conducted a traditional initial public offering registered on Form S–1 or Form F–1.[140]

We are proposing to amend Form S–4 and Form F–4 to require that the SPAC and the target company be treated as co-registrants when these registration statements are filed by the SPAC in connection with a de-SPAC transaction.[141] In view of the protections that the Securities Act provides to investors in a traditional initial public offering, it is appropriate in our view to interpret Section 6(a) to encompass the target company, in addition to the SPAC, as an issuer for purposes of Section 6(a) and the signature requirements of Form S–4 or Form F–4.

A de-SPAC transaction marks the introduction of the private operating company to the U.S. public securities markets, and investors look to the business and prospects of the private operating company in evaluating an investment in the combined company.[142] Accordingly, it is the private operating company that, in substance, issues or proposes to issue its securities, as securities of the newly combined public company.[143] While

[134] *See infra* Section VI.B.3.

[135] When a registrant incorporates by reference information about the registrant or the company being acquired in the Form S–4 or F–4 for a de-SPAC transaction, the 20-business day period in Form S–4 and Form F–4, which we are not proposing to amend, would continue to be applicable. General Instruction A.2 of Form S–4 and General Instruction A.2 of Form F–4.

[136] The proposed minimum dissemination period is intended to apply to the dissemination of certain Commission filings in connection with de-SPAC transactions and is not intended to impact any requirements of the jurisdiction of incorporation or organization regarding the notice of an annual or special meeting, such as Section 251(c) of the Delaware General Corporation Law.

[137] For example, if the jurisdiction has no minimum dissemination period and does not have a maximum dissemination period, the minimum 20-day period, as proposed, would apply. If the jurisdiction has a minimum dissemination period of less than 20 days (*e.g.,* 10 days) and does not have a maximum dissemination period, the minimum 20-day period, as proposed, would apply. If the jurisdiction has a minimum dissemination period of less than 20 days (*e.g.,* 10 days) and a maximum dissemination period of less than 20 days (*e.g.,* 15 days), the maximum dissemination period under the jurisdiction would apply. If the jurisdiction has no minimum dissemination period and a maximum dissemination period of less than 20 days (*e.g.,* 15 days), the maximum dissemination period under the jurisdiction would apply.

[138] In addition, Section 6(a) requires the issuer's principal executive officer or officers, principal financial officer, comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer) to sign a registration statement. When the issuer is a foreign entity, the registration statement must also be signed by the issuer's duly authorized representative in the United States.

[139] Section 2(a)(4) of the Securities Act.

[140] Even when not liable under Section 11, the private operating company and its affiliates, however, may be subject to enforcement actions by the Commission, including those under Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b–5, as well as potential liability under 17 CFR 240.10b–5 (Exchange Act Rule 10b–5) in private rights of action. *See, e.g., In the Matter of Momentus, Inc., et al.,* Release No. 34–92391 (July 13, 2021) (settled proceeding charging privately held company with violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b–5 for, among other things, allegedly materially false statements and omissions in the registration statement/proxy statement filed in connection with a business combination with a publicly traded SPAC).

[141] Proposed General Instruction L.4. to Form S–4; Proposed General Instruction I.4. to Form F–4. Section 6(a) of the Securities Act uses the term ''issuer,'' but Securities Act registration statement forms use the term ''registrant.'' The term ''registrant'' is defined in Rule 405 as ''the issuer of the securities for which the registration statement is filed.'' As a co-registrant of the Form S–4 or Form F–4, the private operating company would have an Exchange Act reporting obligation pursuant to Section 15(d) of the Exchange Act following the effectiveness of the registration statement.

[142] That is, the operations of the private company constitute the business and the basis for the financial and other disclosures of the newly combined public company following a de-SPAC transaction.

[143] The legislative history of the broad definition of the term ''issuer'' in the Securities Act suggests that the identification of the ''issuer'' of a security should be based on the economic reality of a transaction to ensure that, in service of the

Continued

similar policy considerations can arise in other business combination contexts, given the substantial increase in the number of SPAC transactions in recent years, the number of shareholders typically impacted by such transactions, and concerns that are unique to the SPAC structure, we are concerned that a narrow approach to registrant status in de-SPAC transactions could undermine the statutory liability scheme that Congress applied to initial public offerings of securities.

We are proposing to amend the signature instructions to Form S–4 and F–4 to state that, if a SPAC is offering its securities in a de-SPAC transaction that is registered on the form, the term ''registrant'' for purposes of the signature requirements of the form would mean the SPAC and the target company.[144] This requirement would make the additional signatories to the form, including the principal executive officer, principal financial officer, controller/principal accounting officer, and a majority of the board of directors or persons performing similar functions of the target company, liable (subject to a due diligence defense for all parties other than the SPAC and the target company), for any material misstatements or omissions in the Form S–4 or Form F–4 and would thereby mitigate the risk that the target company's directors and management would not be held accountable to investors for the accuracy of the disclosures in the registration statement due to the absence of the deterrent threat of liability under Section 11.[145] Moreover, this proposed requirement could improve the reliability of the disclosure provided to investors in connection with de-SPAC transactions by creating strong incentives for such additional signing persons to review more closely the disclosure about the target company in these registration statements and to conduct more searching due diligence in connection with de-SPAC transactions and related registration statements.

Request for Comment

65. Should we amend Form S–4 and Form F–4, as proposed, to require that the SPAC and the private operating company be treated as co-registrants when the registration statement is filed by the SPAC in connection with a de-SPAC transaction?

66. Would amending Form S–4 and Form F–4 in this manner improve the disclosure provided in connection with de-SPAC transactions that are registered on these forms?

67. Should the proposed amendment to Form S–4 and Form F–4 be extended to apply to all business combination transactions where a shell company, other than a business combination related shell company, is the acquirer?

68. Should the sponsor of a SPAC also be required to sign a Form S–4 or Form F–4 filed in connection with a de-SPAC transaction, as well as a Form S–1 or Form F–1 filed for a SPAC's initial public offering, in view of, among other things, the sponsor's control over the SPAC and the sponsor's role in preparing these registration statements? Would such a requirement be consistent with the Commission's approach in requiring a majority of the board of directors of any corporate general partner to sign a registration statement when the registrant is a limited partnership?

69. Should we also adopt corresponding amendments to Form S–1 and Form F–1 in the event that these forms are used by a SPAC for a de-SPAC transaction?

D. Re-Determination of Smaller Reporting Company Status

Smaller reporting companies are a category of registrants that are eligible for scaled disclosure requirements in Regulation S–K and Regulation S–X and in various forms under the Securities Act and the Exchange Act.[146] For example, smaller reporting companies are not required to provide quantitative and qualitative information about market risk pursuant to Item 305 of Regulation S–K.[147] In general, a smaller reporting company is a company that is not an investment company, an asset-backed issuer or a majority-owned subsidiary of a parent that is not a smaller reporting company, and had (1) a public float of less than $250 million, or (2) had annual revenues of less than $100 million during the most recently completed fiscal year for which audited financial statements are available and either had no public float or a public float of less than $700 million.[148] Smaller reporting company status is determined at the time of filing an initial registration statement under the Securities Act or Exchange Act for shares of common equity and is re-determined on an annual basis. Once a company determines that it is not a smaller reporting company, it will retain this status unless it determines, when making its annual determination, that its public float was less than $200 million or, alternatively, that its public float and annual revenues fell under certain thresholds.[149]

Currently, most SPACs qualify as smaller reporting companies,[150] and a post-business combination company after a de-SPAC transaction is permitted by rule [151] to retain this status until the next annual determination date when a SPAC is the legal acquirer of the private operating company in a de-SPAC transaction. The absence of a re-determination of smaller reporting company status upon the completion of these de-SPAC transactions permits certain post-business combination companies to avail themselves of scaled disclosure and other accommodations when they otherwise would not have

disclosure purpose of the Act, the person(s) that have access to the information relevant to investors are responsible as an ''issuer'' for providing such information. *See, e.g.,* H.R. REP. 73–85, 12 (''Special provisions govern the definition of 'issuer' in connection with security issues of an unusual character. . . . [For example, in the case of an investment trust], although the actual issuer is the trustee, the depositor is the person responsible for the flotation of the issue. Consequently, information relative to the depositor and to the basic securities is what chiefly concerns the investor—information respecting the assets and liabilities of the trust rather than of the trustee.'').

[144] The Commission has previously specified who constitutes the ''registrant'' for purposes of signing a Securities Act registration statement in certain contexts. For example, an instruction in Forms S–4 and F–4 requires two or more existing corporations to be deemed co-registrants when they will be parties to a consolidation and the securities to be offered are those of a corporation not yet in existence at the time of filing. See Instruction 3 to the signature page for Form S–4 and Form F–4 (''If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the registrant.'').

[145] In this regard, we note that the target company's directors and executive officers are the parties most similarly situated to the directors and officers of a private company conducting a traditional initial public offering, in terms of their knowledge of, and background in, the company going public through a de-SPAC transaction.

[146] *See, e.g.,* 17 CFR 229.10(f) (Item 10(f) of Regulation S–K); Rules 8–01, 8–02, 8–03, 8–07, and 8–08 of Regulation S–X; Item 1A of Form 10 and Form 10–K; Item 3.02 of Form 8–K. A foreign private issuer is not eligible to use the scaled disclosure requirements for smaller reporting companies unless it uses the forms and rules designated for domestic issuers and provides financial statements prepared in accordance with U.S. GAAP. Instruction 2 to Item 10(f); Instruction 2 to definition of ''smaller reporting company'' in Securities Act Rule 405 and Exchange Act Rule 12b–2.

[147] Item 305(e) of Regulation S–K.

[148] The definition of ''smaller reporting company'' is set forth in Securities Act Rule 405, Exchange Act Rule 12b–2 and Item 10(f) of Regulation S–K.

[149] *See* Item 10(f)(2)(iii) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

[150] *See infra* Section IX.B.2.f.

[151] *See* Item 10(f)(2) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

qualified as a smaller reporting company had they become public companies through a traditional initial public offering.

In view of the informational asymmetries that result when a private operating company chooses to go public through such a de-SPAC transaction and the increasing prevalence of these transactions as a vehicle for private operating companies to become reporting companies under the Exchange Act, we are proposing to require a re-determination of smaller reporting company status following the consummation of a de-SPAC transaction. As proposed, this re-determination of smaller reporting company status would occur prior to the time the post-business combination company makes its first Commission filing, other than the Form 8–K with Form 10 information,[152] with the public float threshold measured as of a date within four business days after the consummation of the de-SPAC transaction and the revenue threshold determined by using the annual revenues of the private operating company as of the most recently completed fiscal year for which audited financial statements are available.[153] The applicable thresholds in the current definition would remain unchanged.

The proposed four-business day window to calculate the public float threshold following a de-SPAC transaction would end on the due date for the Form 8–K with Form 10 information that a post-business combination company is required to file after the completion of a de-SPAC transaction. The proposed four-business day period would provide some flexibility for issuers to measure public float, compared to the annual re-determination of smaller reporting company status,[154] and would allow for a more accurate reflection of a post-business combination company's public float, in view of the limited trading history of the common equity securities of the post-business combination company following a de-SPAC transaction.

We are proposing to require a post-business combination company to reflect this re-determination of smaller reporting company status in its first periodic report (Form 10–K or Form 10–Q) following a de-SPAC transaction, which would provide the post-business combination company with time to prepare for any loss of the scaled disclosure and other accommodations available to smaller reporting companies.[155] As proposed, a post-business combination company that fails to qualify for smaller reporting company status after a de-SPAC transaction would remain unqualified until its next annual re-determination of this status.

Request for Comment

70. As proposed, the re-determination of smaller reporting company status must be based on public float measured as of a date within four business days after the consummation of the de-SPAC transaction and the annual revenues of the private operating company as of the most recently completed fiscal year for which audited financial statements are available. Should we require the re-determination of smaller reporting company status upon the completion of a de-SPAC transaction, as proposed? Should public float be determined within a different time frame (*e.g.,* 30 days) or through a different method (*e.g.,* as the average over a certain period)? Should the annual revenues of the private operating company be used in determining whether the revenue threshold has been met, as proposed?

71. Should we require a post-business combination company following a de-SPAC transaction to reflect the re-determination of smaller reporting company status in its next periodic report, as proposed? Alternatively, should we require a post-business combination company to reflect the re-determination of smaller reporting company status at an earlier or later point in time after the completion of a de-SPAC transaction, such as in the first periodic report that covers the period in which the de-SPAC transaction occurred (*e.g.,* when a de-SPAC transaction is completed after the end of a fiscal year but prior to the due date of the Form 10–K for that fiscal year)? Should we provide an accommodation if a de-SPAC transaction is completed close in time to the due date for the registrant's first periodic report?

72. To the extent that a post-business combination company no longer qualifies for smaller reporting company status as a result of the proposed re-determination of this status following a de-SPAC transaction, would the proposed re-determination make it more difficult for such a company to file a registration statement after the filing of its first periodic report that complies with the disclosure requirements applicable to non-smaller reporting companies? If so, should we provide any accommodations for this scenario?

73. Should we make any additional changes with respect to re-determining smaller reporting company status after the completion of a de-SPAC transaction? For example, should we replace the public float test with a revenue test for this purpose? Should we provide any guidance with respect to how to apply this proposal?

74. Should we similarly require a re-determination of emerging growth company status, accelerated filer status, large accelerated filer status and/or foreign private issuer status upon the completion of a de-SPAC transaction?

E. PSLRA Safe Harbor

The PSLRA provides a safe harbor for forward-looking statements under the Securities Act and the Exchange Act, under which a company is protected from liability for forward-looking statements in any private right of action under the Securities Act or Exchange Act when, among other things, the forward-looking statement is identified as such and is accompanied by meaningful cautionary statements.[156] The safe harbor is not available, however, when a forward-looking statement is made in connection with an offering by a blank check company or an initial public offering.[157]

[152] A Form 8–K with Form 10 information is filed pursuant to Items 2.01(f), 5.01(a)(8), and/or 9.01(c) of the form.

[153] Proposed Item 10(f)(2)(iv) and the proposed amendments to the definition of ''smaller reporting company'' in Securities Act Rule 405 and Exchange Act Rule 12b–2. The float determination would be required to precede the first Commission filing after the Form 8–K with Form 10 information.

[154] In re-determining smaller reporting company status annually, a registrant is required to measure its public float as of the last business day of its most recently completed second fiscal quarter.

[155] For example, as proposed, a post-business combination company would be required to re-determine whether it qualifies as a smaller reporting company, using the initial qualification thresholds in the definition, prior to the time the company makes its first Commission filing (*e.g.,* a Form 8–K, registration statement or periodic report) after the filing of a Form 8–K with Form 10 information, with its public float measured as of a date within four business days after the completion of the de-SPAC transaction. The company would not be required to reflect this re-determination of smaller reporting company status in any Commission filing until it files its first periodic report (Form 10–K or Form 10–Q) following the de-SPAC transaction. Thus, if a SPAC qualified as a smaller reporting company before a de-SPAC transaction and was the legal acquirer in the de-SPAC transaction, the post-business combination company would continue to be able to rely on the scaled disclosure accommodations for smaller reporting companies when filing a registration statement between the re-determination date and the post-business combination company's first periodic report.

[156] Section 27A of the Securities Act and Section 21E of the Exchange Act. The PSLRA does not impact the Commission's ability to bring enforcement actions relating to forward-looking statements.

[157] Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act. In addition, the safe harbor is not available for an offering by a

Continued

For purposes of the safe harbor, the term ''blank check company'' and certain other terms [158] ''have the meanings given those terms by rule or regulation of the Commission.'' [159] The Commission has defined the term ''blank check company'' for purposes of and in Rule 419 as a development stage company that is issuing ''penny stock,'' as defined in Exchange Act Rule 3a51–1, and that has no specific business plan or purpose, or has indicated that its business plan is to merge with or acquire an unidentified company or companies, or other entity or person.[160] This definition, which has not been amended since it was adopted by the Commission in 1992, predates the enactment of the PSLRA in 1995. SPACs that raise more than $5 million in a firm commitment underwritten initial public offering are excluded from this definition of ''blank check company'' because they are not selling ''penny stock.'' [161]

Projections of the private operating company's performance are typically prepared and disclosed in connection with a de-SPAC transaction. Some market participants are of the view that the PSLRA safe harbor for forward-looking statements is available in de-SPAC transactions when a SPAC is not a blank check company under Rule 419 and thus may not exercise the same level of care in preparing forward-looking statements, such as projections, as in a traditional initial public offering.[162] As noted above, a number of commentators have raised concerns about the use of projections that they believe to be unreasonable in de-SPAC transactions.[163]

To address concerns about the use of forward-looking statements, such as projections, in connection with de-SPAC transactions, and pursuant to the statutory authority under the PSLRA to define ''blank check company'' by Commission rule or regulation, we are proposing to amend the definition of ''blank check company'' for purposes of the PSLRA to remove the ''penny stock'' condition and to define the term as ''a company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.'' [164] As discussed above, private companies are increasingly using de-SPAC transactions as a mechanism to become public companies. For purposes of the PSLRA, we see no reason to treat forward-looking statements made in connection with de-SPAC transactions differently than forward-looking statements made in traditional initial public offerings, in that both instances involve private issuers entering the public U.S. securities markets for the first time and similar informational asymmetries that exist between these issuers (and their insiders and early investors) and public investors. Moreover, we see no reason to treat blank check companies differently for purposes of the PSLRA safe harbor depending on whether they raise more than $5 million in a firm commitment underwritten initial public offering and thus are not selling penny stock.

Amending the definition of ''blank check company'' in this manner would clarify that the statutory safe harbor in the PSLRA is not available for forward-looking statements, such as projections, made in connection with de-SPAC transactions involving an offering of securities by a SPAC or other issuer that meets the definition of ''blank check company'' as amended, such that forward-looking statements by SPACs, such as statements regarding the projections of target private operating companies in these transactions, would not fall under the safe harbor.[165] The proposed amendment would also eliminate the current overlap in the safe harbor in regard to the exclusion for offerings by blank check companies and the exclusion for penny stock issuers.[166] To avoid multiple definitions for the term ''blank check company,'' we are proposing to amend Rule 419 in a manner that would otherwise retain the current scope of the rule. We are also proposing to amend the references to ''blank check company'' in various Securities Act rules to ''blank check company issuing penny stock,'' as such term would be defined in Securities Act Rule 405, to maintain the current scope of these rules.[167]

Request for Comment

75. Should we define ''blank check company'' in Rule 405, as proposed? Should we include a reference in the definition to ''development stage company'' or the issuance of ''penny stock''? Should we consider other changes to the proposed definition?

76. Would the proposed amendments improve the quality of projections in connection with de-SPAC transactions by clarifying that the safe harbor under the PSLRA is unavailable? Would the proposed amendment discourage some SPACs from disclosing projections in connection with these transactions or affect the ability of SPACs or target companies to comply with their obligations under the laws of their jurisdiction of incorporation or organization to disclose projections used by the board of directors or the companies' fairness opinion advisers?

77. As an alternative approach, should we issue an interpretation addressing whether a de-SPAC transaction is an ''initial public offering'' for purposes of the PSLRA?

78. Would including the proposed Rule 405 definition of ''blank check company'' in Rule 419 create confusion for registrants and investors? Should we consider retaining a separate definition of ''blank check company'' for purposes of Rule 419? If so, why?

79. Should we amend the references to ''blank check company'' in Securities Act Rules 137, 138, 139, 163A, 164, 174, 430B and 437a to refer to ''blank check company issuing penny stock,'' as proposed?

penny stock issuer, a roll-up transaction, a going private transaction, an offering by a partnership or a limited liability company, a tender offer, or an offering by an issuer convicted of specified securities law violations or subject to certain injunctive or cease and desist actions.

[158] These other terms are ''rollup transaction,'' ''partnership,'' ''limited liability company,'' ''executive officer of an entity,'' and ''direct participation investment program.''

[159] Section 27A(i)(7) of the Securities Act and Section 21E(i)(5) of the Exchange Act.

[160] *See supra* notes 3 and 13. The statutory definition of ''blank check company'' appears in Section 7(b)(3) of the Securities Act.

[161] *See supra* note 12.

[162] *See, e.g.,* Matt Levine, *Money Stuff: Maybe SPACs Are Really IPOs,* Bloomberg, Apr. 12, 2021; Eliot Brown, *Electric-Vehicle Startups Promise Record-Setting Revenue Growth,* The Wall Street Journal, Mar. 15, 2021; *Public Statement on SPACs, IPOs and Liability Risk under the Securities Laws* (Division of Corporation Finance, Apr. 8, 2021).

[163] *See supra* note 33.

[164] We are also proposing to amend the definition to remove the reference to ''development stage company'' because the reference would be unnecessary for purposes of the proposed definition.

[165] Forward-looking statements made by target private operating companies do not fall under the safe harbor, because the safe harbor is not available to companies that are not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act at the time that the statement is made. Further, the safe harbor would not be available to the subset of shell companies that meet the amended definition of ''blank check company'' (*i.e.,* that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person).

[166] The exclusion in the safe harbor for offerings by ''blank check companies'' is subsumed by the exclusion for penny stock issuers, in that the term ''blank check company,'' as currently defined in Rule 419, is ''a development stage company that . . . is issuing 'penny stock.' ''

[167] *See* proposed amendments to Rules 137, 138, 139, 163A, 164, 174, 430B, and 437a. As proposed, the term ''blank check company issuing penny stock'' would be defined as a company that is subject to Rule 419. Due to current **Federal Register** formatting requirements, we are also proposing technical changes to Rule 163A and Rule 164 to move the Preliminary Note(s) in these rules to introductory paragraphs of the respective rules.

80. Should we amend Rule 419 so that some or all of its conditions are applicable to SPACs that raise more than $5 million in a firm commitment underwritten initial public offering? If so, which conditions? What would be the advantages and drawbacks of such an approach? Should we amend the definition of ''penny stock'' to bring more SPACs within the scope of Rule 419?

81. Are there other rule amendments we should consider in connection with the PSLRA?

F. Underwriter Status and Liability in Securities Transactions

Underwriters form an essential link in the distribution of securities from an issuer to investors. The term ''underwriter'' is broadly defined in Section 2(a)(11) of the Securities Act to mean ''any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.'' [168] The determination of whether a particular person is an ''underwriter'' does not depend on the person's business but rather on that person's relationship to a particular securities offering. Any person whose activities with respect to any given offering fall within one of the prongs of the Section 2(a)(11) definition is deemed to meet the statutory definition of underwriter—commonly known as a ''statutory underwriter.'' [169] Congress enacted a broad definition of ''underwriter'' in order to ''include as underwriters all persons who might operate as conduits for securities being placed into the hands of the investing public.'' [170] Correspondingly, the Commission's longstanding view is that, depending on facts and circumstances, any person, including an individual investor who is not a professional in the securities business, can be an ''underwriter'' within the meaning of the Securities Act if that person acts as a link in a chain of transactions through which securities are distributed from an issuer or its control persons to the public.[171]

As intermediaries between an issuer and the investing public, underwriters play a critical role as ''gatekeepers'' to the public markets.[172] Historically, in initial public offerings, where the investing public might be unfamiliar with a particular issuer, financial firms that act as underwriters would lend their well-known name to support that issuer's offering. Where public investors may not have been inclined to invest with the company seeking to conduct a public offering, they could take comfort in the fact that a large, well-known financial institution, acting as underwriter, was including its name on the first page of the issuer's prospectus.[173] In exchange, in a firm commitment underwritten offering, the underwriters earn the ''gross spread'' between the price stated on the cover of the prospectus (the price at which the underwriters will sell the issuer's shares to the public for the first time) and the price at which the underwriters are able to negotiate with the issuer for the initial purchase of the issuer's shares.[174]

An underwriter's participation in an issuer's offering also exposes the underwriter to potential liability under the Securities Act. The civil liability provisions of the Securities Act reflect the unique position underwriters occupy in the chain of distribution of securities and provide strong incentives for underwriters to take steps to help ensure the accuracy of disclosure in a registration statement. Section 11 of the Securities Act imposes on underwriters, among other parties identified in Section 11(a), civil liability for any part of the registration statement, at effectiveness, which contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, to any person acquiring such security.[175] Similarly, Section 12(a)(2) imposes liability upon anyone, including underwriters, who offers or sells a security, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, to any person purchasing such security from them.[176] These provisions provide significant investor protections to those who acquire securities sold pursuant to a registration statement by providing tools to hold companies, underwriters, and other parties accountable for misstatements and omissions in connection with public offerings of

[168] 15 U.S.C. 77b(a)(11). Section 2(a)(11) states that the term ''issuer'' shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. Therefore, any person who purchased securities from an affiliate of an issuer is an underwriter under Section 2(a)(11) if that person purchased with a view to the distribution of the securities.

[169] *See* 2 Louis Loss (late), Joel Seligman, and Troy Paredes, Securities Regulation 3.A.3 (6th ed. 2019) (''The term underwriter is defined not with reference to the particular person's general business but on the basis of his or her relationship to the particular offering. . . . Any person who performs one of the specified functions in relation to the offering is a statutory underwriter even though he or she is not a broker or dealer.'').

[170] Thomas Lee Hazen, The Law of Securities Regulation, section 4:98.

[171] 17 CFR 230.144, Preliminary Note; *Notice of Adoption of Rule 144 Relating to the Definition of the Terms ''Underwriter'' in Sections 4(1) and 2(11) and ''Brokers Transactions'' in Section 4(4) of the Securities Act of 1933, Adoption of Form 144, and Rescission of Rules 154 and 155 Under That Act,* Release No. 33–5223 (Jan. 11, 1972) [37 FR 591 (Jan. 13, 1972)].

[172] *See, e.g.,* Ronald J. Gilson & Reinier Kraakman, *The Mechanisms of Market Efficiency,* 70 Va. L. Rev. 549, 620 (1984); Coffee, *supra* note 34, at 302 n. 1, 308 nn.13–14; John C. Coffee, Jr., *Brave New World?: The Impact(s) of the internet on Modern Securities Regulation,* 52 Bus. Law. 1195, 1210–13, 1232–33 (1999) (each discussing the role of underwriters as ''gatekeepers'' or ''reputational intermediaries''). *See also Securities Act Concepts and Their Effects of Capital Formation,* Release No. 33–7314 (July 25, 1996) [61 FR 40044 (July 31, 1996)] (discussing the role of gatekeepers in maintaining the quality of disclosure); Michael P. Dooley, *The Effects of Civil Liability on Investment Banking and the New Issues Market,* 58 Va. L. Rev. 776 (1972) (''The most important function performed during origination is the selection of candidates for public investment. The decision to underwrite a particular issue is normally made only after careful investigation of the issuer and evaluation of its prospects. Not all corporations are able to win sponsorship of proposed flotations, and prestigious underwriters reject many more candidates than they accept. After initially deciding to sponsor a flotation, the managing underwriter must conduct another, more intensive investigation into the issuer's affairs in order to satisfy the duty to conduct a 'reasonable investigation' imposed on underwriters by section 11 of the 1933 Act . . . [t]he screening and investigative processes employed in origination should weed out those prospective issuers least likely to make productive use of publicly invested funds and should identify elements of risk in those issues which are selected and presented to the public. The successful performance of these functions is important to the protection of investors and to the optimum allocation of economic resources.'').

[173] *See, e.g.,* Harold S. Bloomenthal & Samuel Wolff, Due diligence defenses—Underwriter's responsibilities and liabilities, 3B Sec. & Fed. Corp. Law § 12:42 (2d ed.) (''The managing or initiating underwriter plays a critical role in determining access to capital markets. The decision of a particular investment banking firm to put together an underwriting syndicate in order to float an issue of securities or to refrain from doing so for a particular issuer obviously has significance beyond investors since it determines to a degree the shape of our economy. However, it has specific and immediate significance to members of the investing public in that in large part reliance is being placed on such underwriters to screen the multitude of issuers seeking access to the capital markets.'').

[174] SPACs initially engage in firm commitment underwritten offerings in order to first sell their securities to the public. *See supra* Section I. However, as we further discuss below, the compensation structure for SPAC initial public offerings is generally different than that in traditional firm commitment offerings because a significant portion of the compensation is deferred.

[175] 15 U.S.C. 77k.

[176] 15 U.S.C. 77l(a)(2).

securities.[177] As a result, anyone who might be named as a potential defendant in these suits has strong incentives to take the necessary steps to avoid such liability.

One defense available to an underwriter in a distribution is the ''due diligence'' defense, which shields an underwriter from liability if it can establish that, after reasonable investigation, the underwriter had reasonable ground to believe and did believe, at the time the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.[178] To establish its ''due diligence'' defense, an underwriter must establish that it exercised reasonable care in verifying the statements in the registration statement. Underwriters in a traditional initial public offering are therefore motivated to take the investigative steps necessary to establish the ''due diligence'' defense.[179] The statutory provision of a due diligence defense appears to reflect an intent to improve the standards of conduct to which persons associated with the distribution of securities are to be held by imposing upon them standards of ''honesty, care, and competence.'' [180] It was believed that the imposition of civil liability under the Securities Act upon participants in a distribution would cause them to exercise the care necessary to assure the accuracy of the statements in the registration statement.[181]

Consistent with this intent, the Commission has stated that the due diligence efforts performed by underwriters are central to the integrity of our disclosure system.[182] The investing public relies on underwriters to ''screen the multitude of issuers seeking access to the capital markets'' and expects them to verify the accuracy of the information in the registration statement.[183] Moreover, although the Securities Act does not expressly require an underwriter to conduct a due diligence investigation, the Commission has long expressed the view that underwriters nonetheless have an affirmative obligation to conduct reasonable due diligence.[184] The Commission has stated that ''an underwriter [in a securities offering] impliedly represents that he has made such an investigation [of the accuracy of the information in the registration statement] in accordance with professional standards'' and ''[i]nvestors properly rely on this added protection which has a direct bearing on their appraisal of the reliability of the representations in the prospectus.'' [185]

1. Participants in a Distribution as ''Underwriters''

Common interpretations of the underwriter definition in Section 2(a)(11) traditionally have focused on the words ''with a view to'' in the phrase ''purchased from an issuer with a view to . . . distribution.'' Thus, an investment banking firm that arranges with an issuer for the public sale of its securities is clearly an ''underwriter.'' However, as noted above, the statutory definition of underwriter is much broader. Both federal courts and the Commission previously have found that other parties involved in securities offerings can be deemed ''statutory underwriters'' under the underwriter definition, such as by selling ''for an issuer;'' [186] and/or directly or indirectly

[177] *See* William O. Douglas & George E. Bates, *The Federal Securities Act of 1933,* 43 Yale L.J. 171 (1933) (''The civil liabilities imposed by the Act are not only compensatory in nature but also *in terrorem.* They have been set high to guarantee that the risk of their invocation will be effective in assuring that the 'truth about securities' will be told.'').

[178] *See* Section 11(b)(3) of the Securities Act. [15 U.S.C. 77k(b)(3).].

[179] Similarly, Section 12(a)(2) of the Securities Act provides a defense for defendants who, in the exercise of ''reasonable care,'' could not have known of the alleged misstatement or omission (15 U.S.C. 77l(a)(2)). Courts generally have construed these two defenses similarly. *See, e.g., In re WorldCom Inc. Sec. Litig.,* 346 F. Supp. 2d 628, 663–64 (S.D.N.Y. 2004).

[180] H.R. No. 85, 73d Cong., 1st Sess. (1933) (From the Introductory Statement to the Report submitted by Mr. Rayburn, Committee on Interstate and Foreign Commerce: ''Honesty, care, and competence are the demands of trusteeship. These demands are made by the bill on the directors of the issues, its experts, and the underwriters who sponsor the issue. If it be said that the imposition of such responsibilities upon these persons will be to alter corporate organization and corporate practice in this country, such a result is only what your committee expects.'').

[181] *Id.* (''The duty of care to discover varies in its demands upon participants in security distribution with the importance of their place in the scheme of distribution and with the degree of protection that the public has a right to expect.''). *See also New High Risk Ventures,* Release No. 33–5275 (July 27, 1972) [37 FR 16011 (Aug. 9, 1972)] (discussing the Commission's views that Section 11 was designed by Congress to incentivize persons associated with the distribution of securities to ''exercise the 'honesty, care and competence' necessary to assure the accuracy of the [s]tatements in the registration statement'').

[182] *See, e.g., Circumstances Affecting the Determination of What Constitutes Reasonable Investigation & Reasonable Grounds for Belief Under Section 11 of the Sec. Act Treatment of Info. Inc. by Reference into Registration Statements,* Release No. 33–6335 (Aug. 6, 1981) [46 FR 42015 (Aug. 18, 1981)] (''In sum, the Commission strongly affirms the need for due diligence and its attendant vigilance and verification.'').

[183] *See* Bloomenthal, *supra* note 173. *See also* Release No. 33–5275, *supra* note 181.

[184] *See, e.g., In re Charles E. Bailey & Co.,* 35 S.E.C. 33, at 41 (Mar. 25, 1953) (''[An underwriter] owe[s] a duty to the investing public to exercise a degree of care reasonable under the circumstances of th[e] offering to assure the substantial accuracy of representations made in the prospectus and other sales literature.''); *In re Brown, Barton & Engel,* 41 SEC 59, at 64 (June 8, 1962) (''[I]n undertaking a distribution . . . [the underwriter] had a responsibility to make a reasonable investigation to assure [itself] that there was a basis for the representations they made and that a fair picture, including adverse as well as favorable factors, was presented to investors.''); *In the Matter of the Richmond Corp., infra* note 185 (''It is a well established practice, and a standard of the business, for underwriters to exercise diligence and care in examining into an issuer's business and the accuracy and adequacy of the information contained in the registration statement. . . . The underwriter who does not make a reasonable investigation is derelict in his responsibilities to deal fairly with the investing public.'').

[185] *In the Matter of the Richmond Corp.,* Release No. 33–4584 (Feb. 27, 1963). *See also In re WorldCom, Inc. Sec. Litig.,* 346 F. Supp. 2d 628, 684 (S.D.N.Y. 2004) (''Underwriters . . . have special access to information about an issuer at a critical time in the issuer's corporate life, at a time it is seeking to raise capital. The public relies on the underwriter to obtain and verify relevant information and then make sure that essential facts are disclosed.''); *Sanders* v. *John Nuveen & Co., Inc.,* 524 F.2d 1064, 1069–70 (7th Cir. 1975) (''An underwriter's relationship with the issuer gives the underwriter access to facts that are not equally available to members of the public who must rely on published information. And the relationship between the underwriter and its customers implicitly involves a favorable recommendation of the issued security. Because the public relies on the integrity, independence and expertise of the underwriter, the underwriter's participation significantly enhances the marketability of the security. And since the underwriter is unquestionably aware of the public's reliance on his participation in the sale of the issue, the mere fact that he has underwritten it is an implied representation that he has met the standards of his profession in his investigation of the issuer.''); *Chris-Craft Industries, Inc.* v. *Piper Aircraft Corp.,* 480 F.2d 341, 370 (2d Cir. 1973) (''No greater reliance in our self-regulatory system is placed on any single participant in the issuance of securities than upon the underwriter. He is most heavily relied upon to verify published materials because of his expertise in appraising the securities issue and the issuer, and because of his incentive to do so. He is familiar with the process of investigating the business condition of a company and possesses extensive resources for doing so. . . . Prospective investors look to the underwriter . . . to pass on the soundness of the security and the correctness of the registration statement and prospectus.''); *Escott* v. *BarChris Const. Corp.,* 283 F. Supp. 643, 697 (S.D.N.Y. 1968) (''The purpose of Section 11 is to protect investors. To that end the underwriters are made responsible for the truth of the prospectus.'').

[186] *See SEC* v. *Chinese Consolidated Benevolent Association,* 120 F.2d 738 (2d Cir. 1941) (charitable association deemed a statutory underwriter in promoting the sale of war bonds, collecting funds and distributing the securities to its members notwithstanding the charitable association's lack of a relationship with the issuer of the bonds); *SEC* v. *Kern,* 425 F.3d 143 (2d Cir. 2005). *See also* Release No. 33–5223, *supra* note 171 (stating that any persons may be underwriters within the meaning of Section 2(a)(11) ''if they act as links in a chain of transactions through which securities move from an issuer to the public . . . . the Commission hereby emphasizes and draws attention to the fact that the statutory language of Section 2[(a)](11) is in the disjunctive. Thus, it is insufficient to conclude that a person is not an underwriter solely because he did

''participating'' in a distribution by engaging in activities ''necessary to the distribution'' [187] or in ''distribution-related activities.'' [188] Such parties can attain underwriter status even if they do not receive compensation for their services,[189] do not sell securities directly to the public,[190] and do not have privity of contract with the issuer.[191] Similarly, courts have interpreted the underwriter definition broadly to include promoters, officers, and control persons who have arranged for public trading of an unregistered security or have stimulated investor interest in such security through advertisements, research reports, or other promotional efforts.[192] Moreover, the Commission has stated that ''there is nothing in Section 2[(a)](11) which places a time limit on a person's status as an underwriter'' because the ''public has the same need for protection afforded by registration whether the securities are distributed shortly after their purchase or after a considerable length of time.'' [193]

2. The De-SPAC Transaction as a ''Distribution'' of the Combined Company's Securities

Underwriter status depends upon a person's activities occurring ''in connection with'' a ''distribution'' of any security. The Commission has explained that underwriter status under the ''participation'' prong of the underwriter definition depends on the putative underwriter ''enjoying substantial relationships with the issuer or underwriter, or engaging in the performance of any substantial functions in the organization or management of the distribution.'' [194] The Securities Act does not define the term ''distribution;'' however, the federal courts and the Commission have interpreted the term as synonymous with a ''public offering'' within the meaning of Section 4(a)(2) of the Act.[195] Moreover, a distribution has been said to comprise ''the entire process by which in the course of a public offer [a] block of securities is dispersed and ultimately comes to rest in the hands of the investing public.'' [196]

The purpose of a SPAC initial public offering is to raise a pool of cash in order to subsequently merge with a private operating company in a de-SPAC transaction that will convert the private operating company into a public company. Although the timing of a SPAC initial public offering and a de-SPAC transaction is bifurcated because a private operating company is not identified at the SPAC initial public offering stage, the result of a de-SPAC transaction, however structured, is consistent with that of a traditional initial public offering. The substance of a de-SPAC transaction is, in many ways, analogous to the distribution that occurs in a traditional IPO—*i.e.,* a SPAC's assets consist primarily of highly liquid assets, such as cash and government securities, and the combined company effectively distributes its securities to public holders of SPAC shares in exchange for the contribution of the SPAC's assets to the combined company. The de-SPAC transaction marks the introduction of the private operating company to the public capital markets [197] and is effectively how the private operating company's securities ''come to rest''—in other words, are distributed—to public investors as shareholders of the combined company.[198] Accordingly, as in a

not purchase securities from an issuer with a view to their distribution. It must also be established that the person is not offering or selling for an issuer in connection with the distribution of the securities and that the person does not participate or have a participation in any such undertaking, and does not participate or have a participation in the underwriting of any such undertaking.'').

[187] *See, e.g., Harden* v. *Raffensperger, Hughes & Co.,* 65 F.3d 1392 (7th Cir. 1995) (third party retained as a ''qualified independent underwriter'' to perform due diligence and recommend a minimum yield for a bond offering deemed a statutory underwriter). The defendant argued that it was not an underwriter because it had neither purchased nor sold any of the distributed securities. The court held that the defendant's activities fell within the ''participates'' and ''has a participation'' language of Section 2(a)(11), reasoning that Section 2(a)(11) is broad enough to encompass all persons who engage in the steps necessary to the distribution of securities.

[188] *See, e.g., Geiger* v. *SEC,* 363 F.3d 481, 487 (D.C. Cir. 2004) (defendant ''participated'' in a distribution as a statutory underwriter through its actions in finding a buyer, negotiating the terms of the transaction, and facilitating the resale of securities).

[189] *See, e.g., Chinese Consolidated Benevolent Association, supra* note 186, at 740 (''The solicitation of offers to buy the unregistered bonds, either with or without compensation, brought defendant's activities literally within the prohibition of the statute.''); *see also* J. William Hicks, 7A Exempted Trans. Under Securities Act 1933 § 9:39 (citing the Brief for the Securities and Exchange Commission in *Chinese Consolidated Benevolent Association:* ''The legislative history of Section 2[(a)](11) makes it apparent that Congress did not intend to require the elements of compensation or a contract with the issuer in order to make a distributor of securities an underwriter. In an earlier draft of the Securities Act, which was considered by the House Committee on Interstate and Foreign Commerce, the definition of underwriter . . . would have made the underwriting relationship depend upon the receipt of compensation. In abandoning that definition and adopting the definition which is included in the bill as enacted, Congress showed a clear intention of extending the term to include all persons who sell for an issuer, whether or not they do so for profit.'').

[190] *See, e.g., Raffensperger, supra* note 187.

[191] *See, e.g., Chinese Consolidated Benevolent Association, supra* note 186, at 740 (Hand, J. explaining, ''Whether the Chinese government as issuer authorized the solicitation, or merely availed itself of gratuitous and even unknown acts on the part of the defendant whereby written offers to buy, and the funds collected for payment, were transmitted to the Chinese banks does not affect the meaning of the statutory provisions which are quite explicit. In either case, the solicitation was equally for the benefit of the Chinese government and broadly speaking was for the issuer in connection with the distribution of the bonds.'').

[192] *See, e.g., SEC* v. *Allison,* No. C–81–19 RPA, 1982 WL 1322 (N.D. Cal. 1982).

[193] Release No. 33–5223, *supra* note 171, at 4. *See also Gilligan, Will & Co.* v. *SEC,* 267 F.2d 461 (2d Cir. 1959) (holding that a distribution exists if there are sales to those who cannot ''fend for themselves'' and citing *Ralston Purina Co.,* 346 U.S. 119 (1953)).

[194] *See Opinion of General Counsel relating to Rule 142,* Release No. 33–1862 (Dec. 14, 1938).

[195] *See* J. William Hicks, 7A Exempted Trans. Under Securities Act 1933 § 9:18. Courts have equated the term ''distribution'' with a public offering of securities. *See, e.g., Berckeley Inv. Group, Ltd.* v. *Colkitt,* 455 F.3d 195, 215 (3d Cir. 2006) (''We agree with the rationale of those courts and similarly hold that the term ''distribution'' in § 2(a)(11) is synonymous with 'public offering.'''); *see also Gilligan, Will & Co., supra* note 193, at 466 (''a 'distribution' requires a 'public offering'''' (citation omitted)).

[196] J. William Hicks, 7A Exempted Trans. Under Securities Act 1933 § 9:18 (citing *Geiger* v. *SEC,* 363 F.3d 481, 484, 487 (D.C. Cir. 2004), where the court agreed with the SEC that the petitioners, Charles F. Kirby and Gene Geiger (head trader and salesman, respectively, at a securities brokerage firm), who made resales in broker transactions over a two-week period of 133,333 shares of the roughly 25 million shares then outstanding, were engaged in a distribution within the meaning of Section 2(a)(11) of the Securities Act and that one ''did not have to be involved in the final step of [a] distribution to have participated in it''). *See also R.A Holman* v. *SEC,* 366 F.2d 446, 449 (2d Cir. 1966) (finding that an ongoing distribution and related manipulation had occurred where a broker-dealer sold securities on a ''delayed delivery'' basis and there was a real possibility at the time of purchase that the purchaser would cancel the order and quoting *Lewisohn Copper Corp.,* 38 SEC. 226, 234 (1958)); accord *In the Matter of Oklahoma-Texas Tr.,* 2 SEC. 764, 769, 1937 WL 32951 (Sept. 23, 1937), aff'd, 100 F.2d 888 (10th Cir. 1939) (finding an ongoing distribution where portions of a registered offering continued to be held by securities dealers).

[197] Such a transaction may take a variety of forms and involve a multitude of issuers. However, the rule we are proposing would apply to all de-SPAC transactions involving a registered offer of securities.

[198] A court has addressed in dicta whether a somewhat analogous situation involving the introduction of private companies to the public markets through an existing shareholder base was a distribution. *See SEC* v. *Datronics Engineers, Inc.,* 490 F.2d 250, 254 (4th Cir. 1973), *cert denied,* 416 U.S. 937 (1974) wherein Datronics, a public corporation, acquired a number of privately-held, target companies in merger transactions. A subsidiary of the defendant would merge with the target company, with the subsidiary surviving the merger. Both the shareholder-principals of the target and Datronics received stock in the surviving subsidiary. After the merger, Datronics distributed some of its shares to its shareholders as a dividend. In this way, formerly privately-held companies became publicly owned without going through a registered public offering. The court stated *in dicta,* ''we think that Datronics was an underwriter within the meaning of the 1933 Act. Hence its transactions were covered by the prohibitions, and were not within the exemptions, of the Act. §§ 3(a)(1) and

Continued

traditional underwritten initial public offering, public investors—who were unfamiliar with the formerly private company—would benefit from the additional care and diligence exercised by SPAC underwriters in connection with the de-SPAC transaction.[199]

3. Proposed Rule: SPAC IPO Underwriters Are Underwriters in Registered De-SPAC Transactions

Proposed Rule 140a would clarify that a person who has acted as an underwriter in a SPAC initial public offering (''SPAC IPO underwriter'') and participates in the distribution by taking steps to facilitate the de-SPAC transaction, or any related financing transaction,[200] or otherwise participates (directly or indirectly) in the de-SPAC transaction will be deemed to be engaged in the distribution of the securities of the surviving public entity in a de-SPAC transaction within the meaning of Section 2(a)(11) of the Securities Act. Clarifying the underwriter status of SPAC IPO underwriters in connection with de-SPAC transactions should motivate them to exercise the care necessary to help ensure the accuracy of the disclosures in these transactions by affirming that they are subject to Section 11 liability for registered de-SPAC transactions.[201] In this way, proposed Rule 140a underscores and reinforces that the liability protections in de-SPAC transactions involving registered offerings have the same effect as those in underwritten initial public offerings.

As described above, the purpose of a SPAC's initial public offering is to facilitate a subsequent de-SPAC transaction, and for target companies merging with a SPAC, the de-SPAC transaction is the means chosen, out of the several avenues available under the securities laws, for a private operating company to go public. It is the method by which the target company's securities, as securities of the combined company, are distributed into the hands of public investors. Although SPAC IPO underwriters typically are not retained to act as firm commitment underwriters in the de-SPAC transaction, they nevertheless typically participate in activities that are necessary to that distribution.[202] For instance, it is common for a SPAC IPO underwriter (or its affiliates) to participate in the de-SPAC transaction as a financial advisor to the SPAC, and engage in activities necessary to the completion of the de-SPAC distribution such as assisting in identifying potential target companies, negotiating merger terms, or finding investors for and negotiating PIPE investments. Furthermore, receipt of compensation in connection with the de-SPAC transaction could constitute direct or indirect participation in the de-SPAC transaction. While SPAC IPO underwriting fees—those fees the SPAC IPO underwriters earn for their efforts in connection with the initial offering of SPAC shares to the public—generally range between 5% and 5.5% of IPO proceeds, a significant portion (typically 3.5% of IPO proceeds) is deferred until, and conditioned upon, the completion of the de-SPAC transaction.[203] A SPAC IPO underwriter therefore typically has a strong financial interest in taking steps to ensure the consummation of the de-SPAC transaction.[204] For these reasons, proposed Rule 140a would clarify that the SPAC IPO underwriter is an underwriter with respect to the distribution that occurs in the de-SPAC transaction, when it takes steps to facilitate the de-SPAC transaction, or any related financing transaction, or otherwise participates (directly or indirectly) in the de-SPAC transaction.

We note that proposed Rule 140a addresses the underwriter status of only the SPAC IPO underwriter in the context of a de-SPAC transaction. In addition, we have discussed above some of the activities that are sufficient to establish that the SPAC IPO underwriter is participating in the distribution of target company securities. This discussion, however, is not intended to provide an exhaustive assessment of underwriter status in the SPAC context, and neither is it intended to limit the definition of underwriter for purposes of Section 2(a)(11) of the Securities Act. Federal courts and the Commission may find that other parties involved in securities distributions, including other parties that perform activities necessary to the successful completion of de-SPAC transactions, are ''statutory underwriters'' within the definition of underwriter in Section 2(a)(11). For example, financial advisors, PIPE investors, or other advisors, depending on the circumstances, may be deemed statutory underwriters in connection with a de-SPAC transaction if they are purchasing from an issuer ''with a view to'' distribution, are selling ''for an issuer,'' and/or are ''participating'' in a distribution.

Request for Comment

82. Should we adopt a definition of distribution in Rule 140a, as proposed?

83. Does the current regulatory regime provide sufficient incentives for participants in a de-SPAC transaction to conduct appropriate due diligence on the target private operating company and the disclosures provided to public investors in connection with the de-SPAC transaction? Would proposed Rule 140a likely result in improved diligence of private company targets in de-SPAC transactions and related disclosure? Would the other measures we are proposing in this release mitigate the need for proposed Rule 140a?

84. Does the SPAC IPO underwriter have the means and access necessary (via contract or otherwise) to perform due diligence at the de-SPAC transaction stage, particularly where the SPAC IPO underwriter is not retained as an advisor in the de-SPAC transaction or the target is the registrant for the de-SPAC transaction? Could such access be reasonably obtained in the course of the negotiation of the underwriting agreement for the SPAC initial public offering or otherwise?

85. Will shareholders after the de-SPAC transaction have difficulty

4(1) of the 1933 Act, 15 U.S.C. 77c, 77d. By definition, the term underwriter 'means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking. . . .' § 2(11) of the 1933 Act, 15 U.S.C. 77b(11). . . . By this underwriter distribution Datronics violated [Section] 5 of the 1933 Act—sale of unregistered securities.''

[199] *See Gilligan, Will & Co., supra* note 193.

[200] Most SPAC deals contain an available cash condition that represents a minimum amount of proceeds below which the target will not be obligated to consummate the transaction. The cash condition represents a number the sponsor group believes it can reasonably achieve given their banking syndicate, network, access to capital, and the target company itself. Since cash in trust is subject to redemption, one mechanism to ensure the cash condition will be satisfied is to secure commitments for a PIPE investment. *See* SPAC Research Weekly Newsletter (Oct. 19, 2020), available at *https://www.spacresearch.com/newsletter?date=2020-10-19*. In addition the staff has observed that for the vast majority of PIPEs associated with de-SPAC transactions, the closing of the PIPE financing is cross-conditioned on the closing of the de-SPAC transaction.

[201] Under Section 11, ''any person acquiring such security'' has a right of recovery. The Commission's longstanding view for traditional firm commitment registered offerings is that standing to sue under this provision extends to all purchasers of securities, whether the purchase occurred in the offering or subsequently in the secondary market. *See* Brief of the SEC in *DeMaria* v. *Andersen,* 318 F.3d 170 (2d Cir. 2003).

[202] *See generally Chinese Consolidated Benevolent Association, supra* note 186 and accompanying text.

[203] *See* Klausner, Ohlrogge, and Ruan, *supra* note 17. It is not necessary, however, for a SPAC IPO underwriter to derive a pecuniary benefit from the distribution in order for Section 2(a)(11) to apply. *See* Brief for the SEC at 19, *Chinese Consolidated Benevolent Association, supra* note 186 (''The legislative history of Section 2[(a)](11) makes it apparent that Congress did not intend to require the elements of compensation or a contract with the issuer in order to make a distributor of securities an underwriter.'')

[204] *See* Robert J. Haft, Peter M. Fass, Michele Haft Hudson, and Arthur F. Haft, Tax-Advantaged Securities, Overview of SPACs § 6:134.60.

recovering against SPAC IPO underwriters liable under Securities Act Section 11 due to potential challenges in tracing the shares they hold to an effective registration statement for the de-SPAC transaction? Are there steps we should take to address the challenges shareholders might face in tracing their shares to such a registration statement? For example, should we consider rulemaking to define ''any person acquiring such security'' under Securities Act Section 11 in the context of de-SPAC transactions and, if so, how should it be defined?

86. Should we limit the application of proposed Rule 140a to situations in which the SPAC IPO underwriter takes steps to facilitate the de-SPAC transaction, or any related financing transaction, or otherwise participates (directly or indirectly) in the de-SPAC transaction, as proposed?

87. Would a determination that SPAC IPO underwriters are engaged in a distribution of the private operating company's securities, as proposed, raise additional issues we should address? For example, does it raise questions about when the SPAC IPO underwriters' participation in the SPAC initial public offering distribution is completed for purposes of calculating the restricted period under Regulation M?

88. As noted above, there may be additional parties that are involved in a de-SPAC transaction that may fall within the statutory definition of underwriter because they are ''participating in the distribution'' of the target private operating company's securities to the public. Should proposed Rule 140a be expanded to expressly include such other parties? If so, which parties? Should the rule instead deem any party playing a significant role at the de-SPAC transaction stage to be an underwriter? Should the Commission provide additional guidance as to which additional parties may be underwriters and what activities or other considerations would be relevant to determining whether a party falls within the statutory definition of underwriter in a de-SPAC transaction?

89. Is it clear what parties would be considered a SPAC IPO underwriter for purposes of proposed Rule 140a? Should we limit underwriter status as clarified by Rule 140a to the entities acting as traditional underwriter in a SPAC IPO? Are there other parties that should be specifically excluded from the application of the rule?

90. Are there alternative approaches we should consider that would enhance the incentives of participants in a de-SPAC transaction to assure the accuracy of the disclosures provided to public investors in connection with the de-SPAC transaction and/or align liability protections for investors across the various avenues for private operating companies to go public?

IV. Business Combinations Involving Shell Companies

In response to concerns regarding the use of shell companies [205] as a means of accessing the U.S. capital markets, and as discussed more fully below, we are proposing new rules that would apply to business combination transactions involving shell companies, which include de-SPAC transactions. First, we are proposing new Rule 145a under the Securities Act that would deem such business combination transactions to involve a sale of securities to a reporting shell company's shareholders. Second, we are proposing new Article 15 of Regulation S–X and related amendments to more closely align the required financial statements of private operating companies in connection with these transactions with those required in registration statements on Form S–1 or F–1 for an initial public offering.[206] The issues we are addressing with these rule proposals are common to these shell company transactions, regardless of whether the shell company is a SPAC.

A. Shell Company Business Combinations and the Securities Act of 1933

1. Shell Company Business Combinations

SPAC initial public offerings and business combinations occurred with increased frequency in 2020 and 2021,[207] but a business combination with a reporting shell company [208] is not a new means for a private company to become a U.S. public company with an Exchange Act reporting obligation.[209] Historically, private companies have utilized shell companies in various forms of transactions,[210] such as spin-offs, reverse mergers, and de-SPAC transactions to become U.S. public companies,[211] in many cases without filing a Securities Act registration statement.[212] Due to abuses involving shell company transactions, over the years the Commission has adopted various rules and limitations intended

[205] As stated above, throughout this release, we use ''shell company'' and ''reporting shell company'' in lieu of the phrases ''shell company, other than a business combination related shell company'' and ''reporting shell company, other than a business combination related shell company.'' *See supra* note 43 for the definition of ''reporting shell company.''

[206] The requirements in Form S–4, Form F–4, and Schedule 14A for an acquisition of a business were developed at a time when acquirers were generally operating companies, and these requirements do not specifically address transactions involving shell companies. For example, Form S–4 was adopted by the Commission in 1985, which predates the origins of SPACs in the 1990s. *See Business Combination Transactions-Adoption of Registration Form,* Release No. 33–6578 (Apr. 23, 1985) [50 FR 19001 (May 6, 1985)].

[207] *See supra* notes 7 and 8 regarding the 2020–2021 increase in popularity of SPACs as a means for private companies to access the public markets.

[208] *See supra* note 9.

[209] *See generally,* Ronald M. Shapiro and Laurence M. Katz, *The ''Going Public through the Back Door'' Phenomenon—An Assessment,* 29 Md. L. Rev. 320 (1969); Leib Orlanski, *Going Public through the Backdoor and the Shell Game,* 58 Va. L. Rev. 1451 (1972) (both describing various ways of combining with a public shell company as a method to bring private corporations public).

[210] Shell company business combinations can take many forms. They can be as simple in structure as a statutory merger, with a private operating company merging with and into a shell company that has previously filed a Form 10 with the Commission, or as complex as a de-SPAC transaction involving multiple merging entities, tax blockers, and/or a new holding company. Among de-SPAC transactions, the Commission staff has observed a number of variations, only some of which are consistently registered transactions. For example, in de-SPAC transactions structured as share exchanges, securities can be offered and sold to the public holders of SPAC securities from the target, a new holding company, or they can retain their interests in the reporting SPAC.

[211] These transactions generally can take the form of either a ''reverse merger'' in which the private business merges into the shell company, with the shell company surviving and the former shareholders of the private business controlling the surviving entity or, in another common type of transaction, a ''back door registration,'' the shell company merges into the formerly private company, with the formerly private company surviving and the shareholders of the shell company becoming shareholders of the surviving entity. *See Use of Form S–8, Form 8–K, and Form 20–F by Shell Companies,* Release No. 33–8587 (July 15, 2005) [70 FR 42234 (July 21, 2005)] (''Shell Company Adopting Release''). Both alternatives transform a private company into a public company by combining directly or indirectly with a public company (whether through a merger, exchange offer, or otherwise).

[212] For example, unregistered transactions can involve a direct or indirect offer and sale of the public shell's securities to holders of the target entity's securities in consideration for their interests in the target entity. The public shell is then the entity that survives the business combination. In the context of SPACs, where there is no registration statement, transactions are typically disclosed to the SPAC's public shareholders in a proxy or information statement if there is a vote or consents being solicited, or otherwise in a Schedule TO. In shell company mergers where there is no vote, the shell company's shareholders may only learn about the transaction when the shell company files an Item 5.06 Form 8–K to report a change in shell company status. With respect to de-SPAC transactions, the Commission staff has observed that in 2020 (Sept. 30, 2019 to Oct. 1, 2020), 21 de-SPAC transactions were registered on Form S–4 or F–4 and 16 were disclosed on proxy or information statements soliciting shareholder votes or consents, respectively. Over the same months in 2021, 212 de-SPAC transactions were registered on Form S–4 or F–4 and 48 were disclosed on proxy or information statements.

to address the misuse of shell companies.[213] For example:

- Rule 144 is not available for the resale of securities initially issued by either reporting or non-reporting shell companies; [214]
- Shell companies are not permitted to use Form S–8; [215]
- Shell companies are considered ineligible issuers that cannot use free writing prospectuses for communications during a registered offering; [216] and
- Broker-dealers are able to rely on the ''piggyback'' exception to publish quotations for shell companies for only 18 months following the initial priced quotation on OTC Markets.[217]

Although many of these rules address concerns related to market manipulation and penny stock fraud, the Commission also has previously expressed concerns about the use of a shell company to distribute securities to the public without the protections afforded by the Securities Act including, where required, a registration statement.[218] The lack of a registration statement could deprive investors of the critical disclosures and protections that come with Securities Act registration.[219] The use of shell companies to complete business combinations can thus also provide companies with opportunities to avoid the disclosure, liability, and other provisions applicable in traditional registered offerings.[220] These concerns are still present when shell companies are used in business combinations to provide private companies with access to the public markets.

2. Proposed Rule 145a

The substantive reality of a reporting shell company [221] business combination with a company that is not a shell company is that reporting shell company investors have effectively exchanged their security representing an interest in the reporting shell company for a new security representing an interest in the combined operating company. As noted above, however, unlike investors in transaction structures in which the Securities Act applies and a registration statement would be filed (absent an exemption), investors in reporting shell companies may not always receive the disclosures and other protections afforded by the Securities Act at the time the change in the nature of their investment occurs due to the business combination involving another entity that is not a shell company.

Under the Securities Act, all offers and sales of securities must either be registered or be exempt from registration, and any offer or sale that is not registered or exempt violates Section 5.[222] Section 2(a)(3) of the Securities Act defines a ''sale'' as, among other things, ''every contract of sale or disposition of a security or interest in a security, for value.'' [223] In view of the remedial purpose of the Securities Act, courts and the Commission have broadly interpreted this term, particularly with respect to the creation of a public market in shares of a private company.[224] Moreover, the Commission has concluded that certain business combination and other transactions involve a sale of securities within the meaning of Section 2(a)(3).[225]

Due to the significant increase in reporting shell company business combination transactions as a means to enter the U.S. capital markets, including through the use of a SPAC, and in an effort to provide reporting shell company shareholders with more consistent Securities Act protections regardless of transaction structure, we are proposing new Rule 145a [226] that would deem any business combination of a reporting shell company [227] involving another entity that is not a shell company to involve a sale of securities to the reporting shell company's shareholders.[228] It is our preliminary view that such a transaction would be ''a disposition of a security or interest in a security . . . for value,'' [229] regardless of the form or structure deployed, and regardless of whether a shareholder vote or consent is solicited.[230] By deeming such

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[213] We note that these rules and limitations generally do not apply to shell companies that qualify as ''business combination related shell companies'' as defined in Rule 405. *See infra* Section IV.A.3.

[214] *See* 17 CFR 230.144(i), 17 CFR 230.145(c) and (d), and *Revisions to Rules 144 and 145,* Release No. 33–8869 (Dec. 6, 2007) [72 FR 71546 (Dec. 17, 2007)].

[215] *See* Form S–8 [17 CFR 239.16b], General Instruction A.1, Rule as to Use of Form S–8; Shell Company Adopting Release, *supra* note 211.

[216] *See* 17 CFR 230.165(e)(2)(ii) and *Securities Offering Reform,* Release No. 33–8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)].

[217] *See* 17 CFR 240.15c2–11(f)(3)(i)(B)(*2*) and *Publication or Submission of Quotations Without Specified Information,* Release No. 33–10842 (Sept. 16, 2020) [85 FR 68124 (Oct. 27, 2020)].

[218] *See generally Spin Offs and Shell Corporations,* Release No. 33–4982 (July 2, 1969) [34 FR 11581 (July 15, 1969)] (stating the Commission's concern over the use of shell companies to effect unregistered distributions of securities in spin-offs and in other contexts).

[219] *Id. See also Notice of Adoption of Rules 145 and 153A, Prospective Rescission of Rule 133, Amendment of Form S–14 Under the Securities Act of 1933, and Amendment of Rule 14a–2, 14a–6 and 14c–5 Under the Securities Exchange Act of 1934,* Release No. 33–5316 (Oct. 6, 1972) [37 FR 23631 (Nov. 7, 1972)] (''Rule 145 Adopting Release'').

[220] For example, in *SEC* v. *M & A W., Inc.,* 538 F.3d 1043, 1053 (9th Cir. 2008), the court considered a civil enforcement action against an individual engaged in the business of assisting private corporations to become publicly-traded companies through reverse merger transactions with reporting shell companies, alleging the sale of unregistered securities. The court noted: ''[W]e are informed by the purpose of registration, which is 'to protect investors by promoting full disclosure of information thought necessary to informed investment decisions.' The express purpose of the reverse mergers at issue in this case was to transform a private corporation into a corporation selling stock shares to the public, without making the extensive public disclosures required in an initial offering. Thus, the investing public had relatively little information about the former private corporation. In such transactions, the investor protections provided by registration requirements are especially important.'').

[221] *See supra* note 43 for a definition of this term.

[222] 15 U.S.C. 77e.

[223] 15 U.S.C. 77b(3).

[224] In this regard, the Supreme Court has stated that securities legislation, enacted for the purpose of avoiding frauds, is to be construed ''not technically and restrictively, but flexibly to effectuate its remedial purposes.'' *SEC* v. *Cap. Gains Rsch. Bureau, Inc.,* 375 U.S. 180, 195, 84 S. Ct. 275, 284–85 (1963). *See also SEC* v. *Harwyn Indus. Corp.,* 326 F. Supp. 943, 954 (S.D.N.Y. 1971) (construing ''value'' in Section 2(a)(3) to include the creation of a public market in the shares with its resulting benefits to the defendants, the court stated, ''. . . [W]e must look to its overall purpose, which is to provide adequate disclosure to members of the investing public, rather than engage in strangulating literalism.''); *SEC* v. *Datronics Engineers, Inc.,* 490 F.2d 250, 254 (4th Cir. 1973), cert denied, 416 U.S. 937 (1974); *In the Matter of UniversalScience.com, Inc.,* Release No. 33–7879 (Aug. 8, 2000) (distribution of securities as purported ''free stock'' constituted a sale because it was a disposition for value, the ''value'' arising ''by virtue of the creation of a public market for the issuer's securities.''); and Thomas Lee Hazen, The Law of Securities Regulation § 12:22 (''Concepts of purchase and sale are to be construed flexibly in order to accomplish the purpose of the securities laws. The courts will consider the economic reality of the transaction and whether it lends itself to fraud in the making of an investment decision.'').

[225] *See* 17 CFR 230.145(a) and (b) (Securities Act Rules 145(a) and (b)) and Rule 145 Adopting Release, *supra* note 219 (Rule 145 deems the submission to a vote of stockholders of a proposal for certain mergers, consolidations, or reclassifications of securities or transfers of assets to involve a ''sale,'' ''offer,'' ''offer to sell,'' or ''offer for sale'' of the securities of the new or surviving corporation to the security holders of the disappearing corporation).

[226] *See* proposed 17 CFR 230.145a.

[227] *See supra* note 43 for a definition of this term.

[228] This expresses our views as to the substance of these transactions for the purposes of the Securities Act. Neither proposed Rule 145a nor the description in this section is intended to express a view with respect to the treatment of these transactions under other laws including, but not limited to, state corporate law and the Internal Revenue Code.

[229] Although no securities may actually be changing hands, in substance, shareholders in a reporting shell company merger are effectively exchanging their interests in the shell company for interests in a non-shell company; these shareholders can be viewed as having surrendered ''value'' for the purposes of Section 2(a)(3).

[230] We note that this rule does not change the conclusion that a merger with a reporting shell company may constitute the offer and sale of

transactions to be a ''sale'' for the purposes of the Securities Act, the proposed rule is intended to address potential disparities in the disclosure and liability protections available to reporting shell company shareholders depending on the transaction structure deployed in a reporting shell company business combination.

Nothing in proposed Rule 145a would prevent or prohibit the use of a valid exemption, if available, for the deemed sale of securities to the reporting shell company's shareholders in the business combination.[231] However, our current view is that Section 3(a)(9) of the Securities Act,[232] which exempts any securities exchange by an issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange, generally would not be available for the sales covered by proposed Rule 145a. In these circumstances, we believe that the deemed exchange by the reporting shell company's existing shareholders for the combined company's securities should be viewed as part of the same offering as the exchange of the private company's securities for their interests in the combined company.[233] As a result, because the exchange would not be exclusively with the reporting shell company's existing security holders, Section 3(a)(9) would not be available to exempt the deemed sale to reporting shell company shareholders in proposed Rule 145a, if adopted. In addition, we note that Section 3(a)(9) would not be available where a commission or other remuneration is paid or given directly or indirectly for soliciting of participation in the deemed exchange. This would occur, for example, if a proxy solicitor is compensated to solicit the approval of the reporting shell company's shareholders for the business combination.

Given the substance of the transactions that would be covered by new Rule 145a, we are proposing the rule so that shareholders more consistently receive the full protections of the Securities Act disclosure and liability provisions in business combinations involving reporting shell companies, regardless of the transaction structure. Not only would registration in this context result in enhanced liabilities for signatories to any registration statement and potential underwriter liability as described elsewhere in this release,[234] it would also include liability under Securities Act Section 11(a)(4) for experts, which include every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement or as having prepared or certified any report or valuation which is used in connection with the registration statement.[235] In addition, if the transaction is registered, Rule 145a would, in some cases, provide reporting shell company investors with additional pre-sale disclosure about a transaction that would significantly alter the nature of their investment.[236] In this way, proposed Rule 145a is consistent with the intent of other rules intended to ''inhibit the creation of public markets in securities of issuers about which adequate current information is not available to the public.'' [237] The proposed rule should also eliminate potential regulatory arbitrage opportunities to avoid disclosure requirements or liability through the use of alternative transaction structures when combining with a reporting shell company.[238]

3. Excluded Transactions

We wish to emphasize that proposed Rule 145a would have no impact on business combinations between two bona fide non-shell entities. However, we note that any reporting shell company that is made to appear to have, or has cloaked itself as having, more than ''nominal'' assets or operations would still be subject to Rule 145a in a business combination transaction.[239]

The Commission has historically recognized the usefulness of shell companies formed solely to change an entity's domicile or to effect a business combination transaction.[240] As a result, the Commission has excluded such so-called business combination related shell companies [241] from many of the shell company requirements and prohibitions that have been put in place to ensure the protection of investors in such companies.[242] Consistent with this, the proposed rule would not apply to reporting shell companies that are business combination related shell companies as this term is defined in Securities Act Rule 405.[243]

In addition, we are proposing to exclude the business combination of one shell company into another shell company from the scope of Rule 145a. Such a business combination would not amount to a fundamental change in the nature of the reporting shell company shareholder's investment unlike a business combination with an entity that is not a shell company.[244]

securities to other parties for which registration under the Securities Act or an exemption would be required. For example, where a SPAC survives the de-SPAC transaction, the SPAC will frequently issue its securities to shareholders of the private company in exchange for their interests in the private company. Such a transaction would still require registration or an exemption from registration.

[231] We note that even if an exemption applies, if Rule 145a is adopted, investors would have the protections of the anti-fraud provisions in Section 17(a) of the Securities Act and Section 10(b) and Rule 10b–5 thereunder of the Exchange Act. [15 U.S.C. 77q; 15 U.S.C. 78j; and 17 CFR 240.10b–5, respectively].

[232] 15 U.S.C. 77c(a)(9).

[233] We note that none of the non-exclusive safe harbors in 17 CFR 230.152(b) would be likely to apply. In particular, the closing of the business combination with the reporting shell company would be simultaneous with the deemed exchange of reporting shell company securities with its own holders and would therefore not meet the 30-day safe harbor in 17 CFR 230.152(b)(1).

[234] *See supra* Sections III.C and III.F, respectively.

[235] *See* 15 U.S.C. 77k(a)(4). This would include auditors who opine on the financial statements associated with the business combination. Depending on the transaction and whether services are provided by other parties, this could also include, for example, valuation consultants, outside reviewers of management projections, or anyone who provides a fairness opinion about the transaction.

[236] Some public shell company business combinations are not disclosed to investors until after the transaction has closed. *See supra* note 212.

[237] *See* Rule 145 Adopting Release, *supra* note 219.

[238] *See infra* Sections III.F for a discussion of the sources of liability in registered de-SPAC transactions.

[239] We reiterate the Commission's previous position on structuring transactions to avoid shell company status in adopting the 2005 shell company limitations. *See* Shell Company Adopting Release, *supra* note 211, at n.32.

[240] *See* the Supplementary Information to the Shell Company Adopting Release, *supra* note 211 (''We recognize that companies and their professional advisors often use shell companies for many legitimate corporate structuring purposes. Similarly, our definition and use of the term 'shell company' is not intended to imply that shell companies are inherently fraudulent. Rather, these rules target regulatory problems that we have identified where shell companies have been used as vehicles to commit fraud and abuse our regulatory processes.'').

[241] *See supra* note 43 for the definition of ''business combination related shell company.''

[242] *See* Shell Company Adopting Release, *supra* note 211.

[243] Neither a SPAC nor any such entity formed to facilitate a merger with a SPAC meets the definition of a business combination related shell company because neither of these entities is a shell company formed solely for the purpose of changing the corporate domicile solely within the United States or formed solely for the purpose of completing a business combination transaction among one or more entities other than the shell company, none of which is a shell company.

[244] However, such a business combination may continue to fall within Securities Act Rule 145 because there is a shareholder vote and the transaction is one to which Rule 145 would apply (*e.g.,* a statutory merger or consolidation or similar plan or acquisition where the sole purpose of the transaction is not to change an issuer's domicile solely within the United States).

Request for Comment

91. Should we adopt Rule 145a as proposed?

92. Should we be seeking to align the required disclosures and liabilities associated with shell company business combinations among the various available transaction structures in order to provide reporting shell company investors consistent disclosures and protections across transaction structures? Are there alternative approaches that would accomplish this goal?

93. How would the proposed rule affect business combinations involving both SPACs and non-SPAC reporting shell companies? Would these entities be more likely to register such transactions?

94. If the deemed sale to reporting shell company shareholders is required to be registered under the Securities Act pursuant to the proposed amendments, should we provide guidance with respect to the timing of the effectiveness of such registration statement in relation to the business combination?

95. Are there other transactions that have purposes or results similar to reporting shell company business combinations that we should deem to constitute sales? Conversely, does the proposed rule deem too broad of a set of reporting shell company business combinations to be sales? For example, should the rule be limited to SPACs?

96. Should proposed Rule 145a be limited to deeming shell company business combinations ''sales'' with respect to only reporting shell company shareholders? Are there other parties whose interest in a shell company would be such that a shell company business combination should be deemed a sale? For example, holders of securities other than common shares?

97. Should reporting shell companies be prohibited from relying on the exemption in Securities Act Section 3(a)(9) in a transaction deemed a sale under proposed Rule 145a? Should we provide additional guidance on the potential availability or lack of availability of other exemptions from registration for the proposed Rule 145a sale? If so, what exemptions should we address?

98. Should we exclude business combination related shell companies from the scope of proposed Rule 145a, as proposed?

99. Should Rule 145a exclude the business combination of one shell company into another shell company, as proposed? How frequently do such mergers occur in absence of the proposed Rule 145a? In such a situation, would either or both companies' shareholders benefit from registration under the Securities Act?

100. Securities Act Rule 145(a) deems sales within the meaning of Section 2(a)(3) of the Securities Act for certain transactions submitted for the vote or consent of security holders. Securities Act Rules 145(c) and (d) include provisions that have the effect of limiting resales with respect to parties to transactions described in Rule 145(a) and their affiliates that involve shell companies. Although proposed Rule 145a would apply to all reporting shell company business combinations, not all of these business combinations would also fall within Rule 145(a). Should we consider resale limitations for Rule 145a? Should any such resale limitations be similar to those in existing Rule 145?

101. Should we consider guidance or additional rule amendments for transactions where the provisions of existing Rule 145 and Rule 145a could overlap? For example, are there any rules that currently reference Rule 145 that should be amended to apply (or not apply) to transactions covered by proposed Rule 145a (*e.g.,* Rule 500 of Regulation D, which states the availability of the exemptions for Rule 145(a) transactions; Securities Act Rule 135, which allows notice of a registered offering, including for a Rule 145(a) transaction; or Rule 172, which prohibits the use of access equals delivery in Rule 145(a) transactions)? What, if any, issues should the Commission address through guidance?

102. Are there other potential opportunities for regulatory arbitrage in shell company or SPAC transactions that the Commission should consider addressing?

B. Financial Statement Requirements in Business Combination Transactions Involving Shell Companies

After a business combination involving a shell company, the financial statements of the private operating company become those of the registrant for financial reporting purposes. In other words, the private operating company becomes the predecessor.[245] How the private operating company chooses to become a public company could affect its financial statement disclosures due to differences in the requirements of registration statements on Form S–1/F–1 and the requirements of Form S–4/F–4. In our view, a company's choice of the manner in which it goes public should not generally result in substantially different financial statement disclosures being provided to investors.

We are proposing amendments to our forms, schedules, and rules to more closely align the financial statement reporting requirements in business combinations involving a shell company and a private operating company with those in traditional initial public offerings. The financial statements that would be required under the proposed amendments are based, in part, on current staff guidance for transactions involving shell companies.[246] Codifying this guidance should reduce any asymmetries between financial statement disclosures in business combination transactions involving shell companies and traditional initial public offerings. Accordingly, we are proposing new Article 15 of Regulation S–X and related amendments to address certain inconsistencies in the reporting of financial information that can arise when applying existing requirements to business combination transactions involving shell companies compared to the financial statement requirements for a Securities Act registration statement.

1. Number of Years of Financial Statements

A registration statement on Form S–4 and F–4 and a proxy or information statement require financial statements of the target company for the same number of years of financial statements as would be required by the target in an annual report and any subsequent interim periods.[247] Three years of statements of comprehensive income, changes in stockholders' equity, and cash flows are required, except in the following scenarios when two years are permitted:

- The target company would qualify as a smaller reporting company;[248]
- The target company would be an emerging growth company (''EGC'')[249] if it were conducting an initial public offering of common equity securities and the registrant is an EGC that has not yet filed or been required to file its first annual report, even if the target would

[245] The term ''predecessor'' when used in this section has the same meaning as applied in its use under Regulation S–X and determination of financial statement requirements.

[246] Commission staff has provided informal guidance to address practical questions related to financial reporting issues for shell company mergers in the Division of Corporation Finance's Financial Reporting Manual (''FRM''). The FRM is not a rule, regulation or statement of the Commission, and the Commission has neither approved nor disapproved its content.

[247] *See* Items 17(b)(7) and 17(b)(8) of Form S–4; Items 17(b)(5) and 17(b)(6) of Form F–4; Item 14 of Schedule 14A; and Instruction 1 of Schedule 14C.

[248] *See supra* Section III.D.

[249] *See supra* note 112.

not be a smaller reporting company; [250] or

• The transaction is registered on a Form F–4 and either (1) the target company is a first time adopter of International Financial Reporting Standards (''IFRS'') as issued by the International Accounting Standards Board (''IASB''), or (2) the Form F–4 is the initial registration statement of the private company and it provides U.S. GAAP financial statements.[251]

Our proposed amendments would expand the circumstances in which target companies may report two years of financial statements under the second bullet above by removing whether or not the shell company has filed its first annual report as a factor in determining the number of years required. Because the scenarios described in the first and third bullets above are already aligned with the financial statements required in a traditional initial public offering, we have not proposed any changes related to them. In addition, the proposed amendments would not affect the number of years of statements of comprehensive income that are required for the private operating company when it exceeds both the smaller reporting company and EGC revenue thresholds (that is, three years would continue to be required).[252] However, to align the reporting with a traditional initial public offering, the proposed amendments would potentially reduce the number of years required when the target company would be an EGC if it were conducting an initial public offering of common equity securities and the registrant is an EGC that has filed or been required to file its first annual report.

In a traditional initial public offering under the Securities Act, the registrant may provide two years of statements of comprehensive income, changes in stockholders' equity, and cash flows when its most recently completed fiscal year revenue is below the smaller reporting company or EGC revenue thresholds (and all the other EGC qualifications are met), or as noted in the third scenario above for a foreign private issuer. We are proposing to align the number of fiscal years required to be included in the financial statements for a private company that will be the predecessor(s) in a shell company combination with the financial statements required to be included in a Securities Act registration statement for an initial public offering of equity securities in proposed Rule 15–01(b) of Regulation S–X.

Proposed Rule 15–01(b) would provide that when the registrant is a shell company, and the financial statements of a business [253] that will be a predecessor to the registrant are required in a registration statement or proxy statement, the registrant must file financial statements of the business that will be a predecessor to the registrant in accordance with § 210.3–01 to 3–12 and § 210.10–01 (Articles 3 and 10 of Regulation S–X) or § 210.8–01 to 8–08 (Article 8), if applicable, as if the filing were a Securities Act registration statement for the initial public offering of that business's equity securities. As a result, a shell company registrant would be permitted to include in its Form S–4/F–4/proxy or information statement two years of statements of comprehensive income, changes in stockholders' equity, and cash flows for the private operating company for all transactions involving an EGC shell company and a private operating company that would qualify as an EGC, and this determination would not be dependent on whether the shell company has filed or was already required to file its annual report or not. The proposed amendments would not affect the number of years of statements of comprehensive income that are required for the private operating company when it exceeds both the smaller reporting company and EGC revenue thresholds (that is, three years would continue to be required).[254]

2. Audit Requirements of Predecessor

Proposed Rule 15–01(a) would align the level of audit assurance required for the target private operating company in business combination transactions involving a shell company with the audit requirements for an initial public offering.[255] Specifically, we are proposing that the term audit (or examination), when used in regard to financial statements of a business that is or will be a predecessor to a shell company, means an examination of the financial statements by an independent accountant in accordance with the standards of the PCAOB for the purpose of expressing an opinion thereon. As a result, a target private operating company would be required to comply with Article 2 of Regulation S–X as if it were filing an initial public offering for its audited financial statements. Forms S–4 and F–4 [256] currently provide that, for an acquisition by a registrant that is not a shell company, (i) the target operating company financial statements may be audited in accordance with U.S. Generally Accepted Auditing Standards,[257] (ii) the financial statements of the most recent fiscal year are required to be audited only to the extent practicable,[258] and (iii) financial statements before the latest fiscal year need not be audited if they were not previously audited.[259] The staff, however, has advised registrants that it expects the financial statements of the business, *i.e.,* target private operating company, in a transaction involving a shell company to be audited to the same extent as a registrant in an initial public offering, because at consummation the financial statements of the target private operating company become that of the registrant.[260] The proposed amendments

[250] An EGC is permitted to include two years of statements of comprehensive income in its Securities Act registration statement for an initial public offering of its common equity securities. EGCs that are not smaller reporting companies are still required to include three years of statements of comprehensive income in their annual reports. *See* Rule 3–02 of Regulation S–X.

[251] Item 17(b)(5) of Form F–4; General Instruction G of Form 20–F; and Instruction 3 to Item 8.A.2 of Form 20–F.

[252] *See* Items 17(b)(7) and 17(b)(8) of Form S–4; Items 17(b)(5) and 17(b)(6) of Form F–4; Item 14 of Schedule 14A; and Instruction 1 of Schedule 14C. In addition to providing three years of financial statements due to the private operating company not qualifying as an EGC, the private operating company would not be able to take advantage of the delayed adoption dates for new or revised accounting standards permitted by EGCs in its financial statements. In the staff's view, the private operating company's revenue, as predecessor, should be used to determine whether the registrant qualifies as an EGC after the transaction. *See* FAQ 47 of the Division of Corporation Finance's Jumpstart Our Business Startups Act Frequently Asked Questions, available at *https://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm* (last revised Dec. 21, 2015). The FAQ does not represent a rule, regulation or statement of the Commission, and the Commission has neither approved nor disapproved its content.

[253] We use the term ''business'' in this context, rather than ''private operating company,'' in order to be consistent with the provisions in Regulation S–X that define and use *business,* such as Rule 11–01(d) of Regulation S–X. In a business combination transaction involving a shell company, the private operating company would meet the definition of a business.

[254] The private operating company would also not be able to take advantage of the delayed adoption dates for new or revised accounting standards as that transition is only available to EGC companies. As described in FAQ 47 of the Division of Corporation Finance's Jumpstart Our Business Startups Act Frequently Asked Questions, the staff takes the view that the private operating company's revenue, as predecessor, will determine the post-transaction EGC status. See Securities Act Section 7(a)(2)(B).

[255] *See* proposed Rule 15–01(a) of Regulation S–X and Instruction 1 to Item 17(b) of Form S–4.

[256] *See* Instruction 1 to Item 17(b)(5) of Form F–4 and General Instruction E(c)(2) of Form 20–F.

[257] *See* 17 CFR 210.1–02(d) (Rule 1–02(d) of Regulation S–X).

[258] *See* Instruction 1 to Item 17(b)(7) of Form S–4.

[259] *Id.*

[260] *See* FRM at Section 4110.5 for a chart that outlines the staff's application of certain PCAOB

Continued

would codify this existing staff guidance.

3. Age of Financial Statements of the Predecessor

Proposed Rule 15–01(c) would provide that the age of financial statements for a private operating company that would be the predecessor to a shell company in a registration statement or proxy statement would be based on whether the private operating company would qualify as smaller reporting company if filing its own initial registration statement. Absent this amendment, our rules require filing financial statements of the private operating company that would be required in an annual report, which do not have the same age requirements as those in the context of an initial registration statement.[261] Similar to the other proposed amendments to Regulation S–X, this amendment would further align the financial statement requirements for a private operating company involved in a business combination with a shell company with those required in a Securities Act registration statement for an initial public offering. If the private operating company would qualify to be a smaller reporting company, it would apply Rule 8–08 of Regulation S–X for the age of financial statements.[262] Otherwise, the private operating company would apply the age of financial statement requirements in Rules 3–01(c) and 3–12 of Regulation S–X. Based on the staff's experience reviewing these transactions, we believe this proposed amendment to be consistent with existing practice.

We are not proposing amendments to the age requirements for the financial statements of the shell company registrant because we continue to believe that the age requirements in Articles 3 and 8 of Regulation S–X that apply to existing registrants are appropriate. Thus, the existing provisions in Articles 3 and 8 of Regulation S–X for reporting companies required to file under Exchange Act Section 13(a) or 15(d) would continue to apply to shell companies.[263]

4. Acquisitions of Businesses by a Shell Company Registrant or Its Predecessor That Are Not or Will Not Be the Predecessor

The financial statements of a target private operating company that is or will be the predecessor to a shell company registrant are required in registration statements or proxy statements related to the business combination.[264] The financial statements of any other businesses, besides the predecessor, that have been, or are probable to be, acquired may also be required.[265] For example, ''Shell Company A'' and ''Target Private Operating Company B'' are part of a business combination and a Form S–4 registration statement is filed. Target Private Operating Company B acquired ''Company C'' before the Form S–4 was filed. The proposed amendments in this section would address the reporting required for Company C in this non-exclusive example.

Under existing rules,[266] financial statements of a business acquired or probable of being acquired by the target private operating company (*e.g.,* ''Company C'' in the above example) are required to be filed in a registration statement or proxy/information statement only when omission of those financial statements would render the target company's financial statements substantially incomplete or misleading. In order to specify when such financial statements are required, we are proposing new Rule 15–01(d) of Regulation S–X to require application of Rules 3–05 or 8–04 (or Rule 3–14 as it relates to a real estate operation), the Regulation S–X provisions related to financial statements of an acquired business, to acquisitions of businesses by a shell company registrant, or its predecessor, that are not or will not be the predecessor to the registrant.[267] This proposal would further align the financial reporting for a shell company business combination contained in Forms S–4 or F–4 and a proxy or information statement with what would be required to be included in a Securities Act registration statement for an initial public offering of the target private operating company. Based on staff's experience reviewing these transactions, we understand this proposed amendment to be consistent with the current market practice of applying Rule 3–05 (or Rule 8–04) to acquisitions by the target private operating company in the context of a business combination involving a shell company.

In connection with this proposed amendment in Rule 15–01(d), we also considered and are proposing amendments related to the significance tests in Rule 1–02(w) of Regulation S–X that determine when acquired business financial statements are required. The existing tests as applied to acquisitions involving shell companies appear inconsistent with the reasons underlying the sliding scale approach adopted in Rule 3–05.[268] Rule 1–02(w) requires the financial information of the registrant, which may be a shell company, to be used as the denominator for the significant subsidiary tests and does not address the scenario when there is both a shell company registrant and target private operating company that is or will be its predecessor. Because a shell company has nominal activity, the application of such tests results in limited to no sliding scale for business acquisitions, including those made by the private operating company that will be the predecessor to the shell company, because every acquisition would be significant and thus require financial statements.[269] Such application may limit the ability to

requirements in various filings with the SEC, which includes transactions involving a shell company.

[261] For example, in an annual report, a domestic company with net losses in its recently completed fiscal year would have up to 90 days after its most recently completed fiscal year-end to update its third quarter financial statements. In contrast, in an initial registration statement, it would have up to only 45 days. *See* General Instruction A. to Form 10–K and 17 CFR 210.3–12 (Rule 3–12 of Regulation S–X).

[262] *See* 17 CFR 210.8–08 (Rule 8–08 of Regulation S–X), which states financial statements may be as current as of the end of the third fiscal quarter when the anticipated effective or mailing date falls within 45 days after the end of the fiscal year, OR if the date falls within 90 days of the end of the fiscal year and (1) if a reporting company, all reports due were filed; (2) in good faith the company expects to report income in the fiscal year just completed; and (3) it reported income in at least one of the two previous fiscal years.

[263] *See* Rule 3–01(c) of Regulation S–X (Rule 8–08 for smaller reporting companies), which applies to reporting companies required to file under Exchange Act Section 13(a) or 15(d).

[264] *See* Item 17 of Form S–4 or Form F–4, § 240.14A–3(b), and Items 13 and 14 of Schedule 14A.

[265] *See* 17 CFR 230.408(a) (Securities Act Rule 408(a)) and 17 CFR 240.12b–20 (Exchange Act Rule 12b–20).

[266] *Id.*

[267] 17 CFR 210.8–04 (Rule 8–04) applies when the registrant or, depending on the context, its predecessor would qualify to be a smaller reporting company based on its annual revenues as of the most recently completed fiscal year if it were filing a registration statement itself.

[268] *Instructions for the Presentation and Preparation of Pro Forma Financial Information and Requirements for Financial Statements of Businesses Acquired or To Be Acquired,* Release No. 33–6413 (June 24, 1982) [47 FR 29832 (July 9, 1982)] (''Rule 3–05 Adopting Release''). The requirements are based on the significant subsidiary tests using a sliding scale so that the requirements for filing such financial statements, as well as the periods covered by such financial statements, will vary with the percentage impact of the acquisition on the registrant. In adopting the sliding scale approach, the Commission stated its belief that the selected percentages ''meet the objectives of providing adequate financial information to investors, shareholders and other users while at the same time reducing the reporting burdens of registrants involved in acquisitions.''

[269] For example, financial statements of a business that the private operating company has acquired and represents less than 5% of its total assets, revenue and net income could be required in the Form S–4 because the acquired business would be compared to the shell company's financial statements.

recognize which acquisitions have a greater impact on the predecessor than others.[270]

We are proposing to amend Rule 1–02(w) of Regulation S–X to require that significance of the acquired business be calculated using the private operating company's financial information as the denominator instead of that of the shell company registrant. Using the private operating company's financial statements for the denominator should produce results more consistent with the sliding scale approach in Rule 3–05 and recognizes that certain acquisitions have a greater impact than others.[271]

Related to the application of the significance tests, we considered the impact of the application of 17 CFR 210.11–01(b)(3)(i)(B) (''Rule 11–01(b)(3)(i)(B) of Regulation S–X''). This rule permits, in certain circumstances, the use of pro forma amounts that depict significant business acquisitions and dispositions consummated after the latest fiscal year-end, for which the registrant's financial statements are required to be filed, for the registrant's financial information in the significance tests.[272] While we are not proposing amendments to this paragraph in Rule 11–01, based on the proposed amendment to 17 CFR 210.11–01(d) (''Rule 11–01(d)'') described below, we highlight that application of this rule may change and result in a future acquired business being compared to the pro forma amounts related to the shell company and target private operating company business combination transaction in filings made after the consummation of the business combination transaction.[273] The impact of such application would be that the SPAC's financial statements, including its cash, would be part of the pro forma financial information and will likely increase the denominator in the significance tests compared to measuring an acquisition solely on the target private operating company.

We are proposing new 17 CFR 210.15–01(d)(2) (''Rule 15–01(d)(2)'') to specify when the financial statements of a recently acquired business (or real estate operation) that is not the private operating company that will be the predecessor, which are omitted from a shell company registration, proxy, or information statement under Regulation S–X, would be required to be filed. Rule 3–05(b)(4)(ii) of Regulation S–X provides that financial statements of a probable of being acquired or recently acquired business may be omitted from a registration, proxy, or information statement when their significance is measured at 50% or less (or Rule 3–14(b)(3)(ii) as it relates to a real estate operation). The rule further provides that financial statements of a recently acquired business, when omitted from the registration statement or proxy or information statement, must be filed under cover of Form 8–K within 75 days after consummation of the acquisition. Because the significance of the acquisition is greater than 20% but less than 50%, the recently acquired business's financial statements, which are omitted from the registration, proxy, or information statement, must be filed.[274] However, it is unclear how those financial statements are to be filed when the private operating company is not yet subject to Exchange Act reporting requirements and thus may not be able to file a Form 8–K. Rather than requiring a post-effective amendment, we are proposing in Rule 15–01(d)(2) that the financial statements of the acquired business omitted from the previously-filed registration, proxy, or information statement would be required in an Item 2.01(f) Form 8–K filed with Form 10 information.

5. Financial Statements of a Shell Company Registrant After the Combination With Predecessor

In recent years, the staff has received questions on whether the historical financial statements of the shell company are required in filings made after the business combination. Due to the lack of clarity regarding the application of the financial statement requirements in Articles 3 and 8 of Regulation S–X, we are proposing new Rule 15–01(e), which would allow a registrant to exclude the financial statements of a shell company, including a SPAC, for periods prior to the acquisition once the following conditions have been met: (1) The financial statements of the shell company have been filed for all required periods through the acquisition date, and (2) the financial statements of the registrant include the period in which the acquisition was consummated.

In the example of a de-SPAC transaction, the financial statements of the SPAC, as a shell company, would generally no longer be relevant or meaningful to an investor after a de-SPAC transaction once the financial statements of the registrant include the period in which the de-SPAC transaction was consummated for any filing.[275] The proposed rule would apply regardless of whether the de-SPAC transaction is accounted for as a forward acquisition of the target private operating company by the SPAC or a reverse recapitalization of the target private operating company. The financial statements of the SPAC would be required in all filings (including registration statements and the Form 8–K with Form 10 information filed following the de-SPAC transaction) prior to the filing of the first periodic report that includes those post-business combination financial statements. The proposed amendments should not result in a significant change from current practice as it relates to periodic reports because the staff in the last several years has not objected to the registrant excluding the historical financial statements of the SPAC from periodic reports once the financial statements for the registrant include the period in which the acquisition or recapitalization was consummated.

Further, the proposed amendments would not change the requirement that a registrant must provide all material information as may be necessary to make required statements, in light of the circumstances under which they were made, not misleading,[276] so if there is information included in or about the historical SPAC financial statements that would be material to an investor, a registrant would still be required to provide such information.

6. Other Amendments

In addition, we are proposing a number of other related amendments as follows:

- We are proposing to amend Rule 11–01(d) of Regulation S–X to state that

[270] The 2020 amendments to Rules 1–02(w) and 3–05 did not affect the financial statements related to the acquisition of a business that is the subject of a proxy statement or registration statement on Form S–4 or Form F–4. *See Amendments to Financial Disclosures about Acquired and Disposed Businesses,* Release 33–10786, (May 21, 2020) [85 FR 54002 (Aug. 31, 2020)], n.20.

[271] *Ibid.*

[272] Such pro forma use is permitted if the registrant has filed audited financial statements for any such acquired business for the periods required by Rule 3–05 or Rule 3–14 and the pro forma information required by Rule 11–01 through 11–02 of Regulation S–X.

[273] Pursuant to the proposed amendment to Rule 11–01d) that would stipulate that the SPAC is a business, an acquisition of the SPAC is considered to be an acquisition of a business, and the conditions to use pro forma financial statements depicting the acquisition as the denominator in the significance tests may be met.

[274] Rule 3–05 generally requires financial statements of an acquired business when the conditions in Rule 1–02(w) related to significant subsidiary exceed 20%.

[275] Once the financial statements of the registrant include the period in which the de-SPAC transaction was consummated, the financial statements required would be those of the predecessor for all historical periods presented.

[276] *See* Exchange Act Rule 12b–20, Securities Act Rule 408(a).

a SPAC is a business for purposes of the rule. While Rule 11–01(d) states that an entity is presumed to be a business, consideration of the continuity of the SPAC's operations prior to and after the de-SPAC transaction may lead some parties to conclude that the SPAC is not a business under the rule. Nonetheless, given the significant equity transactions generally undertaken by a SPAC, we believe the financial statements of the SPAC could be material to an investor, particularly when they underpin adjustments to pro forma financial information in a transaction when an operating company is the legal acquirer of a SPAC. As a result of the proposed rule, an issuer that is not a SPAC may be required to file financial statements of the SPAC in a resale registration statement on Form S–1.

- Item 2.01(f) of Form 8–K currently requires a shell company registrant to file, after an acquisition, the information that would be required if the registrant were filing a general form for the registration of securities on Form 10. We are proposing to revise this Item to refer to ''acquired business,'' rather than ''registrant,'' in an effort to clarify that the information provided relates to the acquired business and for periods prior to consummation of the acquisition and not the shell company registrant.
- Rule 3–02 of Regulation S–X requires that statements of comprehensive income be filed for the registrant and its predecessors. However, as it relates to balance sheets, certain provisions in Regulation S–X specify that they be filed for the registrant and do not specifically refer to balance sheets of predecessors. We do not believe the intent of these rules is to provide the predecessor's statements of comprehensive income without the balance sheets as that would not be considered a complete set of financial statements and would be inconsistent with Article 3 of Regulation S–X that requires both. We are proposing amendments to Rules 3–01, 8–02, and 10–01(a)(1) of Regulation S–X to specifically refer to financial statements of predecessors consistent with the provision regarding income statements. These amendments codify existing financial reporting practices, and we do not expect them to result in any changes in disclosures.

Request for Comment

103. Should we adopt the amendments and new rules related to aligning financial statement disclosures, including Rule 15–01 of Regulation S–X, as proposed?

104. Should Rule 15–01 provide that the term audit (or examination), when used in regard to financial statements of a business that is or will be a predecessor to a shell company, means an examination of the financial statements by an independent accountant in accordance with the standards of the PCAOB for the purpose of expressing an opinion thereon, as proposed?

105. Should Article 15 of Regulation S–X address financial statement requirements for the acquisition by a shell company of a business that will be its predecessor, as proposed, or should we limit the requirements to apply only to a de-SPAC transaction, and if so, why?

106. Should the significance tests that determine whether the financial statements of businesses that are not or will not be the predecessor are required to be filed employ the denominator of the private operating company in lieu of that of the shell company registrant, as proposed? Should the pro forma financial information that gives effect to the shell company transaction be allowed to be used as the denominator in measuring the significance of other acquisitions not involving a predecessor? Should there be restrictions on when such pro forma financial information is used to measure significance, such as only for acquisitions that occur subsequent to consummation of the transaction and not for acquisitions that are done in tandem with the shell company transaction?

107. Should the financial statements of a shell company not be required in filings once the financial statements of the registrant include the period in which the acquisition was consummated, as proposed? Are there situations in which investors would continue to rely upon the information in the shell company financial statements after the acquisition was consummated and reflected in the financial statements of the registrant, or other factors we should consider in determining when the shell company financial statements should not be required in filings after the acquisition is complete? Should the accounting for the transaction as a forward acquisition or reverse recapitalization determine whether the financial statements are required in filings made after the acquisition was consummated?

108. Should Rule 11–01(d) of Regulation S–X be amended to state that a SPAC is a business for purposes of the rule, as proposed? Would it change the existing application of Rule 11–01(b)(3)(i)(B) of Regulation S–X as it relates to de-SPAC transactions? Should eliciting the financial statements of the SPAC in a resale registration statement of an issuer that is not a SPAC be accomplished through a rule that specifically requires the SPAC financial statements to be filed (subject to the provisions of proposed Rule 15–01(e))?

109. The Form 8–K filed pursuant to Item 2.01(f) may require a third fiscal year of certain financial statements for an acquired business that is the predecessor to a shell company and an emerging growth company, while Rule 15–01(b), as proposed, would only require two. Should we amend the Form 8–K requirement to provide an exception to the required Form 10-type information so the financial statements of the acquired business need not be presented for any period prior to the earliest audited period previously presented in connection with a registration, proxy, or information statement of the registrant?

V. Enhanced Projections Disclosure

A. Background

Disclosure of financial projections is not expressly required by the federal securities laws; however, there are various reasons why registrants produce and disclose such information. For example, projections may be disclosed to comply with state or foreign corporate law regarding the board's decision to approve a business combination transaction or the basis underlying a fairness opinion issued by a financial advisor.[277] Companies engaged in business combination transactions may use projections to negotiate the offered consideration, terms, and conditions and to allocate risks in those transactions. Companies may also disclose projections to avoid claims that the omission of such information violates federal anti-fraud provisions or to satisfy certain requirements under Regulation M–A.[278]

[277] *See, e.g., In re Netsmart Techs., Inc.,* 924 A.2d 171 (Del. Ch. 2007), and the disclosure of the substantive work performed by the financial advisor, *see, e.g., In re Pure Res.,* Inc., 808 A.2d 421 (Del. Ch. 2002).

[278] *See* Exchange Act Rules 10b–5, 12b–20, 13e–3(b)(1)(ii), and 17 CFR 240.14a–9 (Exchange Act Rule 14a–9), Securities Act Rule 408(a), and Exchange Act Section 14(e). *See also* Item 1004(b)(2)(iii) and 1011(c) of Regulation M–A. Omission of projections used by the board or the fairness opinion advisers, in particular, have been the subject of various lawsuits filed in federal courts alleging violation of Rule 14a–9. *See, e.g., Smith* v. *Robbins & Myers, Inc.,* 969 F.Supp.2d 850 (2013), *Azar* v. *Blount Intern., Inc.,* No. 3:16–cv–483–SI, 2017 WL 1055966, 2017 U.S. Dist. LEXIS 39493 (D. Or. Mar. 20, 2017), and *NECA–IBEW Pension Trust Fund* v. *Precision Castparts Corp.,* No. 3:16–cv–01756–YY, 2017 WL 4453561, 2017 U.S. Dist. LEXIS 165139 (D. Or. Oct. 3, 2017), adopted by 2018 WL 533912, 2018 U.S. Dist. LEXIS 11463 (D. Or. Jan. 24, 2018) (relating to disclosed

Recent events have raised renewed concerns about the use of projections, particularly with respect to de-SPAC transactions in which private operating companies disclose projections that may lack a reasonable basis.[279] For example, some companies have presented projections of significant increases in revenue or market share even though they do not have any operations at the time such projections were prepared.[280] Other companies have allegedly used materially misleading assumptions, failed to take into account foreseeable future events in developing projections, or used projections unsupported by a target's experience.[281] Similar potentially misleading projections have been used in non-SPAC filings, including with respect to future revenues, prospects and profitability.[282] Although the Commission has previously acknowledged that projections and other forward-looking information can provide useful information for investors when making voting and investment decisions,[283] it has also recognized that the use of such forward-looking information could raise investor protection concerns.[284] Accordingly, the Commission adopted Item 10(b) of Regulation S–K to set forth its views on important factors to be considered in formulating and disclosing such projections in certain Commission filings.[285] Item 10(b) states that management has the option to present in Commission filings its good faith assessment of a registrant's future performance, but it also states that management must have a reasonable basis for such an assessment. Item 10(b) further expresses the Commission's views on the need for disclosure of the assumptions underlying the projections, the limitations of such projections, and the format of the projections.

B. Rule Proposals

We are proposing to amend Item 10(b) of Regulation S–K to expand and update the Commission's views on the use of projections. Among other things, the proposed amendments would address the presentation of projections by companies with no history of operations and provide that the guidance in the item also applies to projections of future economic performance of persons other than the registrant, such as the target company in a business combination. Further, given the widespread use of projections in de-SPAC transactions and the resulting heightened concerns, we are also proposing new Item 1609 of Regulation S–K that would be applicable to financial projections used in de-SPAC transactions and would set forth additional disclosure requirements relating to financial projections.

The proposed revisions to Item 10(b) of Regulation S–K and proposed Item 1609 of Regulation S–K are intended to help address concerns about the use of projections in de-SPAC transactions and similar circumstances. By providing additional guidance for registrants and mandating specific disclosures in de-SPAC transactions, these proposed rules could enhance the attention and level of care companies bring to the preparation of financial projections, both in de-SPAC transaction filings and in other filings made with the Commission.

1. Item 10(b) of Regulation S–K

We are proposing to amend Item 10(b) to present the Commission's updated views on projected financial information. The proposed amendments to Item 10(b) would continue to state the Commission's view that projected financial information included in filings subject to Item 10(b) must have a reasonable basis. To address specific concerns that some companies may present projections more prominently than actual historical results (or the fact that they have no operations at all) or use non-GAAP financial measures in the projections without a clear explanation or definition of such a measure, we propose to amend Item 10(b) to state that:

- Any projected measures that are not based on historical financial results or operational history should be clearly distinguished from projected measures that are based on historical financial results or operational history;
- It generally would be misleading to present projections that are based on historical financial results or operational history without presenting such historical measure or operational history with equal or greater prominence; and
- The presentation of projections that include a non-GAAP financial measure should include a clear definition or explanation of the measure, a description of the GAAP financial measure to which it is most closely related,[286] and an explanation why the non-GAAP financial measure was used instead of a GAAP measure.[287]

These proposed changes, if adopted, should assist registrants in presenting their projections in an appropriate format and with the appropriate context, which in turn should facilitate investors' evaluation of the projections, assessment of the reasonableness of the bases for these projections (particularly when compared to historical performance and results), and determinations about the appropriate reliance to place on the projections

projections that management knew were not reflective of management's plans for the registrant).

[279] The Commission recently has brought enforcement actions alleging the use of baseless or unsupported projections about future revenues and the use of materially misleading underlying financial projections. These cases involve both SPACs and other reporting companies. *See* the following matters related to SPACs: *In the Matter of Momentus, Inc., et. al.,* Exch. Act Rel. No. 34–92391 (July 13, 2021); *SEC* vs. *Hurgin, et al.,* Case No. 1:19–cv–05705 (S.D.N.Y., filed June 18, 2019); *In the Matter of Benjamin H. Gordon,* Exch. Act Rel. No. 34–86164 (June 20, 2019); and, *SEC* vs. *Milton,* Case No. 1:21–cv–6445 (S.D.N.Y., filed July 29, 2021). *See* the following non-SPAC cases: *SEC* vs. *CanaFarma Hemp Products Corp, et al.,* Case No. 1:21–cv–08211 (S.D.N.Y., filed Oct. 5, 2021); *SEC* v. *Thomas, et al.,* Civil Action No. 19–cv–1132 (D. Nev., filed June 28, 2019); *In the Matter of Ribbon Communications Inc., et. al.,* Exch. Act Rel. No. 34–83791 (Aug. 7, 2018); *SEC* v. *Enviro Board Corporation, et al.,* [Civil Action No. 2:16–cv–06427 (C.D. Cal., filed Aug. 26, 2016)]; and *SEC* v. *Roberts, et. al.,* Civil Action No. 8:15–cv–2093–T–17–MAP (M.D. Fla., filed Sept. 9, 2015). *See also* Dave Michaels, *Regulators Hit Space SPAC Over Disclosures,* The Wall Street Journal, July 26, 2021.

[280] Some news reports have also suggested that many post-business combination companies, particularly those with less revenue or that are early stage companies, do not meet revenue or earnings targets that they provided to investors at the time of the de-SPAC transaction. An analysis performed by The Wall Street Journal indicates that, of the 63 companies that became public companies through a de-SPAC transaction in 2021 and had less than $10 million in sales at the time of the transaction, at least 30 did not meet their projections. The article reported that the companies in the analysis expected to miss their 2021 revenue projections fell short by an average of 53% and that companies falling short of their earnings projections have estimated losses that are approximately 40% greater, on average, than they projected at the time of the de-SPAC transaction. *See* Heather Somerville, *SPACs Fall Short of Lofty Goals,* The Wall Street Journal, Feb. 26, 2022.

[281] *See supra* note 275.

[282] *Id.*

[283] *Disclosure of Projections of Future Economic Performance,* Release No. 33–5362 (Feb. 2, 1973) [38 FR 7220 (Mar. 19, 1973)] and *Guides for Disclosure of Projections of Future Economic Performance,* Release No. 33–5992 (Nov. 7, 1978) [43 FR 53246 (Nov. 15, 1978)].

[284] *See* Release No. 33–5362, *supra* note 283.

[285] *See Adoption of Integrated Disclosure System,* Release 33–6383 (Mar. 3, 1982) [47 FR 11380 (Mar. 16, 1982)]. In connection with the adoption of the integrated reporting system, the Commission rescinded several staff guides relating to the preparation of registration statements and reports and relocated the substance of some of them into Item 10(b) of Regulation S–K. *See Rescission of Guides and Redesignation of Industry Guides,* Release No. 33–6384 (Mar. 16, 1982) [47 FR 11476 (Mar. 16, 1982)].

[286] The reference to the nearest GAAP measure called for by amended Item 10(b) would not require a reconciliation to that GAAP measure. The need to provide a GAAP reconciliation would continue to be governed by Regulation G and Item 10(e) of Regulation S–K.

[287] The Commission stated a similar view in 2003. *See Conditions for Use of Non-GAAP Financial Measures,* Release No. 33–8176 (Jan. 22, 2003), section II.B.2 [68 FR 4820 (Jan. 30, 2003)].

when making an investment or voting decision.

Finally, Item 10(b) currently refers to projections regarding the future performance of a ''registrant.'' In business combination transactions, it is common for projections of the target company to be included in the Securities Act registration statement or proxy statement filed by the acquiring company. In such a case, it may be unclear if the guidance in Item 10(b) applies to the target company's projections because the target company is not the registrant for that filing. In our view, Item 10(b) should apply to such projections because they are nevertheless being presented to investors through the registration statement or proxy statement filed by the acquiring company. Accordingly, we are proposing to amend Item 10(b) to state that the guidance therein applies to any projections of future economic performance of persons other than the registrant, such as the target company in a business combination transaction, that are included in the registrant's Commission filings.

Request for Comment

110. Should we amend Item 10(b) of Regulation S–K, as proposed? Is there additional or different guidance we should provide?

111. Instead of applying to all filings covered by Item 10(b), as proposed, should the proposed updated guidance apply solely to filings relating to business combination transactions (including de-SPAC transactions), while retaining the existing Item 10(b) guidance for other filings?

112. Are the proposed amendments to Item 10(b) necessary in light of proposed Item 1609 of Regulation S–K, which is limited to de-SPAC transactions?

113. Are there different ways of presenting financial projections that would be beneficial to investors? For example, should we require registrants to present some or all financial projections in a separately captioned section of a Commission filing?

2. Item 1609 of Regulation S–K

We are also proposing new Item 1609 of Regulation S–K that would apply only to de-SPAC transactions.[288] The nature of the SPAC structure and de-SPAC transactions raise heightened concerns about the use of projections in such transactions. As noted above, a sponsor's compensation may depend to a large extent on the completion of the de-SPAC transaction, and thus the SPAC and its sponsor may have an incentive to use a private operating company's financial projections in seeking support for the de-SPAC transaction.[289] In particular, such projections could be used to value the private operating company and may influence how investors evaluate a proposed de-SPAC transaction.[290] Similarly, as a consequence of the SPAC's expected valuation of the private operating company on the basis of this type of financial projections, controlling shareholders and management of the private operating company may have an incentive to be overly aggressive in their development of projections as a means of justifying a higher price for their company.[291] Aggressive projections may also be used by the SPAC or the private operating company to justify the target's valuation in order to help meet any exchange listing requirement that the target has a fair market value equal to at least 80% of the balance of funds in the SPAC's trust account.[292]

For these reasons, we are proposing additional disclosures intended to assist investors in assessing the bases of projections used in de-SPAC transactions and determining to what extent they should rely on such projections. Proposed Item 1609 would require a registrant to provide the following disclosures:

- With respect to any projections disclosed by the registrant, the purpose for which the projections were prepared and the party that prepared the projections;
- All material bases of the disclosed projections and all material assumptions underlying the projections, and any factors that may materially impact such assumptions (including a discussion of any factors that may cause the assumptions to be no longer reasonable, material growth rates or discount multiples used in preparing the projections, and the reasons for selecting such growth rates or discount multiples); and
- Whether the disclosed projections still reflect view of the board or management of the SPAC or target company, as applicable, as of the date of the filing; if not, then discussion of the purpose of disclosing the projections and the reasons for any continued reliance by the management or board on the projections.

These proposed disclosures would inform investors about why the projections were prepared, and by whom, which could allow them to better understand the motivations underlying such projections. In addition, the proposed disclosures could help investors assess the continued reliability of the projections both independently and through the views of the board or management.

Request for Comment

114. Should we adopt Item 1609 as proposed? Are there additional disclosures that we should require in de-SPAC transaction filings related to financial projections?

115. As proposed, Item 1609 of Regulation S–K would apply only to de-SPAC transactions. Should we expand the scope of the item to apply to all companies that publicly disclose financial projections in Commission filings?

116. Should we prohibit the disclosure of any specific financial measures or metrics? If so, which measures or metrics?

117. Will proposed Item 1609 discourage the use of financial projections in de-SPAC transactions? What impact would this have on investors? Would our proposal have any impact on the ability to comply with state or foreign law obligations regarding disclosures of projections used in business combination transactions?

118. Both the proposed amendments relating to the PSLRA safe harbor and proposed Item 1609 may result in market participants using financial projections in de-SPAC transactions in a different manner than they do currently. Would adoption of only one of the proposals strike a better balance in terms of the costs and benefits with respect to the use of projections? If so, which proposal?

[288] The disclosure would be required in the forms or schedules filed for de-SPAC transactions.

[289] There is evidence that, in a majority of de-SPAC transactions announced in the twelve months ending in the first quarter of 2021, the private operating companies were pre-revenue, thus making financial projections an important basis for SPACs and private operating companies to find additional investments and to receive support for de-SPAC transactions. *See* ''Why Have SPAC Valuations Skyrocketed?,'' Stuart Gleichenhaus and Bill Stotzer, FTI Consulting, Aug. 6, 2021.

[290] In this regard, we note that there also is evidence of the different uses of, and greater reliance on, financial projections by retail investors than by institutional investors. *See* Dambra, Even-Tov, and George, *supra* note 33.

[291] *See* Kimball Chapman, Richard M. Frankel, and Xiumin Martin, *SPACs and Forward-Looking Disclosure: Hype or Information?* (SSRN Working Paper, 2021).

[292] *See, e.g.,* NYSE Listed Company Manual Section 102.06 and Nasdaq Listing Rule IM–5101–2.

VI. Proposed Safe Harbor Under the Investment Company Act

A. Background

While the number of SPACs has grown dramatically in recent years,[293] some SPACs have sought to operate in novel ways that suggest that SPACs and their sponsors should increase their focus on evaluating when a SPAC could be an investment company.[294] We are concerned that SPACs may fail to recognize when their activities raise the investor protection concerns addressed by the Investment Company Act.[295] To assist SPACs in focusing on, and appreciating when, they may be subject to investment company regulation, we are proposing Rule 3a–10, which would provide a safe harbor from the definition of ''investment company'' under Section 3(a)(1)(A)[296] of the Investment Company Act for SPACs that meet the conditions discussed below.[297] We believe that certain SPAC structures and practices may raise serious questions as to their status as investment companies. While a SPAC would not be required to rely on the safe harbor, we have designed the proposed conditions of the safe harbor to align with the structures and practices that we preliminarily believe would distinguish a SPAC that is likely to raise these questions from one that would not.

1. Potential Status as an Investment Company

Section 3(a)(1)(A) defines an ''investment company'' as any issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Depending on the facts and circumstances, SPACs could meet the definition of ''investment company'' in Section 3(a)(1)(A). To assess a SPAC's status as an investment company under that definition, we generally look to the SPAC's assets, the sources of its income, its historical development, its public representations of policy, and the activities of its officers and directors (known as the ''Tonopah factors'').[298]

SPACs are generally formed to identify, acquire and operate a target company through a business combination and not with a stated purpose of being an investment company.[299] We understand that SPACs typically view their public representations, historical development and efforts of officers and directors as consistent with those of issuers that are not investment companies. At the same time, most SPACs ordinarily invest substantially all their assets in securities, often for a period of a year or more, meaning that investors hold interests for an extended period in a pool of securities. Moreover, whatever income a SPAC generates during this period is generally attributable to its securities holdings. The asset composition and sources of income for most SPACs may therefore raise questions about their status as investment companies under Section 3(a)(1)(A) of the Investment Company Act and, in assessing this status, these factors would need to be weighed together with the other Tonopah factors.

2. Rationale for the Safe Harbor

The safe harbor we are proposing focuses on conditions that limit a SPAC's duration, asset composition, business purpose and activities as a means of enhancing investor protection.[300] The proposed rule is designed so that, if a SPAC satisfies the rule's conditions, together with the disclosure requirements being proposed in this release, such SPAC's operations would be limited and differ sufficiently from those of investment companies so as to generally not raise the types of investor protection concerns that the Investment Company Act is intended to address. In addition, the proposed rule may also promote investor protection by highlighting for SPACs and their sponsors the Investment Company Act concerns that certain SPAC activities may raise.

The proposed rule may also have the effect of providing more certainty to SPACs regarding their status under the Investment Company Act. This in turn, could facilitate capital formation because SPACs that operate within the boundaries of the safe harbor would be assured that they would not qualify as investment companies. The rule may also promote efficiency by providing a clear framework for SPACs to determine their status under the Investment Company Act.[301]

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[293] *See supra* notes 7–8 and accompanying text.

[294] The growth of the SPAC industry, among other things, has also sparked debate about the status of SPACs as investment companies. *See, e.g.,* Kristi Marvin, *49 Law Firms Unite and Push Back on Recent SPAC Litigation,* SPAC Insider (Aug. 27, 2021), *available at https://spacinsider.com/2021/08/27/49-law-firms-unite-push-back-on-spac-litigation/;* Alison Frankel, *Law Profs Defend Theory that SPAC is Illegal under the Investment Company Act,* Reuters (Nov. 1, 2021).

[295] The Investment Company Act regulates the organization of investment companies that engage primarily in investing, reinvesting, and trading in securities, and whose own securities are offered to the investing public. The Act is designed to minimize conflicts of interest that arise in these complex operations protecting investors by preventing insiders from managing the companies to their benefit and to the detriment of public investors; preventing the issuance of securities having inequitable or discriminatory provisions; preventing the management of investment companies by irresponsible persons; preventing the use of unsound or misleading methods of computing earnings and asset value; preventing changes in the character of investment companies without the consent of investors; preventing investment companies from engaging in excessive leveraging; and ensuring the disclosure of full and accurate information about the companies and their sponsors. *See* Section 1(b) of the Investment Company Act [15 U.S.C. 80a–1(b)].

[296] 15 U.S.C. 80a–3(a)(1)(A).

[297] Proposed 17 CFR 270.3a–10. SPACs that meet the proposed rule's conditions would not need to register under the Investment Company Act.

[298] *See In the Matter of Tonopah Mining Co.,* 26 S.E.C. 426 (July 21, 1947). *See generally SEC* v. *National Presto Industries, Inc.,* 486 F.3d 305 (7th Cir. May 15, 2007), rev'g. *SEC* v. *National Presto Industries Inc.,* Case No. 02 C 5057 (N.D. Ill, Oct. 31, 2005). The Tonopah factors were first used by the Commission to determine an issuer's primary engagement under Section 3(b)(2), but have been applied in part or in totality to determine an issuer's primary engagement in other contexts under the Investment Company Act, including Section 3(a)(1)(A) of the Act. *Certain Prima Facie Investment Companies,* Release No. IC–10937 (Nov. 13, 1979) [44 FR 66608 (Nov. 20, 1979)] at n.24 (''Proposing Release to Rule 3a–1'') (''Although [Tonopah] was decided under [S]ection 3(b)(2) of the Act, the ''primary engagement'' standard set forth in that case also appears to be applicable to the identical standard of Section 3(a)(1)[A] and [S]ection 3(b)(1).''). The Commission has also considered the activities of the company's employees, in addition to company's officers and directors, in determining a company's primary business. *See, e.g.,* 17 CFR 270.3a–8 (Rule 3a–8 under the Investment Company Act); *Snowflake Inc.,* Release No. IC–34049 (Oct. 9, 2020) [85 FR 65449 (Oct. 15, 2020)] (notice), Release No. IC–34085 (Nov. 4, 2020) (order); *Lyft Inc.,* Release No. IC–33399 (Mar. 14, 2019) [84 FR 10156 (Mar. 19, 2019)] (notice), Release No. IC–33442 (Apr. 8, 2019) (order).

[299] *See generally supra* Section I.

[300] We understand that SPACs typically place most of their assets in a trust or escrow accounts. Although the Commission has never addressed the status of SPACs under the Investment Company Act, the Commission has addressed the status of escrow or trust accounts established by blank check companies that comply with Rule 419 under the Securities Act (''Rule 419 Accounts''). The Commission took the position that ''although a Rule 419 Account may be an investment company under the Investment Company Act of 1940, in light of the purposes served by the regulatory requirement to establish such an account, the limited nature of the investments, and the limited duration of the account, such an account will neither be required to register as an investment company nor regulated as an investment company as long as it meets the requirements of Rule 419.'' *Blank Check Offerings, supra* note 6 (''Rule 419 Adopting Release''), at text accompanying n.32. SPACs have evolved since the Commission adopted Rule 419, and as noted above, SPACs are not subject to the requirements of Rule 419. *See supra* notes 12 and 13 and accompanying text.

[301] For these reasons, we believe the safe harbor, subject to the proposed conditions, would be necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. *See* Section 6(c) of the Investment Company Act [15 U.S.C. 80a–6(c)]. *See*

Continued

3. Boundaries of the Safe Harbor

While a SPAC would not be required to rely on the safe harbor, we have designed the proposed conditions of the safe harbor to align with the structures and practices that we preliminarily believe would distinguish a SPAC that is likely to raise serious questions as to its status as an investment company under the Investment Company Act from one that would not. Activities that would raise these concerns include, solely by way of example and without limitation, if a SPAC were to invest in securities not permitted by the proposed safe harbor, actively manage its portfolio, or hold itself out in a manner that suggests investors should invest to gain exposure to the portfolio it holds prior to the de-SPAC transaction.

A SPAC would raise similar concerns if it were to invest its assets in securities, including those permitted by the safe harbor, for a lengthier period of time without identifying a target company. As discussed below, we are concerned that, the longer the SPAC operates with its assets invested in securities and its income derived from securities, the more likely investors will come to view the SPAC as a fund-like investment and the more likely the SPAC will appear to be deviating from its stated business purpose.[302] Similarly, if a SPAC did not seek to engage in a business combination but instead sought to acquire a minority interest in a target company with the intention of being a passive investor, it is more likely that it will appear to be an investment company. Investors in SPACs that engage in the activities discussed above may be at a significantly greater risk of acquiring SPAC shares expecting a fund-like investment.[303]

The safe harbor we are proposing only addresses investment company status under Section 3(a)(1)(A) of the Investment Company Act, commonly known as the ''subjective test.'' Section 3(a)(1)(C) of the Investment Company Act provides an alternate ''objective test'' that defines an ''investment company'' as any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and that owns or proposes to acquire investment securities,[304] having a value exceeding 40% of the value of the company's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. If a SPAC owns or proposes to acquire 40% or more of investment securities, it would likely need to register and be regulated as an investment company under the Investment Company Act.

The safe harbor we are proposing is intended to address the status of a qualifying SPAC from the time of the SPAC's initial public offering until it completes its de-SPAC transaction.[305] For purposes of the proposed rule, the definitions of SPAC, de-SPAC transaction, and target company would be the same as those set forth in proposed Item 1601 of Regulation S–K.[306]

Request for Comment

119. Instead of a safe harbor, should we provide an interpretation concerning when SPACs would meet the definition of ''investment company''? Alternatively, should we exempt SPACs that meet the definition of ''investment company'' from any provisions of the Investment Company Act, and if so, which provisions? Are there any changes we should make to the proposed approach that would better achieve the objectives of the proposed rule? Are there conditions we should include in addition to those set forth below?

120. We request comment on whether the safe harbor should include an exemption from Section 3(a)(1)(C), in addition to Section 3(a)(1)(A). If such an expansion is needed, please explain the circumstances in which a SPAC could meet the definition of ''investment company'' in Section 3(a)(1)(C) while still complying with the conditions in the proposed safe harbor.

121. Should the proposed rule incorporate the definitions of de-SPAC transaction, special purpose acquisition company and target company as proposed in Item 1601? Should any of these definitions be different under proposed Rule 3a–10? If so, please identify the definition, how the definition should be changed, and why.

122. We understand that SPACs typically place most of their assets in a trust or escrow account as required by the listing standards. In the event that these accounts may also be ''issuers'' under the Investment Company Act,[307] does the safe harbor need to address these accounts under that Act? Alternatively, should the rule text specify that assets and activities of the SPAC (as discussed below) include those of the trust?

123. As proposed, an existing SPAC that has not completed a de-SPAC transaction prior to the effective date of the rule would not be prohibited from relying on the safe harbor if it satisfies the conditions. Should we permit an existing SPAC to rely on the safe harbor if it does not have a board resolution but has other contemporary evidence of its intent and otherwise meets the conditions of the safe harbor? Alternatively, should we limit reliance on the safe harbor to SPACs formed after the effective date of the rule? If proposed Rule 3a–10 is adopted, should the rule's effective date reflect the possibility that some SPAC's may need to alter their operations or more quickly complete a de-SPAC transaction in order to meet the conditions of the rule? If so, should we provide an extended or delayed effective date? Should we provide a compliance or transition period, and if so, why?

B. Conditions

The conditions to the safe harbor focus on certain defining characteristics of SPACs[308] and are designed to ensure that SPACs wishing to rely on the safe harbor do not operate, or hold themselves out, as investment companies.

The conditions are discussed in more detail below.

1. Nature and Management of SPAC Assets

In order to rely on the proposed safe harbor, a SPAC's assets[309] must consist solely of Government securities,[310] Government money market funds[311]

also Section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)].

[302] *See infra* Section VI.B.2.b.

[303] In considering the investment company status of SPACs that do not comply with the safe harbor, we would use the traditional framework for evaluating the status of a potential investment company discussed above.

[304] Section 3(a)(2) of the Investment Company Act generally defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies or certain private investment companies. 15 U.S.C. 80a–3(a)(2).

[305] The remaining company (or companies) after the de-SPAC transaction may also raise separate questions of Investment Company Act status. If a remaining company meets the definition of ''investment company'' following the de-SPAC transaction, that company would need to register as an investment company or rely on an appropriate exclusion or exemption under the Investment Company Act.

[306] *See supra* Section II.A.

[307] *See supra* note 300.

[308] The conditions are also consistent with our approach with respect to Rule 419 Accounts. *Id.*

[309] For purposes of the rule, any references to the SPAC's assets refer to both the assets held in the trust or escrow account and any assets held by the SPAC directly.

[310] The term ''Government security'' has the same meaning as defined in Section 2(a)(16) of the Investment Company Act. 15 U.S.C. 80a–2(a)(16).

[311] The term ''Government money market fund'' has the same meaning as defined in paragraph

and cash items [312] prior to the completion of the de-SPAC transaction.[313] Thus, all proceeds obtained by the SPAC, including those from any SPAC offering, cash infusion from the sponsor, or any interest, dividend, distribution or other such return derived from the SPAC's underlying assets would need to be held in these assets. We understand that SPACs typically acquire these assets in part because they may be easily liquidated to fund any acquisition or other expenses related to the de-SPAC transaction and investor redemptions and, unlike the investments of registered investment companies, are not primarily made to achieve an investment purpose.[314] This condition reflects the SPAC's intended business purpose to acquire assets to fund a de-SPAC transaction and also generally limits the SPAC's assets to those that may be consistent with cash management practices rather than primarily investment purposes.[315]

Under the proposed rule, a SPAC seeking to rely on the safe harbor may not acquire any other type of asset, including interests in an operating company, prior to the completion of a de-SPAC transaction. Acquiring other types of assets and then transferring such assets to another entity or to SPAC shareholders would suggest that the SPAC's primary business is that of investing in securities. Nothing in this provision, however, is intended to preclude the SPAC from using SPAC assets to pay expenses related to the operation of the SPAC.

Under the proposed rule, the assets set forth in paragraph (a)(1) may not at any time be acquired or disposed of for the primary purpose of recognizing gains or decreasing losses resulting from market value changes.[316] Unlike management investment companies, SPACs typically do not actively manage their portfolios, often holding their Government securities to maturity. The proposed provision is therefore intended to allow SPACs the flexibility to hold their assets consistent with cash management practices yet ensure that SPACs relying on the safe harbor do not engage in activities that would necessitate the investor protections of the Investment Company Act, like portfolio management practices resembling those that management investment companies employ.

Request for Comment

124. Should we allow SPACs seeking to rely on the safe harbor to invest in Government securities? Alternatively, should we limit these SPACs to only certain types of Government securities, such as U.S. Treasury securities?

125. Should we allow SPACs to invest in government money market funds, as defined in Rule 2a–7? Should we instead limit the type of money market funds that a SPAC may invest in to money market funds that only hold U.S. Treasury securities? Conversely, should the provision be expanded to permit SPACs to invest in all types of money market funds provided that they rely on Rule 2a–7? [317]

126. In addition to the questions raised above, as a general matter, is paragraph (a)(1) too narrow? For example, should the safe harbor be expanded to include SPACs that acquire investment securities or other assets (*e.g.,* assets that are not for investment purposes relevant to the operation of the SPAC)? If yes, please explain which investment securities and/or assets and why such an expansion of the safe harbor would be appropriate.

127. Does paragraph (a)(2) provide enough flexibility with respect to a SPAC's holdings but yet prevent SPACs from engaging in activities similar to management investment companies?

128. As noted, we understand that SPACs typically place most of their assets in trust or escrow accounts. Should the rule text address the manner in which a SPAC holds its assets? For example, should the rule require SPAC assets to be held in trust or escrow accounts? If yes, should the safe harbor be conditioned on complying with the terms of the custody rules under the Investment Company Act as if they applied to these accounts?

2. SPAC Activities

a. De-SPAC Transactions

The proposed rule would provide a safe harbor only to those SPACs that seek to complete a single de-SPAC transaction as a result of which the surviving public entity (the ''surviving company''),[318] either directly or through a primarily controlled company,[319] will be primarily engaged in the business of the target company or companies, which is not that of an investment company. Thus, to rely on the rule, the SPAC must have a business purpose aimed at providing its shareholders with the opportunity to own interests in a public entity that, in contrast to an investment company, will either be an operating company, or will, through a primarily controlled company, operate such operating company.[320] In addition, the SPAC would need to seek to complete a de-SPAC transaction as a result of which the surviving company would have at least one class of securities listed for trading on a national securities exchange.[321]

A SPAC would be able to engage in only one de-SPAC transaction while relying on the safe harbor, but such

(a)(14) of Rule 2a–7 under the Investment Company Act. 17 CFR 270.2a–7.

[312] The Commission has previously included the following as cash items for purposes of Rule 3a–1: Cash, coins, paper currency, demand deposits with banks, timely checks of others, cashier checks, certified checks, bank drafts, money orders, travelers' checks, and letters of credit. *See* Proposing Release to Rule 3a–1, *supra* note 298, at text accompanying n.11. We take the same view here with respect to the proposed rule.

[313] Proposed Rule 3a–10(a)(1).

[314] If a SPAC were to significantly change its asset composition contrary to its original representations, it would raise questions whether the initial representations were false and misleading.

[315] This limited asset composition would not, on its own, distinguish a SPAC from an investment company. This provision is designed to operate together with the other conditions to the safe harbor, and nothing in this provision is meant to address the status under Section 3(a)(1)(A) of a company that is not relying on this safe harbor, including those primarily engaged in the business of investing in government securities and/or government money market funds. For example, an issuer that holds these types of assets, but whose primary business is to achieve investment returns on such assets would still be an investment company under Section 3(a)(1)(A).

[316] Proposed Rule 3a–10(a)(2). This provision is similar to that found in paragraph (a)(3)(iii) in 17 CFR 270.3a–7 (Rule 3a–7), and we propose to apply this provision in the same manner in the proposed rule.

[317] The Commission has taken the position that money market funds relying on Rule 2a–7 may be treated as cash equivalents for purposes of Rule 2a–7 for GAAP purposes. *See Money Market Fund Reform; Amendments to Form PF,* Release No. IC–31166 (July 23, 2014) [79 FR 47736 (Aug. 14, 2014)].

[318] The proposed rule defines the term ''surviving company'' to mean the public company issuer that survives a de-SPAC transaction and in which the shareholders of the SPAC immediately prior to the de-SPAC transaction will own equity interests immediately following the de-SPAC transaction. Proposed Rule 3a–10(b)(3).

[319] The proposed rule defines the term ''primarily controlled company'' to mean an issuer that (i) is controlled within the meaning of Section 2(a)(9) of the Investment Company Act by the surviving company following a de-SPAC transaction with a degree of control that is greater than that of any other person and (ii) is not an investment company. Proposed Rule 3a–10(b)(2).

[320] As drafted, the proposed rule would permit a SPAC relying on the safe harbor to seek to engage in a de-SPAC transaction with any company other than an investment company. Thus, a SPAC may seek to engage in a de-SPAC transaction with a target company that is not considered an investment company under Section 3(a) or that is excepted or exempted from the definition of investment company by order under Section 3(b) [15 U.S.C. 80a–3(b)] or by rules or regulations under Section 3(a).

[321] Proposed Rule 3a–10(a)(3)(i). The post-business combination surviving company would have to qualify for listing on a national securities exchange by meeting initial listing standards just as any company seeking an exchange listing would have to do. If the surviving company did not qualify for listing, it could not be listed for trading on a national securities exchange and delisting procedures would commence.

transaction may involve the combination of multiple target companies,[322] provided that the SPAC treats them for all purposes as part of a single de-SPAC transaction. Such intentions would be evidenced by the description in any disclosure or reporting documents, and that the closing with respect to all target companies occurs contemporaneously and within the required time frames.[323] We are imposing this limitation because we are concerned that a SPAC that makes multiple acquisitions could be engaging in the types of activities that raise the investor protection concerns addressed by the Investment Company Act. A SPAC that purchases multiple companies as part of a single transaction (and complies with the other conditions of the safe harbor) would not raise these concerns as it would still appear to be seeking to be primarily engaged in the business of an operating company or companies after the de-SPAC transaction, and not to be engaged in investment management activities.

While recognizing that de-SPAC transactions may have various structures and may involve intermediary entities, the proposed safe harbor is intended to ensure that the SPAC must be seeking a business combination in which the surviving entity, directly or through a primarily controlled company,[324] is primarily engaged in the business of the target company or companies and not merely seeking an investment opportunity. ''Primary control'' within the definition of ''primarily controlled company'' means that the surviving company must have ''control'' [325] of such company and the degree of that control must be greater than that of any other person.[326] The ''primarily control'' standard, which is similar to that found in other status rules under the Investment Company Act,[327] is designed to distinguish a holding company structure for an operating company from an investment in securities of an operating company.[328] As we previously expressed in a similar context, this level of control is more consistent with an active role in managing the affairs of a company than if the issuer owns a lesser controlling interest in such company.[329] We believe that a lesser degree of control, or lack of control, would in these circumstances more closely resemble the activities of an investment company.[330]

In order to rely on the safe harbor, the surviving company must also have at least one class of securities listed for trading on a national securities exchange.[331] This condition recognizes that a SPAC's business plan is to engage in a de-SPAC transaction, the result of which is that SPAC shareholders receive the publicly traded shares of the surviving company.[332] Similar to the other parts of this condition, this provision helps to ensure that the SPAC has a business purpose that is different from engaging primarily in the business of investing, reinvesting or trading in securities.

b. Evidence of Primary Engagement

The proposed rule would require a SPAC wishing to rely on the safe harbor to be primarily engaged in the business of seeking to complete a de-SPAC transaction in the manner and within the time frame set forth in the rule. Such engagement must be evidenced by the activities of its officers, directors and employees, its public representations of policies, and its historical development.[333] For example, the officers, directors and employees of a SPAC wishing to rely on this safe harbor would need to be primarily focused on activities related to seeking a target company to operate and not on activities related to the management of its securities portfolio. These conditions incorporate three of the Tonopah factors and are intended, together with the other conditions to the safe harbor, to ensure that a SPAC may only rely on the safe harbor if it is primarily engaged in a business other than that of investing, reinvesting or trading in securities. These factors are also similar to those used to determine the primary engagement of a business in different contexts under the Investment Company Act.[334]

To rely on the safe harbor, the SPAC's board of directors would also need to adopt an appropriate resolution evidencing that the company is primarily engaged in the business of seeking to complete a single de-SPAC transaction as described by the rule, and which is recorded contemporaneously in its minute books or comparable documents.[335] This condition is similar to other exclusionary rules under the Investment Company Act in which the issuer may only rely on the safe harbor provided by the rule if the issuer's board of directors adopts an appropriate resolution evidencing that the company is primarily engaged in a non-investment business.[336] Such action serves to publicly document the intent of management and helps to establish a shared understanding of shareholders concerning the business purpose of this issuer.

A SPAC relying on the proposed rule also may not hold itself out as being primarily engaged in the business of investing, reinvesting or trading in securities. Given that SPACs invest in the same types of securities as certain investment companies, such as money market funds, a SPAC relying on the rule may not hold itself out, or otherwise suggest, that the SPAC operates in a manner similar to these types of investment companies. For example, a SPAC could not market itself as a means for gaining exposure to U.S. Treasury securities.

Request for Comment

129. Do SPACs engage in other activities that should be expressly permitted or prohibited by the safe harbor? If yes, please explain these business activities and why they should be permitted or prohibited.

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[322] The proposed definitions of ''special purpose acquisition company'' and ''de-SPAC transaction'' anticipate that a SPAC may engage in a de-SPAC transaction with more than one target company contemporaneously. *See supra* Section II.A.

[323] *See infra* Section VI.B.3.

[324] *See supra* note 319.

[325] *See* Section 2(a)(9) of the Investment Company Act for the definition of ''control''[15 U.S.C. 80a–2(9)].

[326] *See, e.g.,* paragraph (b)(2) of 17 CFR 270.3a–8 (Rule 3a–8 under the Investment Company Act).

[327] *See, e.g.,* Rule 3a–8 under the Investment Company Act; 17 CFR 270.3a–1 (Rule 3a–1 under the Investment Company Act).

[328] *See, e.g., Certain Research and Development Companies,* Release No. IC–25835 (Nov. 26, 2002) [67 FR 71915 (Dec. 3, 2002)] (''Proposing Release to Rule 3a–8'') at nn.57–58 and accompanying text.

[329] *See* Proposing Release to Rule 3a–1, *supra* note 287, at n.32. *See also* Proposing Release to Rule 3a–8, *supra* note 328, at text before n.58 (''The Commission traditionally has viewed the fact that an issuer's degree of control over a company is greater than that of any other person as strong evidence that the issuer is engaged in a business through the other company.'').

[330] *Id.*

[331] Proposed Rule 3a–10(a)(3)(i)(B). As noted in *supra* note 321, the surviving company would have to apply for and be approved for listing by meeting the initial listing standards of a national securities exchange. Otherwise, it could not be listed and traded on an exchange.

[332] *See supra* Section I.

[333] Proposed Rule 3a–10(a)(5)(i) through (iii). Such evidence may also include its articles of incorporation or other formation documents.

[334] *See, e.g.,* Rule 3a–8 under the Investment Company Act. As discussed previously, in addition to these factors, the Tonopah factors also focus on the company's assets and sources of income. *See supra* Section VI.A.1. While proposed paragraph (a)(1) addresses the asset composition of SPACs wishing to rely on the safe harbor, the proposed safe harbor does not include a separate condition specifically addressing a SPAC's source of income because the sources of income are addressed in the proposed rule's limitations regarding the SPACs' activities and the types of assets it may acquire.

[335] Proposed Rule 3a–10(a)(5)(iv).

[336] *See* 17 CFR 270.3a–2 (Rule 3a–2 under the Investment Company Act); Rule 3a–8 under the Investment Company Act.

130. As proposed, should the SPAC be required to seek a de-SPAC transaction in which the surviving company is required either to directly or through a primarily controlled company be primarily engaged in the business of the target company? Are the proposed definitions of ''surviving company'' and ''primarily controlled company'' appropriate? Should the proposed definitions be revised, and if so, how?

131. Should the safe harbor be limited to SPACs that seek de-SPAC transactions that result in the surviving company having at least a majority interest in the target company? Conversely, should the safe harbor permit the SPAC to seek a de-SPAC transaction in which the surviving company is only required to control the target company? Are there other approaches, such as requiring the de-SPAC transaction to result in a consolidation of the SPAC and the target company?

132. As proposed, should we require that the surviving company be primarily engaged in the business of operating the target company or companies? Is the use of the term ''primarily engaged'' consistent with current business practices in this context? Should we instead require that the surviving company be ''solely'' in the business of the target company or companies? If so, how should ''solely'' be defined? Alternatively, should we require that the surviving company be engaged in the business of the target company (and in activities related or incidental thereto)? [337]

133. As proposed, should the SPAC be limited to only one de-SPAC transaction while relying on the safe harbor? Why or why not? Similarly, should a SPAC, as proposed, be limited to engaging in a combination with multiple target companies only if the combination occurs as part of a single de-SPAC transaction with a single closing? Why or why not? Should there be a limit on how many target companies may be part of a single de-SPAC transaction? If so, what should that limit be and why? For example, would limiting the safe harbor to two target companies strike an appropriate balance of the relevant regulatory considerations?

134. As proposed, should we require a SPAC to be ''primarily engaged'' in the business of seeking to complete a single de-SPAC transaction? Should we instead require that the SPAC should be ''solely'' in the business of seeking to complete a single de-SPAC transaction? Why or why not? Alternatively, should we require that the SPAC be engaged in the business of seeking to complete a single de-SPAC transaction (and in activities related or incidental thereto)? [338]

135. As drafted, the proposed rule would permit a SPAC relying on the safe harbor to seek to engage in a de-SPAC transaction with any company other than an investment company. Should the safe harbor further limit the types of companies in which a SPAC may seek a de-SPAC transaction? For example, should a SPAC be precluded from seeking to engage in a de-SPAC transaction with issuers relying on Section 3(c)(1) or Section 3(c)(7)? Should a SPAC be precluded from seeking to engage in a de-SPAC transaction with issuers relying on other exclusions under Section 3(c)? Should a SPAC be precluded from seeking to engage in a de-SPAC transaction with issuers otherwise relying on an exclusion or exemption by order from the definition of ''investment company'' by Section 3(b) or the rules or regulations under Section 3(a)? If so please identify which issuers and why?

136. Should the rule include as evidence of the SPAC's business purpose the SPAC's historical development given the SPAC's short duration? Should the rule include, as evidence of the SPAC's business purpose, the SPAC's public representation of policies and the activities of its officers, directors and employees? Similarly, is it appropriate to require the board of directors to adopt a resolution stating that the SPAC is primarily engaged in the business of seeking to complete a de-SPAC transaction as described by the rule? Should we require that the SPAC's activities also, or instead, be evidenced by its articles of incorporation, other formation documents or by-laws? If so, which documents should be required? If a SPAC's business purpose is evidenced in its formation documents or by-laws, should we condition the proposed rule on those provisions being subject to change only with the approval of shareholders? Should the rule include a separate condition that addresses the SPAC's sources of income? For example, should a SPAC's income be limited to that derived from assets in proposed Rule 3a–10(a)(1)? Are any other conditions necessary to ensure that SPACs do not convey to investors that they have attributes similar to investment companies? Given the nature of a SPAC's activities and the proposed conditions of the safe harbor, should the proposed rule also include a condition providing that a SPAC must not be a special situation investment company? [339]

137. Should we include a condition to the safe harbor that SPACs must disclose their intention to rely on the safe harbor? Would such a condition be redundant to the disclosure requirements under the Securities Act or under the Exchange Act? Should the safe harbor include a condition that the SPAC's board of directors must adopt a resolution indicating that the SPAC intends to rely on the safe harbor?

3. Duration Limitations

To rely on the safe harbor, a SPAC would have a limited time period to announce and complete a de-SPAC transaction. Specifically, the proposed rule would require a SPAC to file a report on Form 8–K with the Commission announcing that it has entered into an agreement with the target company (or companies) to engage in a de-SPAC transaction no later than 18 months after the effective date of the SPAC's registration statement for its initial public offering. The SPAC must then complete the de-SPAC transaction no later than 24 months after the effective date of its registration statement for its initial public offering. [340] Following the completion of the de-SPAC transaction, any assets that are not used in connection with the de-SPAC transaction would need to be distributed in cash to investors as soon as reasonably practicable thereafter.

The SPAC would also be required to distribute its assets in cash to investors as soon as reasonably practicable if it does not meet either the 18-month deadline or the 24-month deadline. [341] Given that the time needed for such distribution in either case may be dependent on facts and circumstances, we are not defining the term ''reasonably practicable.'' What is reasonably practicable generally would depend on, among other things, any logistical or legal limitations on an orderly, immediate return of funds to investors.

We are proposing these duration conditions mindful of the framework of the Investment Company Act, the rules thereunder, and past Commission

[337] *See generally* Rule 3a–7 under the Investment Company Act.

[338] *Id.*

[339] *See* Proposing Release to Rule 3a–1, *supra* note 298, at n.19 and accompanying text. *See also In the Matter of United Stores Corp.,* 10 SEC. 1145 (Feb. 12, 1942).

[340] Proposed Rule 3a–10(a)(3)(ii) and (iii). As we discuss below, the average time between the announcement by a SPAC of its intended de-SPAC transaction and the completion of that transaction is approximately 5 months. *See infra* Section IX.B.6.

[341] Proposed Rule 3a–10(a)(4).

positions. The Investment Company Act provides that any issuer that meets the definition of ''investment company'' must register and be regulated under that Act unless the issuer can rely on an exclusion or exemption. The Investment Company Act requires that an issuer will register and be subject to the Act's regulatory requirements once the issuer meets the definition.[342] The Commission, however, has in the past provided conditional, temporary relief to certain issuers that meet the definition of ''investment company'' for only a short period of time. For example, Rule 3a–2 provides a one-year safe harbor to so-called ''transient investment companies,'' which are issuers that, as a result of an unusual business occurrence, may be considered an investment company under the statutory definitions but intend to be engaged in a non-investment company business.[343] In addition, as discussed previously, the Commission took the position that Rule 419 Accounts need not be required to register as an investment company nor regulated as an investment company under the Investment Company Act in part because the rule limits the duration of such accounts to 18 months.[344] The Commission has also at times granted short-term, conditional exemptive relief under Section 6(c) of the Investment Company Act[345] to certain issuers that needed additional time to restructure their businesses beyond that afforded by Rule 3a–2.[346]

Accordingly, the proposed rule would require a SPAC wishing to rely on the safe harbor to enter into an agreement with a target company no later than 18 months after its initial public offering, as evidenced by its filing a report on Form 8–K.[347] A SPAC may enter into agreements with additional target companies[348] after the 18-month period provided that the business combination contemplated by such later agreements are part of the de-SPAC transaction and all of the transactions close contemporaneously within the 24-month period. The condition that the de-SPAC transaction close within 24 months is designed to allow SPACs to complete their stated business purpose while balancing the risk that investors may come to view a SPAC holding securities for a prolonged period as a fund-like investment, thereby necessitating the regulatory protections of the Investment Company Act.

This timeframe is longer than the one-year timeframe of Rule 3a–2. We are proposing a longer time frame under Rule 3a–10 because we understand that the search for a de-SPAC target frequently takes more than one year and an issuer relying on Rule 3a–10 would be more restricted in its business purpose and activities throughout the period of reliance than an issuer relying on Rule 3a–2.[349] This proposed timeframe reflects a consideration of the Tonopah factors, including the factor that focuses on an issuer's historical development as well as our position with respect to Rule 419. While an issuer relying on Rule 3a–10 may have certain characteristics resembling those of an investment company for a longer period than an issuer relying on Rule 3a–2, its assets, income and purpose, and the activities of its officers and directors, would be further restricted under the other conditions of Rule 3a–10. Accordingly, the conditions are designed to work together to reduce the likelihood that investors will come to view the SPAC as a fund-like investment. Nevertheless, we stress that the inability of a SPAC to identify a target and complete a de-SPAC transaction within the proposed timeframe would raise serious questions concerning the applicability of the Investment Company Act to that SPAC.

While we understand most SPACs commit to closing a de-SPAC transaction within 24 months, we also acknowledge that the duration limits we are proposing are shorter than the actual timeline of some SPACs that recently completed their de-SPAC transactions.[350] We understand that SPACs that choose to rely on the proposed safe harbor may need to seek to identify and complete de-SPAC transactions on an accelerated timeline. Nonetheless, we are concerned that, the longer a SPAC operates with its assets invested in securities and its income derived from securities, the more likely investors will come to view the SPAC as a fund-like investment and the more likely the SPAC appears to be deviating from its stated business purpose.[351] We have sought to strike a balance between providing flexibility for the SPAC to pursue its stated purpose and recognizing that, beyond some horizon, the SPAC's historical development would become difficult to distinguish from that of an investment company. While exchange listing rules contemplate potentially longer SPAC lifespans, those rules were adopted for a different regulatory purpose.

The proposed rule would also require that any assets that are not used in connection with the de-SPAC transaction be distributed in cash to SPAC shareholders as soon as reasonably practicable after the completion of the de-SPAC transaction.[352] Thus, in the event that the de-SPAC transaction requires fewer assets than are owned by the SPAC, the

[342] *See generally* Sections 7(a) and 8(a) of the Investment Company Act [15 U.S.C. 80a–7(a); 15 U.S.C. 80a–8(a)].

[343] *See Transient Investment Companies,* Release No. IC–11552 (Jan. 14, 1981) [46 FR 6882 (Jan. 22, 1981)] (''Adopting Release to Rule 3a–2''). *See Transient Investment Companies,* Release No. IC–10943 (Nov. 16, 1979) [44 FR 67152 (Nov. 23, 1979)], at text accompany nn.5–6 (''Proposing Release to Rule 3a–2'') (''Examples of unusual business occurrences include: (1) A 'start-up' company's investing its offering proceeds in securities while arranging to purchase operating assets; (2) a company's selling a large operating division and investing the proceeds in securities pending acquisition of additional operating assets; and (3) a company making a tender offer to stockholders of a non-investment company and failing to obtain a majority of the target company's stock.'').

[344] *See* 17 CFR 230.419(e)(2)(iv) (''If a consummated acquisition(s) meeting the requirements [of Rule 419] has not occurred by a date 18 months after the effective date of the initial registration statement, funds held in the escrow or trust account shall be returned [to investors.]'').

[345] Section 6(c) gives the Commission the broad power to exempt conditionally or unconditionally any person, security, or transaction from any provisions of the Act or any rule thereunder, provided that the exemption is ''necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].'' An applicant requesting such relief must explain in its application that, given its particular facts and circumstances, the requested relief would meet the section's standards. *See generally Amendments to Procedures With Respect to Applications Under the Investment Company Act of 1940,* Release No. IC–33921 (July 6, 2020) [85 FR 57089 (Sept. 15, 2020)].

[346] *See, e.g., General Electric Company and GE Capital International Holdings Ltd.,* Release No. IC–32477 (Feb. 13, 2017) [82 FR 11079 (Feb. 17, 2017)] (notice), Release No. IC–32532 (Mar. 13, 2017) (order).

[347] *See infra* Section IX.B.6. (discussing baseline data regarding average duration). One press report suggests that the average period of time between a SPAC's initial public offering and the signing of its business combination agreement may be decreasing, with the average such period of time being approximately 7.5 months for de-SPAC transactions that closed in 2021. *See* ''De-SPACs Still Popular But Becoming Harder To Close,'' available at: *https://www.law360.com/mergersacquisitions/articles/1464716/de-spacs-still-popular-but-becoming-harder-to-close.*

[348] These additional agreements would need to be evidenced by the filing of a Form 8–K.

[349] We stress that, for an issuer satisfying the safeguards tailored for transient investment companies under Rule 3a–2, a company's inability to become engaged primarily in a noninvestment company business within that rule's one year period would continue to raise serious questions concerning the applicability of the Investment Company Act to that company. *See* Adopting Release to Rule 3a–2, *supra* note 343, at text following n.5. *See also infra* note 358 and accompanying text (quoting from Proposing Release to Rule 3a–2, *supra* note 343).

[350] *See infra* Section IX.B.6.

[351] We also note that some SPACs in the past have sought an extension to their lifespan by obtaining approval of their shareholders. The proposed rule does not provide for any extensions.

[352] Proposed Rule 3a–10(a)(4)(i).

SPAC would be unable to seek another de-SPAC transaction with its remaining assets, or otherwise continue to operate as a SPAC, even if the de-SPAC transaction met the duration conditions. As discussed previously, a SPAC that is relying on the safe harbor would already be precluded from engaging in more than one de-SPAC transaction pursuant to proposed Rule 3a–10(a)(3)(i). This separate condition supplements that provision and is designed to ensure that a SPAC may not continue to operate after its single de-SPAC transaction and still qualify for the safe harbor.

A SPAC seeking to rely on the safe harbor would also be required to distribute the SPAC's assets in cash to investors in the event that the SPAC fails to meet either the 18-month or the 24-month deadline.[353] As proposed, a SPAC would be required to distribute its assets in cash to investors if the SPAC fails to enter into an agreement with a target company within 18 months even if it believes that it would complete a transaction within 24 months. This condition would result in a SPAC that fails to meet these timing requirements either distributing its assets as soon as reasonably practicable or registering as an investment company. In any event, such a SPAC would not be permitted to continue to rely on the safe harbor.[354]

A SPAC would not be able to rely on Rule 3a–2 subsequent to its reliance on proposed Rule 3a–10 in the event that it fails to meet either proposed Rule 3a–10's 18-month or 24-month time frame.[355] A failure to meet either timeframe would not constitute an unusual business occurrence under that rule.[356] In addition, Rule 3a–2 specifically states that the 12-month safe harbor provided under that rule begins once the issuer acquires specified amounts of securities.[357] Generally, the commencement date for reliance on Rule 3a–2 (and the 12 month safe harbor provided under that rule) would have passed in the event a SPAC wished later to rely on that rule subsequent to its reliance on proposed Rule 3a–10. Finally, both Rule 3a–2 and proposed Rule 3a–10 are safe harbors that provide or would provide temporary relief to certain issuers that may be investment companies, provided that, among other conditions, they transition to a non-investment company business in a short period of time. When it was considering Rule 3a–2, the Commission was concerned that issuers could circumvent the Investment Company Act by repeatedly relying on the Rule 3a–2 safe harbor, explaining that ''where an issuer's activities would bring it within the definition of investment company more frequently than would be permitted by the rule, the investor protection concerns of the Act would be relevant, the need for shareholder protections would not be met, and there would be no persuasive public interest from the standpoint of investors in permitting a non-transient investment company to avoid complying with the prohibitions and regulatory provisions of the Act.'' [358] This concern would also arise if SPACs were to rely on the Rule 3a–2 safe harbor following reliance on proposed Rule 3a–10.

Request for Comment

138. Should we require, as proposed, that the SPAC reach an agreement with at least one target company within 18 months? Should we require that the SPAC reach an agreement with at least one target company within 12 months, which would be more consistent with the time period in Rule 3a–2? Should the time period be even shorter than 12 months (*e.g.,* 6 months)? Should the time period be longer *(e.g.,* 20 months, 24 months, 36 months)? If the time period should be longer, please explain why such a longer period is necessary and how any such longer period would be consistent with the framework of the Investment Company Act, the rules thereunder, and prior Commission positions.

139. Is there an alternative way to limit the duration of the SPAC? Should we require that such an agreement be evidenced by the filing of the Form 8–K? Should a SPAC be permitted, as proposed, to enter into agreements with other target companies after the 18-month period provided that all transactions close within 24 months?

140. Should we include an option for SPACs that have not identified a target within 18 months, or completed the de-SPAC transaction within 24 months to extend these deadlines? If so, what would that be and what conditions should be included? For example, should we provide that a SPAC can obtain an extra 2, 4 or 6 months and stay within the safe harbor if it obtains approval from its shareholders? Please explain how any extensions of these deadlines would be consistent with the framework of the Investment Company Act, the rules thereunder, and prior Commission positions.

141. Should we require, as proposed, that the SPAC complete the de-SPAC transaction within a 24-month period? Should the time period be 18 months, as in Rule 419 or 12 months, as in Rule 3a–2? Should the period be longer (*e.g.,* 30 months)? If so, how would that longer period be consistent with the framework of the Investment Company Act, the rules thereunder, and past Commission positions?

142. The rule proposal requires that any assets of the SPAC that are not used in connection with the de-SPAC transaction, or in the event of the SPAC's failure to meet the timelines required for identification or completion of a de-SPAC transaction, be distributed in cash to investors as soon as reasonably practicable. Should we allow distributions ''in-kind''? Are there any other distributions made by the SPAC that should be covered by the rule? Should the rule text define the term ''reasonably practicable''? If yes, how should the term be defined? If the term ''reasonably practicable'' is not defined, could that potentially result in unnecessarily extended periods of time before investor assets are returned? Instead of defining the term ''reasonably practicable,'' should we specifically require that such assets be distributed within a defined time period such as 30 days? 15 days? 7 days? Should we require the SPAC to provide notification to the Commission, its investors and/or the SPAC's board of directors if the distribution of cash takes longer than a certain period of time, *e.g.,* 30 days?

143. The proposed rule would require, following completion of a de-SPAC transaction, or in the event that the SPAC failed to identify or complete a de-SPAC transaction, the SPAC to distribute all remaining assets and cease operating as a SPAC. The proposed rule, however, does not specifically mandate that the SPAC dissolve. Should we include this requirement as a condition to the safe harbor? Why or why not?

144. In adopting Rule 3a–2, the Commission identified examples of companies that may be able to rely on that safe harbor. These examples did not specifically include SPACs or blank check companies. Are SPACs currently relying on Rule 3a–2 and, if so, what is the basis for their reliance? Should the Commission provide guidance concerning, or amend Rule 3a–2 to address, the ability of SPACs to rely on that safe harbor?

[353] Proposed Rule 3a–10(a)(4)(ii).

[354] Once a SPAC has distributed its assets, the SPAC must cease to operate as a SPAC, and it may not rely on the safe harbor again.

[355] The proposed rule would also preclude a SPAC from relying on proposed Rule 3a–10 after Rule 3a–2, because the time period in the proposed rule begins on the effective date of its initial registration statement.

[356] *See supra* note 343 and accompanying text.

[357] Rule 3a–2(b).

[358] *See* Proposing Release to Rule 3a–2, *supra* note 343.

VII. Additional Requests for Comment

As discussed above, we believe that the proposed new rules and amendments would enhance the disclosure requirements applicable to SPACs in initial public offerings and in de-SPAC transactions and provide important investor protections in connection with de-SPAC transactions. In considering the SPAC market as a whole, we are requesting comment on a number of additional matters relating to the disclosures provided by SPACs, investor protection measures, and the treatment of companies following a de-SPAC transaction.

145. Are there disclosure requirements that we have not proposed that would be helpful for investors in SPACs at the initial public offering stage or at the de-SPAC transaction stage?

146. Should the disclosure requirements and filer status determinations in a de-SPAC transaction be the same no matter the de-SPAC structure? Do our proposals accomplish this, or are there other disclosure requirements and filer status determinations impacted by transaction structure that we should address?

147. What are the reasons, other than possible reporting outcomes, why a de-SPAC transaction is structured so that an entity other than the SPAC is the acquirer and filing the registration statement or proxy or information statement for the de-SPAC transaction? Are there tax or other reasons that we should consider in relation to the proposed amendments in this release and whether the disclosure requirements should be further aligned across all de-SPAC transaction structures?

148. Should we consider amendments to other registration statement forms under the Securities Act to require enhanced disclosures for offerings by SPACs that are similar to those proposed above with respect to Forms S–1 and F–1? Should we consider similar amendments to Regulation A and Form 1–A?

149. The periodic reports filed by SPACs under the Exchange Act generally contain limited information due to the absence of an operating business. Should some of the disclosure requirements we are proposing also be required in the periodic reports filed by a SPAC following its initial public offering? If so, which disclosures? Are there other disclosures that we should require in the Exchange Act reports filed by a SPAC?

150. We note that the announcement of a prospective de-SPAC transaction often results in an immediate and substantial increase in the trading volume of the securities of the SPAC, based on the terms of the transaction that have been disclosed and the limited information publicly available on the private operating company at the time of the announcement, which is far less extensive than that of a newly public company after a traditional initial public offering.[359] Should we consider requiring additional disclosures, such as more disclosure on the private operating company or risk factor disclosure, in a Form 8–K filed pursuant to Item 1.01 of the form disclosing that the parties have entered into a business combination agreement? If so, what additional disclosure should we require? Should we amend Item 1.01 of Form 8–K to require the filing of the business combination agreement as an exhibit to the Form 8–K filing (as opposed to allowing the agreement to be filed as an exhibit to a subsequent periodic report)? What other amendments should we consider in this regard?

151. Currently, the post-business combination company is required to file a Form 8–K with Form 10 information within four business days after the completion of a de-SPAC transaction. Should we require the filing of this Form 8–K within a shorter time frame in order to reduce the gap in timing between the completion of the transaction and the public availability of this information in the Form 8–K?

152. Are there other rule changes the Commission should consider to enhance investor protections in initial public offerings by SPACs and in de-SPAC transactions?

- We have not proposed requirements for SPAC offerings comparable to those applicable to blank check companies under Rule 419. Should we consider requiring SPACs to comply with conditions similar to those in Rule 419? If so, which conditions?
- The shareholders of a SPAC are permitted to vote in favor of a proposed de-SPAC transaction while redeeming their shares prior to the closing of the transaction and retaining their warrants, such that the vote is decoupled from any continuing share ownership in the post-business combination company (unless and until the warrants are exercised).[360] Should the Commission adopt rule changes or other approaches to address this situation? For example, should the Commission condition the continued availability of an exclusion from the requirements of Rule 419 on whether shareholders voting to approve a de-SPAC transaction retain an economic interest in the combined company? Should we address this issue through the Commission's authority under Section 19(c) of the Exchange Act to adopt rules applicable to national securities exchanges?

153. A post-business combination company following a de-SPAC transaction is subject to different treatment under various rules based on its status as a former shell company. For example, a post-business combination company following a de-SPAC transaction is an ''ineligible issuer,'' based on its status as a former shell company, which prevents the company from using free writing prospectuses pursuant to Securities Act Rules 164 and 433 for a three-year period.[361] As a former shell company, the post-business combination company is also ineligible to file a registration statement on Form S–8 for a 60-day period following the de-SPAC transaction,[362] and the safe harbor in Rule 139 for broker-dealer research reports is not available for research reports on the post-business combination company for a three-year period.[363] In this regard, we note that the treatment of former shell companies under these rules is based on heightened concerns regarding fraud and other abuses surrounding many shell company transactions. To better align de-SPAC transactions with initial public offerings, should we consider amending these and other rules relating to former shell companies to treat companies that have become public companies through a de-SPAC transaction in the same or similar manner as those that have completed traditional initial public offerings? Should we differentiate SPACs from other shell companies in applying these rules? If so, on what basis?

154. Are there areas relating to SPACs where additional Commission guidance would be helpful? For example, would it be useful if the Commission reiterated or expanded upon the Commission staff's guidance in 2020 and 2021 regarding SPACs? [364]

VIII. General Request for Comments

We request and encourage any interested person to submit comments on any aspect of our proposals, other matters that might have an impact on

[359] According to one study, institutional investors typically purchase the vast majority of the securities in a SPAC's initial public offering and are far more likely to redeem their shares instead of reselling the shares, resulting in limited secondary market trading of SPAC shares. Klausner, Ohlrogge, and Ruan, *supra* note 17.

[360] *See* Rodrigues and Stegemoller, *supra* note 17.

[361] *See* Securities Act Rule 164(e)(1).

[362] *See* General Instruction A.1 to Form S–8.

[363] *See* Securities Act Rule 139(a)(1)(ii)(B).

[364] *See supra* note 35.

the proposed amendments, and any suggestions for additional changes. With respect to any comments, we note that they are of greatest assistance if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate.

IX. Economic Analysis

We are mindful of the costs and benefits of these proposed new rules and amendments. The discussion below addresses the potential economic effects of the proposed new rules and amendments, including the likely benefits and costs, as well as the potential effects on efficiency, competition, and capital formation.[365] We have analyzed the expected economic effects of the proposed new rules and amendments relative to the current baseline, which consists of the existing regulatory framework of disclosure requirements and liability provisions, current market practices, and the distribution of participants by type.

As discussed above, we are proposing new rules and amendments to existing rules that are intended to enhance investor protections in SPAC registered offerings, including initial public offerings, and in de-SPAC transactions. The proposed new rules and amendments would require disclosures with respect to, among other things, compensation paid to sponsors, conflicts of interest, dilution, and the fairness of de-SPAC transactions. The proposed new rules and amendments would also revise certain rules and forms under the Securities Act and the Exchange Act to specify their application in the context of de-SPAC transactions, including, among other things, a proposed rule that a SPAC and a target company be treated as co-registrants when a SPAC files a registration statement for a de-SPAC transaction and a proposed rule that addresses the underwriter status of SPAC IPO underwriters in any subsequently registered de-SPAC transaction.

Additional proposed rules are intended to align de-SPAC transactions more closely with initial public offerings. One would require certain non-financial disclosures regarding the target private operating company that are typically filed on Form 8–K within 4 days after the completion of a de-SPAC transaction to be included in the disclosures that are filed in connection with an anticipated de-SPAC transaction (Form S–4 or F–4, a proxy or information statement, or a Schedule TO). The other would require the surviving entity following a de-SPAC transaction to re-determine its eligibility for smaller reporting company status within four business days of the completion of the transaction.

We are also proposing new rules and amendments that would apply to shell companies more broadly. Proposed Rule 145a would deem any business combination involving a reporting shell company that is not a business combination related shell company, and another entity that is not a shell company, to involve a sale of securities to the reporting shell company's shareholders. In addition, the proposed amendments to Regulation S–X are intended to more closely align the financial statement requirements in business combinations between a shell company (other than a business combination related shell company) and a non-shell company with those required on Forms S–1 or F–1 for an initial public offering.

Furthermore, we are proposing to: (i) Amend Item 10(b) of Regulation S–K to expand and update our views with respect to projections used in Commission filings; (ii) require additional disclosures regarding projections when disclosed in connection with de-SPAC transactions; and (iii) amend the definition of ''blank check company'' for purposes of the PSLRA safe harbor for forward-looking statements, such that the safe harbor would not be available for projections by blank check companies that are not penny stock issuers, which would include SPACs and target companies in de-SPAC transactions. Finally, we are proposing to create a safe harbor from the definition of ''investment company'' under the Investment Company Act for SPACs that meet certain conditions.

Overall, we expect the proposed new rules and amendments relating to SPAC transactions, in particular, and in some cases to shell company business combinations more broadly, to provide investors[366] with improved and, in some instances, potentially earlier[367] access to more consistent, comprehensive, and readily comparable information and to enhance their ability to make more informed investment decisions, which can lead to more efficient pricing of securities.[368] Both public reporting companies seeking to make an acquisition (SPACs or other shell or blank check companies, in some cases) and target private operating companies may incur costs related to the production and public disclosure of the proposed required information; however, these costs may be mitigated to the extent that either party may already voluntarily produce or provide such information in response to evolving market demands.[369] We further anticipate that addressing the liability of various parties in de-SPAC transactions or other shell company business combinations could encourage those parties to exercise greater care in either the selection of an intended target company or the preparation and review of the required disclosures. This could result in more reliable information for investors regarding a private company target at the time of a transaction, and would further align the protections afforded to investors with those of an initial public offering.

To the extent that the proposed rules would also provide better, more readily accessible information about SPACs, they may result in less adverse selection than might otherwise occur at the de-SPAC transaction. Overall, we expect the proposals may enhance the protection of investors, as well as promote market efficiency. We are mindful that some aspects of this rulemaking may deter some forms of communications or some transactions

[365] Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] and Section 3(f) of the Exchange Act [17 U.S.C. 78c(f)], and Section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)] require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) 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 [17 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.

[366] Throughout this section, ''investor'' can refer to any current or a potential shareholder of a company, though it is generally understood costs and benefits may accrue to such investors heterogeneously based on size, sophistication, and affiliation.

[367] *See infra* Sections IX.C.1.b.7 & IX.C.1.b.8.

[368] *See, e.g.,* Orie E. Barron & Hong Qu, *Information Asymmetry and the* Ex Ante *Impact of Public Disclosure Quality on Price Efficiency and the Cost of Capital: Evidence from a Laboratory Market,* 89 Accounting Rev. 1269 (2014) (high-quality public disclosure leads to increased price efficiency and decreased cost of capital); Ulf Brüggemann, Aditya Kaul, Christian Leuz, & Ingrid Werner, *The Twilight Zone: OTC Regulatory Regimes and Market Quality,* 31(3) Rev. Fin. Stud. 898, 898–942 (2018) (increased disclosure regimes lead to increased liquidity and lower crash risk).

[369] *See SPAC to the Future III,* IPO Edge (Nov. 10, 2021) (remarks of panelist Chris Weekes, Managing Director and Co-Head of SPACs, Cowen), *available at https://ipo-edge.com/join-spac-to-the-future-iii-with-nasdaq-cowen-gallagher-ve-icr-morrow-sodali-morganfranklin-featuring-gigcapital-hennessy-and-switchback/.*

that might otherwise be efficient or to the economic benefit of issuers and investors. They also may deter some business combinations that otherwise would have created value. We discuss these considerations in more detail below.

In many cases, we are unable to quantify the relative magnitudes of various economic effects because we lack information to quantify such effects with a reasonable degree of accuracy. Where we are unable to quantify the economic effects of the proposed new rules and amendments, we have provided a qualitative assessment of the potential effects and encourage commenters to provide data, studies, reports and other information that would help quantify the benefits, costs, and potential impacts on efficiency, competition, and capital formation.[370]

A. Broad Economic Considerations

Although a significant level of information asymmetry exists when a private company ''goes public,'' the traditional initial public offering process (IPO) has developed mechanisms that can alleviate adverse selection problems.[371] Those mechanisms include mandated public disclosures, staff review of registration statements,[372] and the effects of Section 11 liability, which, among other things, motivates due diligence performed by underwriters, accountants, and other offering participants. These mechanisms generally lead to lower levels of information asymmetry, which can improve the security's pricing and placement efficiency and encourages investor participation in the IPO market. The traditional IPO process, however, is associated with costs, which could be significant for certain firms. Those costs can be direct, in the form of fees, or indirect in the form of underpricing, as has long been recognized in the academic literature.[373]

Alternative ways[374] of going public have emerged that may allow companies to avoid some of the costs of the traditional initial public offering process, though this also might involve forgoing some of the benefits typically considered desirable by market participants (*e.g.,* potentially better pricing due to underwriter help with the placement of securities as well as more robust due diligence and disclosure).[375] While pursuit of these alternatives suggest private operating companies are interested in accessing the benefits of being publicly traded, it is not clear that these alternatives represent net improvements in the mechanism design of the traditional IPO process.

One way a private company may become a public reporting company is via merger with a shell company that has already obtained exchange listing, quotation, or otherwise registered a class of securities under the Exchange Act. In recent years, a significant number of private companies have opted to become a public reporting company via a merger with a particular kind of shell company, a SPAC. SPACs have been in existence since the 1990s, and though their use by private companies as an alternative mechanism for becoming a public reporting company has varied over time, it has increased dramatically in the past three years. We estimate that in the past year alone, approximately 200 companies have become listed on an exchange via a de-SPAC transaction, which is slightly more than a sevenfold increase since 2019 and a twentyfold increase since 2015.[376]

As with a traditional IPO, becoming a public reporting company through a de-SPAC transaction might also be subject to adverse selection given that this type of transaction is associated with significant information asymmetries between public investors in the SPAC and the private company that the SPAC intends to acquire. Public SPAC investors could rely on various mechanisms to overcome the adverse selection problem in the SPAC context: The contingent nature of sponsor compensation; the right to vote to approve a de-SPAC transaction or redeem shares; projections regarding anticipated future performance, to the extent they improve price formation; potential liability; and any additional unregistered investments by investors at the de-SPAC transaction stage.[377] While in some cases, a private company might prefer these alternative mechanisms to a traditional IPO, their general efficacy in resolving the problems or costs of information asymmetry might, in practice, be limited.[378]

Some economic theorists have argued that the structure of SPAC sponsor compensation may efficiently incentivize transactions that benefit

[370] For our estimates of the paperwork burdens associated with the proposed rules and amendments for purposes of the Paperwork Reduction Act of 1995 (''PRA''), please see Section X below. These PRA burden estimates pertain to ''collections of information'' as that term is defined in the PRA, and therefore reflect only the hours and costs to prepare required disclosures and maintain records. As a result, these estimates do not reflect the full economic effects or full scope of economic costs of the proposed rules and amendments that are discussed in this analysis.

[371] Adverse selection is sometimes described as the 'lemons' problem: When buyers have less information than sellers, their bids will be lower to reflect this uncertainty. In response, the sellers of high quality products may exit the market, causing further decline in buyers' willingness to pay, which could cause a market failure. *See, e.g.,* George Akerlof, *The Market for ''Lemons'': Quality Uncertainty and the Market Mechanism,* 84 Qtr. J. Econ. 488 (1970).

[372] This review includes benefits such as, for example, the production of additional valuable information in response to comments issued by the Commission staff during the filing reviews. *See, e.g.,* Michelle Lowry, Roni Michaely, & Ekaterina Volkova, *Information Revealed Through the Regulatory Process: Interactions Between the SEC and Companies Ahead of Their IPO,* 33 Rev. Fin. Stud. 5510 (2020).

[373] *See* Alexander Ljungqvist, *Chapter 7—IPO Underpricing, in* 1 Handbook of Empirical Corporate Finance 375 (B. Espen Eckbo ed., 2007); Kevin Rock, *Why New Issues are Underpriced,* 15 J. Fin. Econ. 187 (1986); Tim Loughran & Jay Ritter, *Why Has IPO Underpricing Changed Over Time?,* 33 Fin. Mgmt. 5 (2004).

[374] While equity in a private company might also become publicly traded by participation in a roll-up, because such transactions typically involve multiple companies and the surviving entity thus may resemble each of the rolled-up entities less specifically, individually, we do not consider this a comparable way of going public for the purposes of our discussion. Additionally, a handful of companies have listed their shares directly on a national securities exchange without the use of a traditional underwriter and without raising capital. As with participation in a roll-up, this method of accessing the public markets is not frequently used. From 2018 through 2021, only twelve companies went public using this approach. (This Commission estimate includes 9 direct listings on NYSE and 3 direct listings on Nasdaq that occurred on or before Dec. 31, 2021.) In December 2020, the Commission issued an order approving a proposed rule change submitted by New York Stock Exchange LLC (NYSE) that would allow private companies to list on the NYSE via a direct listing and raise capital at the same time. *See* Release No. 34–90768 (Dec. 22, 2020) [85 FR 85807 (Dec. 29, 2020)] (SR–NYSE–2019–67). In May 2021, the Commission approved a similar proposed rule change submitted by The Nasdaq Stock Market LLC. *See* Release No. 34–91947 (May 19, 2021) [86 FR 28169 (May 25, 2021)] (SR–NASDAQ–2020–057). While, it is possible that the number of companies that would seek to offer securities via direct listing will increase following these recent regulatory changes, it is unclear that future use would become comparable in purpose or scope to mergers with shell companies as an alternative means to access the public market. *See* Release No. 34–94311 (Feb. 24, 2022) [87 FR 11780 (Mar. 2, 2022)] (SR–NASDAQ–2021–045) (order disapproving proposed rule change to modify certain price limitations in a direct listing with a capital raise).

[375] *See, e.g.,* James Brau & Stanley Fawcett, *Initial Public Offerings: An Analysis of Theory and Practice,* 61 J. Fin. 399 (2006).

[376] Staff review of Form 8–K filings identified 28 private operating companies acquired in calendar year 2019 and 10 in calendar year 2015 that could be confirmed in the Dealogic M&A module as a de-SPAC transaction.

[377] For a detailed description of the SPAC process, see Section 1.

[378] In addition to the potentially problematic incentives embedded in the SPAC structure as described in the following sections, we further acknowledge that in some cases management and other insiders in target companies may find that a de-SPAC transaction is a more attractive option for becoming a public reporting company than a traditional initial public offering for reasons that conflict more directly with adequate investor protections. These reasons may include the lack of a named underwriter or actionable liability.

investors,[379] but the effects in practice may be more ambiguous. On one hand, because almost all of the SPAC sponsor's compensation is contingent on the completion of a de-SPAC transaction, the sponsors may therefore have an incentive to select target companies that would maximize their own, as well as investors', returns at exit. As noted above, however, there is also a potential conflict of interest for sponsors precisely because their compensation (*e.g.,* 20% promote) is dependent on the completion of a de-SPAC transaction.[380] This could create an incentive to enter into unfavorable, or less favorable, de-SPAC transactions than would otherwise be optimal for the SPAC's unaffiliated shareholders because the sponsor's alternative to a de-SPAC transaction is to liquidate the SPAC, and return the initial public offering proceeds, forfeiting their potential promote. While reputational concerns may be a mitigating source of discipline, sponsors may also be more likely to prioritize private benefits when these concerns are less pressing; for example, in periods when the market is broadly less risk-averse or if the sponsor does not intend to pursue serial SPAC activities.

In addition, voting rights and redemption rights may protect SPAC investors, because SPAC investors have the right to vote against a de-SPAC transaction and may redeem their shares if they believe holding shares in the combined company is not in their best interest.[381] However, these rights can also create potential conflicts of interest between non-redeeming shareholders and shareholders who choose to redeem shares but continue to hold warrants. When SPAC investors redeem the shares but retain and later exercise the warrants of the initial IPO unit, the equity shares of the non-redeeming shareholders are diluted relative to what they would be absent such exercise. A further conflict may arise because the value of the warrants is enhanced by greater volatility of the underlying security. Thus, warrant-holders may incur greater financial benefits from high-risk mergers in a manner that may not be aligned with the interests of the non-redeeming SPAC investors. Additionally, in cases where the SPAC is structured so that the shareholders are able to vote in favor of a merger but also redeem their shares, this could present a moral hazard problem, in economic terms, because these redeeming shareholders would not bear the full cost of a less than optimal choice of target.

The use of projections regarding the future earnings and performance of the target company in the de-SPAC transaction may be another mechanism that helps SPAC investors overcome adverse selection, insofar as they provide information that could improve price formation. However, there may also be conflicts of interest associated with those projections given some features of the SPAC structure. The need to secure shareholder approval and meet the respective exchange listing's valuation requirement [382] to complete the de-SPAC transaction may imply that it is in the target company's interest to present the most favorable projections of its future performance. SPAC sponsors' interests in completing the de-SPAC transaction in order to receive their compensation could also affect the degree to which they would be motivated to scrutinize or question a target company's projections.[383] Additionally, the basis, source, and support for any projections may not be adequately disclosed to shareholders, thereby limiting their value. For example, there may be confusion among some practitioners as to whether Item 10(b) of Regulation S–K, which states the Commission's views regarding the reasonableness of projections, applies to projections regarding the target company's future performance that may be included in the SPAC's filings.

Applicable liability provisions may also provide some protections for SPAC investors. For example, SPACs are liable for material misstatements or omissions in their proxy solicitations under Section 14(a) and Rule 14a–9 of the Exchange Act. However, such liability generally requires proof of negligence. Similarly, SPAC investors may be protected by the application of Section 11 and Section 12(a)(2) of the Securities Act for material misstatements or omissions made in connection with SPAC transactions involving the filing of a registration statement. However, as discussed above, there are potential gaps or inconsistencies in these protections that the proposed amendments are intended to address.[384]

Another mechanism that could help investors overcome the adverse selection problem is the potential signal of deal quality implied by the presence of PIPE investors.[385] These investors, who are generally institutional investors, are often afforded an opportunity to gain considerable insight into the details of a de-SPAC transaction and the future financial prospects of the target company (subject to confidentiality agreements) for purposes of evaluating whether to participate in a PIPE that often occurs close in time to a de-SPAC transaction. Public SPAC investors could benefit from the participation of PIPE investors in a de-SPAC transaction in a number of ways. At present, some PIPE investments in connection with de-SPAC transactions function as a backstop to offset high levels of redemption, thereby ensuring a de-SPAC transaction does not fail to meet the minimum cash requirement necessary to complete its intended business combination. In other cases, PIPE investments enable the SPAC to acquire a larger target, or one with a higher valuation, giving SPAC IPO investors access to a different type of target company than they might otherwise be able to acquire.[386] On the other hand, the presence of PIPE investors in a de-SPAC transaction may not benefit public SPAC investors because they typically invest at a discount. When a de-SPAC redemption rate is high, the PIPE discount can exacerbate the dilution of the equity position of the SPAC's non-redeeming shareholders. Additionally, because PIPEs may, in some cases, involve the purchase of only warrants, similar misalignments of incentives with respect to a de-SPAC transaction may occur with this category of warrant-only holders as those previously discussed in that they may have incentives to pursue riskier targets than would be optimal for a non-redeeming SPAC shareholder. As

[379] *See, e.g.,* Sris Chatterjee, N.K. Chidambaran, Gautam Goswami, *Security design for a non-standard IPO: The case of SPACs,* 69 J. Int'l Money & Fin. 151 (2016).

[380] *See supra* note 12.

[381] For listed SPACs, existing exchange listing standards, if a shareholder vote is held, require public shareholders voting against a de-SPAC transaction to have the right to redeem their shares if the de-SPAC transaction is approved and consummated. *See infra* Section IX.B.1.a. SPACs have often extended this redemption right to shareholders voting in favor of the de-SPAC transaction as well.

[382] *See infra* Section IX.B.1.a.

[383] *See supra* note 67 and accompanying text.

[384] *See supra* Sections III.C & III.F.

[385] *See, e.g.,* Mike Hopkins & Donald G. Ross, *Key Drivers of Private Equity Firm Certification at Initial Public Offering,* 16 J. Private Equity, 69 (2013).

[386] This role of PIPEs has been more common, historically, *see, e.g.,* Vijay M. Jog & Chengye Sun, *Blank Check IPOs: A Home Run for Management* (SSRN Working Paper, 2007) (''the median value of the transaction in relation to gross proceeds is approximately 178 percent, meaning that the size of the acquisition is higher than the proceeds raised through the IPO since many [blank check companies] raised additional debt to finance the acquisitions''), and could be a contributing factor to the differences we continue to observe between average capital raised via SPAC IPO (*see infra* Section IX.B.6.a) and PIPE financing (*see infra* Section IX.B.2.c) and the average consideration paid per SPAC target (*see infra* Section IX.B.2.c).

such, the PIPE's financial participation in a de-SPAC transaction may not be a reliable indication that the transaction would benefit unaffiliated SPAC investors.

Therefore, while a number of the mechanisms associated with a SPAC transaction structure could mitigate adverse selection concerns for investors and could, theoretically, improve the process by which private companies may become publicly traded, many of their potential benefits over the traditional IPO process may be mitigated by countervailing conflicts of interest. As a result of the complexity inherent in the SPAC structure, investors may lack or otherwise be unable to readily decipher critical information regarding certain financial incentives (such as contingent sponsor or IPO underwriter compensation or the potential dilutive effects of PIPE financing) of the SPAC, the target company, their respective affiliates, or other parties in a manner necessary to properly assess the value of an investment position.

There is also a question of whether investors, particularly retail investors, fully understand the costs involved in de-SPAC transactions and how these costs may affect investors' post-de-SPAC transaction returns on their original investments. Specifically, investors may not fully anticipate the dilutive effects of sponsor compensation (the ''promote''), PIPE financing, and outstanding warrants following de-SPAC transactions. In a similar vein, the potential uncertainty regarding the availability of the PSLRA safe harbor and the applicability of the guidance of Item 10(b) of Regulation S–K to projections of a target company in a de-SPAC transaction may result in the use of unreasonable or aspirational projections in connection with de-SPAC transactions that may misrepresent the benefits and risks involved in such transactions. Furthermore, while the SPAC vehicle may allow a private company to go public without using the traditional IPO process, the disclosure regarding the private company provided in connection with a de-SPAC transaction may be less complete or less reliable than that provided in a traditional IPO for reasons discussed in the release, including, among other reasons, the lack of due diligence by traditional gatekeepers, such as underwriters.[387] By strengthening investor protection, the proposed rules could increase investors' confidence in SPAC transactions, while keeping this alternative route of going public attractive for private companies.

In addition to the SPAC-specific items that are of central concern to this proposal, we are also proposing amendments to address further areas of incongruity in requirements that guide the disclosures and liabilities in the broader context of shell-company mergers and the use of projections. For example, proposed Rule 145a would help investors in reporting shell companies more consistently receive the full protections of the Securities Act disclosure and liability provisions in business combinations involving shell companies, regardless of the transaction structure. Reporting shell companies would have to register offerings subject to proposed Rule 145a by filing a Securities Act registration statement unless there is an applicable exemption. Additionally, we are proposing new Article 15 of Regulation S–X and amendments to our forms, schedules, and rules to more closely align the financial statement reporting requirements in business combinations involving a shell company and a private operating company with those in traditional initial public offerings. For example, we are proposing to align the number of fiscal years required to be included in the financial statements for a private company that will be the predecessor(s) in a shell company combination with the financial statements required to be included in a Securities Act registration statement for an initial public offering of equity securities in proposed Regulation S–X Rule 15–01(b). Other proposed amendments would codify certain current staff guidance for transactions involving shell companies.

In our analysis below, we first discuss the proposed provisions that pertain to specialized disclosure requirements for SPACs in registered offerings and for de-SPAC transactions and then address the proposals concerning liability related to de-SPAC transactions and the PSLRA safe harbor. We then analyze the impact of the proposed new rules and amendments that would apply to shell companies and to the use of projections in Commission filings. Finally, we discuss the proposed safe harbor for SPACs from being deemed an investment company under the Investment Company Act. Where appropriate, we discuss the interactions between the proposed new rules and amendments.

B. Baseline and Affected Parties

To assess the economic impact of the proposed rules, the Commission uses as its baseline the current regulatory framework and existing market practices, including Commission staff guidance and other staff positions. We discuss in this section those parties likely to be affected by the proposed rules and some of the relevant regulatory and market baselines. The remainder of the discussion of the regulatory and market baselines is integrated into our analysis of the benefits and costs of the proposed rules to aid comprehension and minimize repetition.[388]

1. SPAC Initial Public Offerings

The parties most likely to be directly affected by the proposed rules regarding specialized disclosure requirements for SPACs in initial public offerings and other registered offerings are existing or potential sponsors intending to organize a new SPAC, SPACs, prospective investors in such offerings, and any other market participants whose service or activities involve analysis of the information, data, and disclosures related to SPACs and their sponsors in these offerings. In 2021, there were approximately 620 SPAC initial public offerings.

In addition, these proposed amendments would necessarily have secondary impacts on the prospects or opportunities of private companies that would be potential targets of such newly organized SPACs if, as a result of their adoption, a different number or type of SPAC sponsors and their affiliates participate in the market. Similarly, given that proposed Rule 140a clarifies the underwriter status of SPAC IPO underwriters at the de-SPAC transaction stage, this proposed rule may affect the number and type of potential targets that might be selected for acquisition by potentially reducing the number of SPAC IPOs underwriters are willing to support or by potentially deterring SPAC IPO underwriters from directly or indirectly participating in the de-SPAC transaction or any related financing transaction.[389] Other potentially affected parties include those parties who provide advisory or other services

[387] Although as discussed above, a court could find that many parties to a de-SPAC transaction may meet the definition of ''underwriter,'' all of these issues may be compounded by the lack of a designated underwriter in de-SPAC transactions that could perform due diligence and would be subject to liability under Section 11 of the Securities Act.

[388] *See also supra* Sections I–IV for further discussion of existing regulatory framework and market practices.

[389] *See* Jessica Bai, Angela Ma, and Miles Zheng, *Reaching for Yield in the Going-Public Market: Evidence from SPACs* (SSRN Working Paper, 2021).

to sponsors of SPACs in connection with these registered offerings.

a. SPAC Initial Public Offerings and Exchange Listing

SPACs initial public offerings on national securities exchanges have greatly increased in recent years. Moreover, SPAC listings have migrated from the over-the-counter market to three national securities exchanges: First NYSE American (formerly AMEX), then Nasdaq and NYSE (see Table 1).[390]

Table 1. Number of SPAC IPOs, 1990-2021[a]

	1990-2000	2001-2005	2006-2010	2011-2015	2016-2020	2021
Total	18	41	128	66	400	620
NASDAQ	18	0	3	56	248	434
NYSE	-	-	1	0	147	183
AMEX	-	6	78	0	5	3
OTC	-	35	46	10	-	-

[a] Estimates are based on all SPACs identified by Dealogic, SPAC Insider, Audit Analytics, and staff manual review, that conducted an initial public offering with a confirmed pricing date as of December 30,2021.

NYSE, Nasdaq, and NYSE American have rules setting forth listing requirements for a company whose business plan is to complete an IPO and engage in a de-SPAC transaction.[391] Among other things, all three exchanges permit the initial listing of SPACs only if at least 90% of the gross proceeds from the IPO and any concurrent sale by the SPAC of equity securities will be deposited in a trust account.[392] These exchanges further require that within three years, for NYSE, or 36 months, for Nasdaq and NYSE American, of the effectiveness of its IPO registration statement (or such shorter period specified in the registration statement under Nasdaq and NYSE American rules or its constitutive documents or by contract under NYSE rules), the SPAC complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the net assets in the account excluding certain costs.[393] NYSE, Nasdaq, and NYSE American require that a de-SPAC transaction meeting the 80% requirement be approved by a majority of the SPAC's independent directors,[394] and all three exchanges require, if a shareholder vote is held, that a majority of the shares voted at the shareholder meeting approve the de-SPAC transaction meeting the 80% requirement.[395] In addition, if a de-SPAC transaction meeting the 80% requirement is approved and consummated, public shareholders voting against the transaction must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the trust account net taxes and working capital disbursements.[396] If a shareholder vote on a de-SPAC transaction is not held, the SPAC must provide all shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the trust account net of taxes and working capital disbursements, pursuant to Rule 13e–4 and Regulation 14E under the Exchange Act, which regulate issuer tender offers.[397]

b. SPAC Sponsors

Historically, it has been suggested that one reason a SPAC vehicle might provide a more attractive route to the public markets was the benefit of the leadership and professional advice by one or more individuals comprising the SPAC sponsor, including in some cases

[390] SPACs first were listed on the AMEX in 2005. The Commission approved the NYSE's proposed rule change to adopt listing standards to permit the listing of SPACs on May 6, 2008, and approved NASDAQ's proposal to adopt listing standards to permit the listing of SPACs on July 25, 2008. See Release No. 34–57785 (May 6, 2008) [73 FR27597 (May 13, 2008)] (SR–NYSE–2008–17); Release No. 34–58228 (July 25, 2008) [73 FR 44794 (July 31, 2008)] (SR–NASDAQ–2008–013). See also Release No. 34–63366 (Nov. 23, 2010) [75 FR 74119 (Nov. 30, 2010)] (SRNYSEAMEX–2010–103) (notice of filing and immediate effectiveness of proposed rule change to adopt additional criteria for the listing of SPACs).

[391] NYSE Listed Company Manual Section 102.06; Nasdaq Listing Rule IM–5101–2; NYSE American Company Guide Section 119. The Rules of the CBOE BZX Exchange, Inc., provide another example of listing requirements that are substantially similar to those describe in this section. *See* CBOE BZX Rule 14.2(b).

[392] NYSE Listed Company Manual Section 102.06; Nasdaq Listing Rule IM–5101–2(a); NYSE American Company Guide Section 119(a).

[393] NYSE Listed Company Manual Section 102.06(e); Nasdaq Listing Rule IM–5101–2(b); NYSE American Company Guide Section 119(b).

[394] NYSE Listed Company Manual Section 102.06(d); Nasdaq Listing Rule IM–5101–2(c); NYSE American Company Guide Section 119(c).

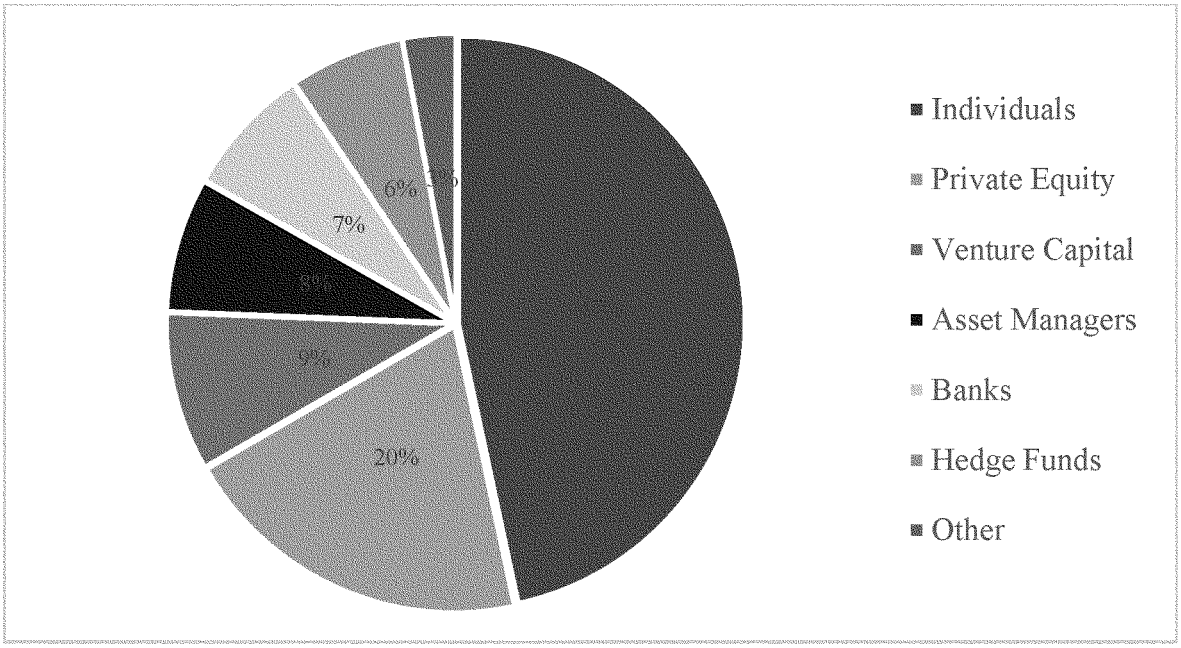
[395] NYSE Listed Company Manual Section 102.06(a); Nasdaq Listing Rule IM–5101–2(d); NYSE American Company Guide Section 119(d).

[396] NYSE Listed Company Manual Section 102.06(b); Nasdaq Listing Rule IM–5101–2(d); NYSE American Company Guide Section 119(d).

[397] NYSE Listed Company Manual Section 102.06(c); Nasdaq Listing Rule IM–5101–2(e); NYSE American Company Guide Section 119(e).

beyond the de-SPAC and into the life of the target as public operating company.[398] Although the majority of sponsors are financial institutions, a sizable fraction (47%) of SPACs are sponsored by individuals.

Figure 1. Distribution of SPACs by Sponsor Type, 2019-2021[a]



[a] Data presents the average composition of SPAC offerings by sponsor type as categorized by SPAC Insider. *See* SPAC Insider, *1H 2021 SPAC Report* (2021). Note, sponsor composition data for 2021 SPAC sponsorship reflects only data through end second quarter.

c. SPAC IPO Underwriters

During the period 1990–2021, the average number of underwriters participating in a SPAC IPO was 2.5.[399] Approximately 99% of these SPAC IPOs were done via a firm commitment offering.[400] The average fee charged by SPAC IPO underwriters during this time was approximately 5.6%.[401] This reflects a decline from the underwriting fees associated with the earliest SPACs (approximately 7–7.5%),[402] when underwriters typically received their full compensation at the time of the SPAC IPO.[403] As mentioned above, a portion of this fee is typically deferred until, and conditioned upon, the completion of the de-SPAC transaction.[404] In a typical SPAC underwriting, this deferred fee is placed in the SPAC trust or escrow account. During the period 1990–2021, we estimate that the average size of the deferred underwriter fee was 3.4%.[405] We do not observe significant differences in the structure or level of underwriter fees and deferred fees, as disclosed at the IPO stage, between SPACs that have completed a de-SPAC transaction and those that have not. We observe that among SPACs that have completed a de-SPAC transaction the average number of underwriters was 3.1, which is slightly higher than the average number of underwriters per SPAC IPO.[406] SPAC underwriters may provide other services to the SPAC or its eventual target after the IPO as well. For example, the SPAC underwriter may help the SPAC identify potential targets, provide financial advisory services to the SPAC or the target, or act as a PIPE placement agent.

d. Warrants

SPAC IPOs most often register the offering of a unit composed of a common share, warrants, or fractions thereof, and—in some cases—rights.[407] In their earliest form, SPAC units usually included two in-the-money

[398] *See* Robert Berger, *SPACs: An Alternative Way to Access the Public Markets,* 20 J. Applied Corporate Fin. 68 (2008) (''Though privately negotiated, tailored transactions, SPACs can provide companies with access to the public markets in ways that a traditional IPO cannot. SPAC mergers typically exhibit . . . specialized SPAC management teams that add experience that is difficult to replicate.'').

[399] This estimate is based on staff analysis of data as described in Table 1, note a.

[400] SPACs that conduct a firm commitment IPO and raise more than $5 million in the offering are not subject to the requirements of Securities Act Rule 419. *See supra* note 12.

[401] This estimate is based on staff analysis of data as described in Table 1, note a.

[402] *See, e.g.,* Lola Miranda Hale, *SPAC: A Financing Tool with Something for Everyone,* 18 J. Corp. Acct. & Fin. 67 (2007) (''The underwriting discounts are typically around 7–7.5 percent of the public offering price'').

[403] *See* Yochanan Shachmurove & Milos Vulanovic, *Specified Purpose Acquisition Company IPOs, in* The Oxford Handbook of IPOs (Douglas Cumming ed., 2018).

[404] *See supra* Section III.E.3.

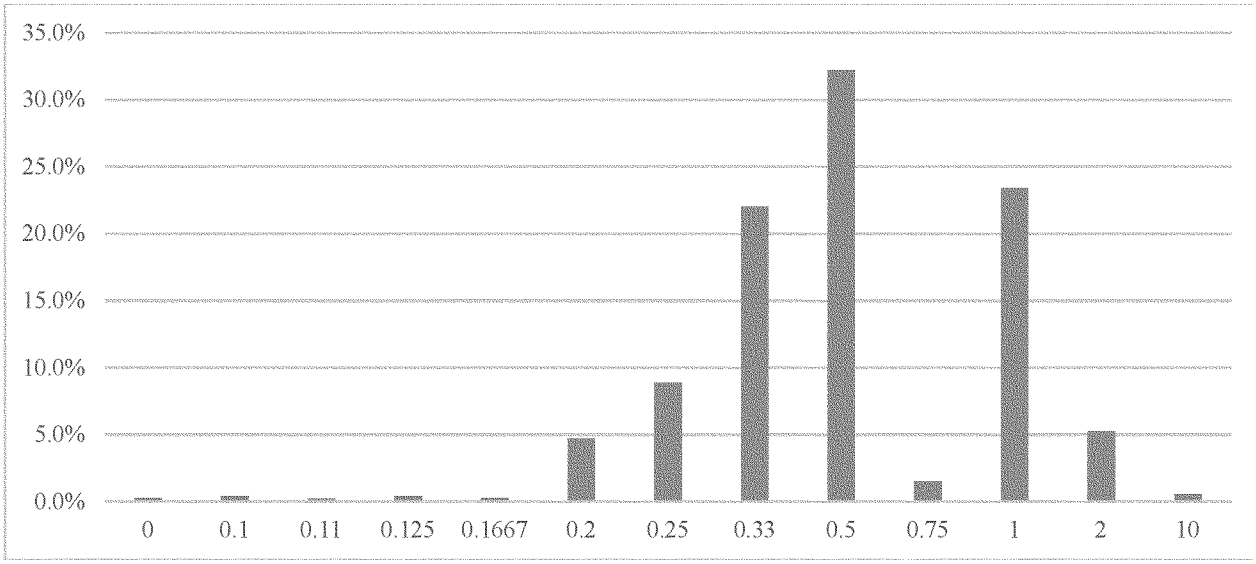
[405] This estimate is based on staff analysis of data as described in Table 1, note a, and may be positively skewed because the data features a greater proportion of deals occurring between 2019 and 2021.

[406] Based on staff analysis of data as described in Table 1, note a. We note that timing differences in where a SPAC might currently be, relative to its dissolution date, might result in overestimation of this difference.

[407] *See, e.g.* Gül Okutan Nilsson, *Incentive Structure of Special Purpose Acquisition Companies,* 19 Eur Bus Org Law Review (2018) (''[R]ecent SPACs seem to be experimenting with issuing certain 'rights' [. . .] defined as the 'right to receive one-tenth of a SPAC share upon consummation of the business combination' Unlike in the case of warrants, shareholders are not required to pay for receiving these shares. 'Rights can also trade separately and even the shareholders who convert their shares can keep them. If the business combination cannot be completed, rights expire worthless.'').

warrants exercisable for full shares at the later of completion of the de-SPAC transaction or one year after the effective date of the IPO registration statement.[408] These warrants could thus become highly dilutive to the equity shareholders given that warrants may begin trading separately from the unit common share once a Form 8–K containing the balance sheet of IPO proceeds has been filed.[409] Shareholders could experience equity dilution if redeeming shareholders retain and later exercise their warrants.

Figure 2. Warrants offered in SPAC IPO Units, 1990 – 2021[a]



[a] The estimated distribution is based on the warrant offering information presented in either the IPO prospectus or the Form S-1 or Form F-1 registration filed in connection with all SPACs identified by Dealogic, SPAC Insider, Audit Analytics, and staff manual review, that conducted an initial public offering with a confirmed pricing date as of December 30,2021.

As SPAC offerings have evolved, however, the highly dilutive aspects of the warrant component of a SPAC offering unit appear to have somewhat attenuated. As indicated in Figure 2, many SPACs offer units with smaller warrant components. The majority of SPACs that have conducted an IPO in the past three years offered units with fractional warrants or units where warrants represented only fractional shares. The dilutive capacity of these warrants is further tempered by the fact that in current practice, warrants (or fractions thereof) are only offered at exercise prices higher than the SPAC IPO offering price. However, the reduced dilution attributable to warrants as a component of SPAC IPO units does not imply that current SPAC IPOs offer a security that is inherently less exposed to potential dilution or that warrants purchased separately from units, such as in sponsor compensation or PIPE financing transactions, are not still a significant source of dilution. Furthermore, while warrant features have in some respects become less dilutive, maximum allowable redemptions have generally increased, creating the possibility for non-redeeming shareholders to experience greater dilution albeit from a different source. The emergent size and significance of PIPE financing in de-SPAC transactions[410] has presented yet another potential source of dilution.

e. Time To Complete a De-SPAC Transaction

Because SPACs are not blank check companies issuing penny stock, they have not been subject to Rule 419's requirements, including the requirement that an acquisition occur by a date 18 months after the effective date of the blank check company's initial registration statement.[411] Nevertheless, SPACs use, as a matter of practice, features of Rule 419 that would appear to enhance protections for investors, including a pre-specified intended lifespan before dissolution that is communicated to investors at the time of the initial public offering. Table 2 documents the average proposed lifespans (in months) that SPACs in each period disclosed in their initial

[408] *See, e.g.,* Hale, *supra* note 402 (''The typical structure involves the offering of a unit consisting of common stock and one or two separate warrants for common stock. In a two-warrant unit, the unit price is $6, including one share of common stock and two warrants.[. . .] Typically, each warrant entitles the holder to purchase one share of common stock at a price of $5 each.''); Carol Boyer & Glenn Baigent, *SPACs as Alternative Investments: An Examination of Performance and Factors that Drive Prices,* 11 J. Private Equity 8 (2008) (''SPACs typically sell in units that are priced at $6, and each unit is composed of one common share and two warrants that give investors the right to buy two more shares for $5 each.'').

[409] Historically, this typically occurred around 90 days after the initial public offering. Over the past decade, the usual number of days has decreased to approximately 60. *See, e.g.,* Anh L. Tran, *Blank Check Acquisitions* (SSRN Working Paper, 2010); James S. Murray, *The Regulation and Pricing of Special Purpose Acquisition Corporation IPOs* (SSRN Working Paper, 2014); James S. Murray, *Innovation, Imitation and Regulation in Finance: The Evolution of Special Purpose Acquisition Corporations,* 6 Rev. Integrative Bus. & Econ. 1 (2017).

[410] *See infra* Section IX.B.2.c.

[411] *See supra* note 12. *See also* Rule 419(e)(2)(iv) under the Securities Act (''If a consummated acquisition(s) meeting the requirements [of Rule 419] has not occurred by a date 18 months after the effective date of the initial registration statement, funds held in the escrow or trust account shall be returned [to investors.]'').

public offering registration materials as well as the average actual number of months used by those SPACs that successfully completed a de-SPAC transaction, by cohort. We note that since 2006, the typical SPAC generally pre-commits to a lifespan at least two months, on average, longer than the 18-month limit in Rule 419 and approximately 13 months shorter than the exchange listing 36-month limit.[412]

Table 2. Average Proposed Acquisition Periods in SPAC IPOs (months), 1990-2021[a]

	1990-2000	2001-2005	2006-2010	2011-2015	2016-2020	2021
Proposed Acquisition Period	-	17.25	20.84	20.58	21.98	20.45
Proposed Extension	-	6.30	6.50	5.11	6.00	5.34
Proposed Period with Extension	-	23.55	24.40	23.40	22.90	21.71
Realized Average Acquisition Period[b]	19.25	20.11	19.83	22.15	15.32	8.58

[a] Averages reported here are estimated over the subsample of SPAC IPOs (*see supra* Table 1 note a) after offerings withdrawn after the IPO pricing date have been removed. Proposed acquisition periods and proposed extension data is drawn from information as provided by the SPAC in its initial registration materials including prospectuses and Form S-1 or Form F-1. SPACs that disclose they would hold a shareholder vote to approve an extension period but did not pre-commit to specified extension period are treated as having such data missing for purposes of computing averages.
[b] Data on realized average acquisition period for IPO cohorts 2016-2020 and 2021 reflect a downward bias due to the outstanding proportion of SPACs that conducted an IPO between 2019 and 2021 that have not yet completed their proposed acquisition period or approved extensions. *See infra* note 457.

2. De-SPAC Transactions

The primary parties affected by the proposed disclosure requirements at the de-SPAC transaction stage include SPACs, sponsors of SPACs, investors, potential PIPE investors, and target private operating companies. Additionally, the proposed rules to amend or otherwise clarify the existing liability framework would affect SPACs, target companies, investors in SPACs, and the underwriters that SPACs use at the SPAC IPO and the de-SPAC stages.[413]

We are mindful that parties may be differentially affected for a number of reasons. For example, to the extent that regulatory changes we are proposing, if adopted, would become effective while some current SPACs are in the process of completing a de-SPAC transaction, these SPACs may incur greater unanticipated transaction costs to comply with the full set of new requirements. Other SPACs that have not yet found a target may find themselves ex-post to have inefficiently entered the market as compared to a SPAC that completes an IPO with knowledge of the costs associated with the proposed amendments. However, the fact that some of the proposed amendments may reduce costs or simply codify existing best practices may offset some of the potentially more costly elements of other amendments, thus the differential impact of the proposed amendments affecting parties at the de-SPAC transaction stage is expected to vary.

Based on staff analysis of SPACs that registered a distribution of securities between 1990 and 2021, it appears that approximately half of all SPACs following their initial public offerings have announced a subsequent de-SPAC transaction, and about one third have completed their de-SPAC transaction. It is possible that SPACs currently searching for targets may still identify targets, complete de-SPAC transactions, and thereby increase the fractions of SPACs with announcements and completed transactions. However, the overall success rate of approximately one-third is generally consistent with previous research findings over more limited historical subsamples,[414] suggesting that the number or proportion of SPACs and related parties that would directly incur the costs, or experience the benefits, of our de-SPAC-related proposals may be smaller than the population of parties affected by our proposed amendments pertaining to a SPAC's initial registration and public offering.

Of the SPAC initial public offerings in 2020 and 2021, a majority have not yet filed a Form 8–K announcing that the SPAC has found a target company, or else have not filed a Form 8–K that

[412] *See supra* Sections VI.B.3 & IX.B.1.a.

[413] *See, e.g.,* Luisa Beltran, *SPACs Are Scrambling to Find Mergers. What That Means for Investors,* Barrons, Feb. 24, 2022.

[414] Studies performed in 2016 or later reviewing the 2003–2013 cohort of SPACs find that approximately 51.5% of SPACs that had an initial public offering during the decade successfully complete a de-SPAC transaction and 21.6% were still publicly traded three years later in 2016. *See, e.g.,* Milos Vulanovic, *SPACs: Post-Merger Survival,* 43 Managerial Fin. 679, 679–699 (2017); Kamal Ghosh Ray & Sangita Ghosh Ray, *Can SPACs Ensure M&A Success?,* 16 Advances in Mergers & Acquisitions 83, 83–97 (2017).

would follow within 4 days of a completed a de-SPAC transaction. As of December 31, 2021, approximately 77 of 248 SPAC IPOs in 2020 (31%) and an additional 495 of 613 SPAC IPOs in 2021 (81%) had not yet announced a target or have withdrawn an announced business combination and resumed searching. Some market participants have opined that, of recently listed SPACs that have not yet secured a target, a greater proportion are likely to liquidate without completing an acquisition.[415] This may be due to factors such as changing market conditions (increased volatility, increasing interest or inflation rates, etc.) and an increasingly limited number of viable target private companies (particularly companies with valuations in the range that would match the 80% requirement of most SPACs).

Table 3. SPAC Outcomes, 1990-2021[a]

Filed	IPO Priced	Merger Announced	Merger Completed	Liquidated
1672	1273	653	475	96

[a] Estimates reported here are based on the respective subsamples of SPAC IPOs (*see supra* Table 1 note a) that reflect all confirmed, completed activity as of December 31, 2021.

a. Filings in Connection With a De-SPAC Transaction

Like any merger or acquisition activity pursued by other public reporting companies, the timing and types of filings that accompany a de-SPAC transaction are usually a function of the way the business combination is structured and the form of consideration employed. Such transactions may require providing existing shareholders information in advance of a vote. Others may simply require providing shareholders with information and a specified period of time in which to redeem shares, if desired. Similarly, such transactions may include an offer of securities as a part of the merger or exchange offer, and if so, may require the filing of a registration statement. The cumulative effects of our proposals would vary in impact on individual de-SPAC transactions based on their unique deal structure and the disclosures they would thus already be obligated or otherwise incentivized to provide.

A recent review of 462 de-SPAC transactions completed in 2020 and 2021 found that approximately 99% of transactions were accompanied by proxy disclosures and 81.0% involved a related filing of a registration statement on either Form S–4 or Form F–4.[416] Of the 81.0% of de-SPAC transactions that involved the filing of a registration statement, 85.4% were accompanied by a proxy statement on Schedule 14A, and the remaining 14.6% were accompanied by an information statement on Schedule 14C as a result of a consent solicitation.[417]

b. Target Form 10 Information in Connection With De-SPAC Transactions

If a shell company that has Exchange Act reporting obligations, including a SPAC, acquires a target that is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, after the business combination, it must file a Form 8–K that includes the same disclosures about the target company that would have been provided if the target had instead registered a class of securities under Section 12 of the Exchange Act on Form 10.[418] This Form 10 information in a Form 8–K must be filed within four business days after the completion of a de-SPAC transaction.[419] Because we are proposing to require these disclosures to instead be included filings related to the de-SPAC transaction that occur prior to the consummation of the proposed business combination, whether in a proxy, information, or registration statement or Schedule TO, any SPAC that would otherwise file Form 10 information about its target in a Form 8–K following a de-SPAC transaction would be affected.

[415] *See, e.g.,* Jemima McEvoy, *Take Back The SPAC: More And More Companies Are Canceling High-Profile Deals To Go Public,* Forbes, Dec. 22, 2021.

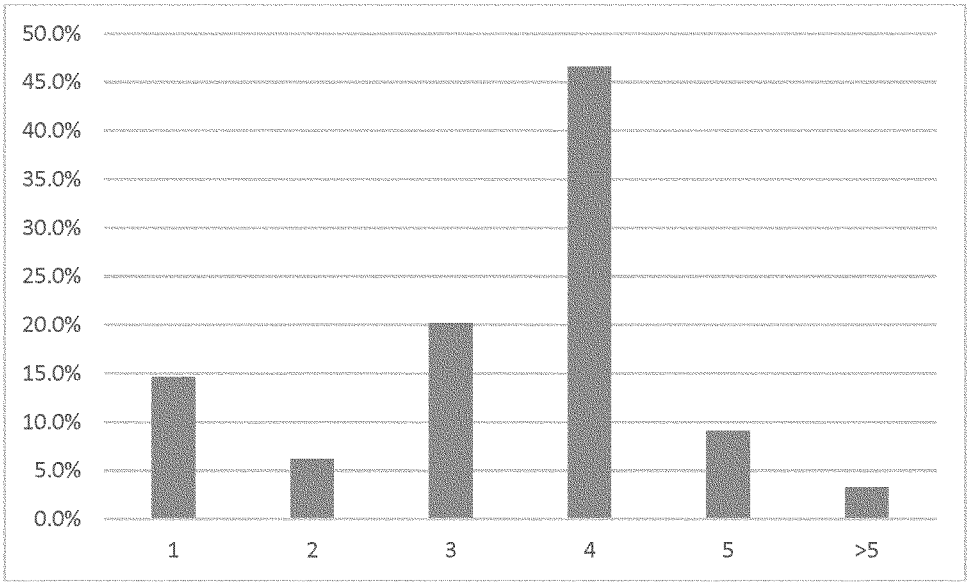
[416] *See* Michael Levitt, Valerie Jacob, Sebastian Fain, Pamela Marcogliese, Paul Tiger, & Andrea Basham, *2021 De-SPAC Debrief,* Freshfields (Jan. 24, 2022), *available at https://blog.freshfields.us/post/102hgzy/2021-de-spac-debrief.* We note that the scope of this study is limited to 2020 and 2021.

[417] *Id.*

[418] *See supra* Section III A.

[419] *See* Shell Company Adopting Release, *supra* note 211, at 15–17, 21 (adopting amendments requiring the entity surviving a merger with a shell company to file its report on Form 8–K within four business days after completion of the merger and limiting the use of Form S–8 to register offerings of securities).

Figure 3. Number of Business Days to File Form 8-K After De-SPAC Transaction[a]



[a] Data represents the percent of filed Forms 8-K that could be identified, based on staff review, as filed in connection with a de-SPAC transaction that occurred between January 1, 2006 and December 31, 2021, and does not include de-SPAC transactions unaccompanied by an 8-K filing. Staff noted that de-SPAC transactions unaccompanied by a Form 8-K containing Form 10 information were otherwise accompanied by a Form 20-F and/or Form 6-K when the combined company was a foreign private issuer (FPI) and, in the remaining cases where the combined company was not an FPI, the de-SPAC transaction was accompanied by either a long form (Form 10-12B) or a short form (Form 8-A12B) registration.

As illustrated in Figure 3, staff review of Forms 8–K filed in connection with approximately 300 de-SPAC transactions completed between January 1, 2006 and December 31, 2021 found that approximately 47% of combined companies filed the Form 8–K on the fourth business day after the de-SPAC transaction and approximately 88% of combined companies filed the Form 8–K within the 4-business day time limit. However, as discussed below in Section C.1.b.8, some registrants currently may voluntarily disclose Form 10 information before filing the Form 8–K given the staff's observations regarding incorporation by reference of this information into the Form 8–K from filings made in connection with the de-SPAC transaction.

c. PIPES in Connection With De-SPAC Transactions

PIPEs have supported de-SPAC transactions since their general increased market presence began in 2005.[420] However, in some recent SPACs, PIPEs have played a larger role than they have historically played, and this has given rise to concern about the potential dilutive effects of PIPEs and how well those might be understood by other investors.

According to a recent study analyzing the 47 registered de-SPAC transactions that occurred between January 2019 and June 2020, approximately 65% of the cash delivered in these merger transactions was contributed by public investors, and the amount typically contributed by third-party PIPE investors was approximately 25%, with the remaining funding provided by the sponsor.[421] In such cases, while the equity position of the PIPE investors in the combined company following a de-SPAC transaction was dilutive, it did not eclipse the ownership stake of the SPAC IPO shareholders. Because PIPE investors may receive confidential information with which to make an investment decision (including one-on-one conversations with the target's management, which may convey soft information) and may also engage in extended and detailed due diligence,[422] their participation has at times been considered a benefit to SPAC IPO investors, providing a meaningful indicator of the expected future financial performance of a proposed de-SPAC transaction.

As the SPAC market has evolved, so too have the role and the structure of PIPEs that support, and in some cases enable, de-SPAC transactions. In 2021, according to one study, approximately 95% of de-SPAC transactions included PIPE financings and the average and median amounts raised in PIPE financings (respectively approximately $300 million and $200 million) were similar to the average size of the SPAC trust account at the time of the IPO.[423] This may reflect that in more recent SPACs, in addition to enabling larger deals, some PIPEs may provide capital to enhance deal certainty.[424] In this

[420] *See* Meghan Leerskov, *Shell Mergers and SPACs: A Statistical Overview of Alternative Public Offering Methods, in* The Issuer's Guide to Pipes: New Markets, Deal Structures, and Global Opportunities for Private Investments in Public Equity 281 (Steven Dresner ed., 2015).

[421] *See* Klausner, Ohlrogge, & Ruan, *supra* note 17. The authors analyzed data for the 47 SEC-registered SPACs that merged, and thereby brought companies public, between Jan. 2019 and June 2020.

[422] *Id.*

[423] *See* Levitt et al., *supra* note 416. The difference between average and median PIPEs in this sample reflect that the data is positively skewed, implying that while some deals may involve low or no additional financing via PIPEs, other deals feature large investments outside the SPAC IPO process.

[424] We note that while there may be more instances in which PIPE financing functions to ensure that the cash requirements of a de-SPAC transaction are met in recent years, the difference between the average and median amount of PIPE financing raised (respectively approximately $300

alternative role, the financing raised via PIPE investment may ensure that a deal that otherwise may fail due to a high redemption rate can proceed to completion. In these cases,[425] the ownership stake of the PIPE investors in the combined company may exceed that of the non-redeeming SPAC investors.[426]

PIPE investors may, therefore, come to have a larger stake in the combined company than SPAC IPO investors may have anticipated when making an initial investment. As a result, SPAC IPO investors may thus find that they hold a smaller stake in the combined company than they would find optimal. Further, they may not be able to purchase an ownership claim in the combined company at the same price as a PIPE investor when PIPEs are offered at a discount to the open market price. Although PIPE discounts may offset differences in the securities' liquidity, discounts to PIPE investors contribute to the dilution of SPAC investors.

Staff review of PIPEs in connection with de-SPAC transactions that occurred between January 2018 and June 2021 found the average and median discount to PIPE investors were respectively 1.8% and 2.4% when estimated over all PIPEs and slightly higher (respectively 4.4% and 2.4%) for PIPE offerings without warrants.[427] These results appear generally consistent with a recent study that was more narrowly scoped to the height of the SPAC boom that found, between 2019 and June 2020, that the median discount received by PIPE investors was 5.5% relative to the market value of the publicly traded securities, and, in 37% of SPACs with PIPE deals, the PIPE was at a 10% discount or more.[428] This level of discount appears to be more broadly consistent with estimated discounts associated with PIPE financing outside the SPAC context as, by comparison, a recent study indicates that the average discount for PIPE investors is 11.2%, and for the subsample of PIPES that do not include warrants, the average discount is 5.7%.[429] While PIPE discounts may, on average, be smaller in the context of SPACs than in other PIPE financing, it is nevertheless a concern that the dilution they may cause may not be adequately anticipated by SPAC IPO investors.

d. Use of Projections in Connection With De-SPAC Transactions

Proposed Item 1609 of Regulation S–K would apply to projections used in de-SPAC transactions. Hence, proposed Item 1609 would potentially affect preparers and users of financial projections related to de-SPAC transactions, including SPACs, their sponsors, target companies, their controlling shareholders and management, and current and prospective investors.

Three recent papers discuss the use of projections by SPACs and target private operating companies in de-SPAC transactions. Chapman, Frankel, and Martin (2021) collected data on 420 SPACs with IPO dates from 2015 to 2020.[430] They found that 249 (59.29%) de-SPAC transactions were accompanied by at least one forecast. Dambra, Even-Tov, and George (2022) focus on de-SPAC transactions between January 1, 2010, and December 31, 2020. They restrict their sample to de-SPAC acquisitions with a single target and exclude SPACs that either delisted before the merger effective date, that traded on the OTC market, or focused on the biotech industry, yielding a sample of 142 observations.[431] They identify 128 target private companies (90.1%) that provided at least one form of forecast (*e.g.,* revenue or net income) in investor presentations. Blankespoor, Hendricks, Miller, and Stockbridge (2022) reviewed a sample of 963 SPAC IPOs completed between January 1, 2000, and July 1, 2021. They removed firms ''that are still seeking a merger target, have liquidated, are foreign, or have not publicly filed their roadshow'', and arrived at a sample of 389 SPACs. Of this sample, 312 (80.21%) SPACs provided a revenue forecast. These studies suggest that the use of projections is fairly common in the de-SPAC transactions and may have become increasingly common over time.

e. Use of Fairness Opinions

According to one source, in 2021, only 15% of de-SPAC transactions disclosed that they were supported by fairness opinions.[432] In contrast, a study of mergers and acquisitions more broadly found that 85% of bidders obtain fairness opinions.[433] The results indicate that deals in which bidders obtain fairness opinions may be associated with higher stock price reactions to the deal announcement and also better post-merger operating performance.[434] This study suggests that, for mergers and acquisitions in which a proxy vote is required, a fairness opinion obtained by the bidder can mitigate information risks and enhance communications between bidder boards of directors and their shareholders.[435]

f. SPAC Filer Status

Figure 4 below shows the proportion of SPACs that claimed smaller reporting company or EGC status, or both, in their first annual report after the initial public offering. Since 2016, almost all SPACs in their initial public offerings have claimed either smaller reporting company or EGC status, with the majority claiming both. For example, in 2021, 399 SPACs in their initial public offerings claimed both smaller reporting company and EGC status, while 48 only claimed EGC status.

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million and $200 million) and the average and median consideration paid to target shareholders (respectively approximately $2 billion and $1.25 billions) suggests that many PIPE offerings in connections with a de-SPAC transaction still appear to facilitate larger acquisitions rather than replace SPAC share redemptions. *See* Levitt et al., *supra* note 416.

[425] This outcome would also occur if the PIPE investments simply exceeded the size of the SPAC IPO proceeds without redemptions, but such cases have not been commonly observed.

[426] In a review of PIPE finance raised in connection with de-SPAC transactions that occurred between Jan. 2018 and June 2021, the Commission staff found that while PIPE proceeds ranged, on average from 60% to 88% of SPAC IPO proceeds, net of redemptions, these proceeds represented up to 137% on average (in calendar year 2019) of SPAC IPO proceeds at the consummation of the de-SPAC transaction.

[427] These estimates are based on staff analysis of data as described in Table 1, note a, and additional data from PrivateRaise.

[428] *See* Klausner, Ohlrogge, and Ruan, *supra* note 17.

[429] *See* Jongha Lim, Michael Schwert, & Michael Weisbach, *The Economics of PIPEs,* 45 J. Fin. Intermediation 100832 (2021). These results are based on a sample of 3001 PIPE transactions by U.S. firms listed on NYSE or NASDAQ between 2001 and 2015.

[430] *See* Chapman, Frankel, and Martin, *supra* note 291.

[431] *See* Dambra, *supra* note 33.

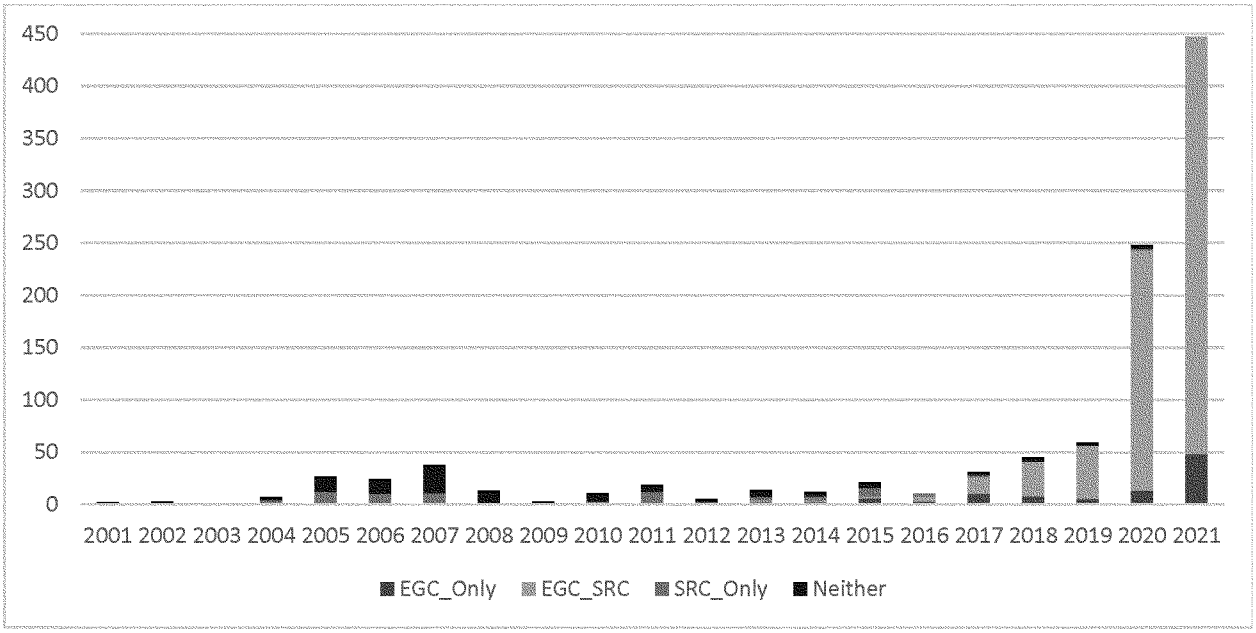
[432] *See* Levitt, Jacob, Fain, Marcogliese, Tiger, & Basham, *supra* note 416.

[433] This finding is based on deals that occurred between 1995 and 2015, involving a publicly traded bidder that seeks to acquire a majority of the target's shares. As discussed by the authors, it is difficult to estimate the fraction of deals that involve a fairness opinion since the use of fairness opinions is disclosed only if bidders are required to file proxy statements to solicit a shareholder vote. They note that listing rules of the NYSE, Amex, and NASDAQ require a bidder shareholder vote only when the bidder plans to issue 20% or more new equity to finance a deal. In other words, if the bidder issues less than 20% equity or uses cash to finance the deal, the bidder would not be required to disclose the fairness opinion even if the firm had obtained one. *See* Tingting Liu, *The Wealth Effects of Fairness Opinions in Takeovers,* 53 Fin. Rev. 533 (2018) (finding positive wealth effects from fairness opinions after the SEC approved Rule 2290 in Oct. 2007 which regulates the identification and disclosure of conflicts of interest of investment banks rendering fairness opinions.)

[434] *Id.*

[435] *Id.*

Figure 4. Annual SPAC Cohorts by Smaller Reporting and Emerging Growth Company Statuses Reported at Original Registration Stage[a]



[a] Data presented here reflects the self-reported status disclosed by SPACs as of the Form S-1, Form F-1, or an amendment to either that was filed most proximate in time to the date of the initial public offering.

g. Changes in Jurisdiction of the Combined Company

As we consider the potential economic effects of the proposed new rules and amendments, we take into consideration elements of the both the economic and the regulatory baseline, which would include accounting for variations between the applicable legal frameworks in the jurisdictions in which SPACs are incorporated or organized. Table 4 presents information on the jurisdiction of incorporation or organization for each SPAC that conducted its initial public offering after 1990 and completed a de-SPAC transaction before 2022. The first two columns state the percentage of SPACs that were originally incorporated or organized in each of six listed jurisdictions. The second two columns state—for each originating jurisdiction—the percentage of combined companies that were incorporated or organized in the listed jurisdictions following a de-SPAC transaction.

While the majority of SPACs that subsequently consummate a de-SPAC transaction remain incorporated in the same location, Table 4 indicates that the jurisdiction of incorporation or organization of the combined company may change in connection with the de-SPAC transaction. As a result, SPACs may face changes in prevailing legal standards that arise from a change in jurisdiction of incorporation or organization. To the extent that different jurisdictions have different disclosure requirements and provide differing levels of investor protections, the baseline regulatory regime will vary across SPACs and may change upon the de-SPAC transaction.

Table 4 Distribution of Combined Company Jurisdiction of Incorporation or Organization by SPAC Jurisdiction of Incorporation or Organization, 1990-2021[a]

At IPO		Post de-SPAC transaction	
Incorporation	% of dc-SPACs	Incorporation	% of IPOs
Delaware	71.88%	Delaware	84.68%
		Cayman Islands	4.03%
		Bermuda	2.02%
		Israel	1.61%
		New York	0.81%
		Utah	0.81%
		Luxembourg	0.81%
		Bahamas	0.40%
		British Columbia	0.40%
		British Virgin Islands	0.40%
		Illinois	0.40%
		India	0.40%
		Jersey	0.40%
		Marshall Islands	0.40%
		Maryland	0.40%
		Nevada	0.40%
		Ohio	0.40%
		Ontario	0.40%
		Quebec	0.40%
		Virginia	0.40%
Cayman Islands	23.48%	Delaware	54.32%
		Cayman Islands	33.33%
		Netherlands	3.70%
		Israel	2.47%
		Luxembourg	2.47%
		British Virgin Islands	1.23%
		New York	1.23%
		Ontario	1.23%
British Virgin Islands	3.77%	British Virgin Islands	46.15%
		Delaware	15.38%
		Cayman Islands	7.69%
		Ireland	7.69%
		Mexico	7.69%
		Singapore	7.69%
		United Kingdom	7.69%
Massachusetts	0.29%	Massachusetts	100.00%
Nevada	0.29%	Cayman Islands	100.00%
Marshall Islands	0.29%	Nevada	100.00%

[a] Estimates reported here are based on the subsample of SPAC IPOs (see *supra* Table 1 note a) after offerings withdrawn after the IPO pricing date and SPACs with a missing merger completion date have been removed. State of incorporation data is obtained from a combination of sources, including Dealogic, Audit Analytics, and SEC filings available on EDGAR. These estimates reflect all confirmed, completed activity as of December 31, 2021.

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3. Blank Check Companies

We are also proposing an amendment to the definition of ''blank check company'' for purposes of the PSLRA safe harbor provisions.[436] The proposed amendment would affect SPACs and certain other blank check companies that may not already be excluded from the PSLRA safe harbor, as well as investors and other market participants whose access to the informational content of forward-looking statements, or potential remedies in the case of material omissions or misstatements, would otherwise differ.[437] We estimate that in addition to potentially affected SPACs, as previously discussed,[438] approximately 30 non-SPAC entities that self-identified as blank check companies but did not self-identify as penny stock issuers may also be affected by the proposed amendment.[439] Because such non-SPAC blank check companies may not be subject to the same limitations on duration as SPACs, the number of filings or disclosures they might make under the presumed protections of the safe harbor may be greater. However, due to the nature of a blank check company as a development stage company with no specific plan or purpose other than to merge with or acquire an unidentified company or companies, or other entity, or person,[440] it is unlikely that the nature of the forward-looking statements such a registrant might produce would differ in substance from the informational content provided by SPACs and therefore should not have a differential impact on investors or other market participants.

4. Shell-Company Business Combinations

Proposed Securities Act Rule 145a and proposed Article 15 of Regulation S–X would affect SPACs and other shell companies (other than business combination related shell companies) involved in business combination transactions. Proposed Rule 145a would impact the disclosures reporting shell company investors may receive and potential sources of liability. Proposed Article 15 of Regulation S–X would impact the financial statements associated with business combinations involving shell companies and, thus, would also affect parties that are typically associated with the preparation, review, and dissemination of financial statements and the information they contain.[441] Table 5 below illustrates that the proportion of SPAC to non-SPAC reporting shell-company business combinations has shifted due to the increasing number of SPACs entering the market. It also shows that, in 2021, more than one-third of all targets acquired by a reporting shell company appear to merge with a non-SPAC entity.

Table 5. Distribution by Year of Shell-Mergers Reported on Form 8-K[a]

	2016	2017	2018	2019	2020	2021
SPAC	9.5%	8.8%	17.8%	30.2%	42.2%	65.2%
Non-SPAC	90.5%	91.2%	82.2%	69.8%	57.8%	34.8%

[a] Based on Form 8-Ks by calendar year of filing that contain Item 5.06 (Change in Shell Company Status) disclosures, excluding filings by asset-backed securities issuers.

We estimate that in addition to existing SPACs that have yet to complete a de-SPAC transaction, approximately 160 additional existing reporting shell companies may be affected by the proposed amendments.[442] Almost all of these non-SPAC reporting shell companies trade on the OTC market[443] and tend to be smaller than SPACs in terms of market capitalization and total assets.[444] We further estimate that approximately

[436] *See supra* Section III.D.

[437] Although the PSLRA safe harbor may currently affect private litigation against some SPAC and blank check companies, those companies are subject to state and federal enforcement actions.

[438] *See supra* Sections IX.B.1.a & IX.B.2.

[439] This estimate is based on staff review of all registrants, by unique CIK, that filed at least one periodic or current report between 2019 and 2021 and, as of its most recent filing, identifies its SIC code as 6770. We exclude CIKs that have already been identified as SPACs and those associated with filings that self-identify as penny stock issuers under Rule 419. We note that this estimate may represent an upper bound on the number of additional affected parties because it is based on registrants' self-reported SIC and penny stock issuer status. Studies have reported that self-reported SIC codes may contain errors that could cause a higher number of issuers to be counted as affected parties than in effect would be. *See, e.g.,* Murat Aydogdu, Chander Shekar, & Violet Torbey, *Shell Companies as IPO Alternatives: An Analysis of Trading Activity Around Reverse Mergers,* 17 Applied Fin. Econ. 1335 (2007) (''Not all firms that use SIC [code] 6770 are actually blank checks. For instance, companies are required to file Form 12 after an acquisition to notify the SEC of their new SIC code. Many fail to file as they acquire operations in a business with a more descriptive SIC code, yet they continue to use 6770.''). Our estimate does not seek to reclassify potential errors in this case because we are not able to distinguish when the classification error would represent a mistake made by a registrant that knows it is not a blank check company versus when the registrant is mistaken in its belief that it is a blank check company when it may not be. In the latter case, even if mistaken about its blank check company status as a registrant, the party would still be affected by the proposed amendment because they may currently make, or believe they are able to make, forward looking statements under the PSLRA safe harbor, and would not if the proposed amendment is adopted.

[440] *See* the definition of ''blank check company'' in Rule 419(a)(2)(i) of the Securities Act.

[441] We acknowledge the possibility of a situation in which a previously non-public shell company files an initial registrant statement. The financial statements included in the registration statement would be required to comply with Regulation S–X, including the proposed amendments in Rule 15–01. As we currently lack the data necessary to estimate the number of shell companies that are private, at present, that could be impacted by proposed Article 15, they are not included in the estimates discussed in this analysis. However, the extent to which this may impact our conclusions is limited because, based on staff observation and experience with common transaction structures, we believe it is unlikely proposed Article 15 will impact many such shell companies.

[442] This estimate is based on staff review of all registrants' self-reported status as a shell company on the cover page of the most recent annual report (Forms 10–K, 20–F, or 40–F) or an amendment thereto filed in calendar year 2021 by unique CIKs of entities that are not already identified as SPACs.

[443] Based on staff review of periodic filings, approximately 72.7% of these shells trade OTC, 26.1% do not trade, and 0.6% each appear to have traded on Nasdaq Global Market and NYSE Market, respectively.

[444] As of yearend 2021, the average market capitalization of non-SPACs shell companies was $154,731,262.50 while the average market capitalization of SPACs was $306,204,218.60. Based on the most recent periodic disclosure filed per registrant before Dec. 31, 2021, the average total asset position of a non-SPAC shell was $33,666,553.41 while the average of SPAC total assets was $309,570,778.30.

11.0% (18) of these shells would also be affected by the proposed amendment to redefine the term ''blank check company'' for purposes of the PSLRA.[445]

Our estimate of approximately 160 shell companies represents an upper bound on the number of potentially affected shell companies because some of these shell companies could engage in transactions pursuant to an exemption from registration, or otherwise may engage in transactions that would not require registration. For example, if a shell company were to acquire another shell company, the acquiring shell would not be affected by proposed Rule 145a or proposed Article 15. Similarly, a shell company that obtains a fairness determination from a court or authorized governmental entity might also be exempt.[446] Given that a more precise estimate would require us to make assumptions about what proportion of future shell company mergers may be exempt or not require registration, we request additional data or comments that would help inform our expectations about how many shell companies that are not SPACs would also be involved in transactions that would be affected by the proposed rules.

5. Projections Under Item 10(b) of Regulation S–K

The proposed amendments to Item 10(b) would update the Commission's view on factors to be considered in formulating and disclosing financial projections and would specify the application of Item 10(b) to financial projections prepared by parties other than management. To the extent that parties elect to follow the updated guidance set forth in the proposed amendments, it would affect registrants and other entities providing financial projections in Commission filings, such as a target firm involved in a business combination with a reporting registrant. A recent study examined management earnings forecasts by focusing on public companies from 2000 to 2018.[447] Drawing management earnings forecast data from IBES Guidance, they find that management provides earnings forecasts in 15,295 (30.8%) out of 49,595 firm-years. The proposed amendments to Item 10(b) would also affect investors and other users of the financial projections included in Commission filings, to the extent that parties elect to follow the updated guidance.

6. Investment Company Act Safe Harbor

The proposed safe harbor would affect all current and future SPACs, sponsors, investors, and potential target companies. For statistics on these affected parties in the SPAC market, see our discussion above.[448] For a description of Section 3(a)(1)(A) of the Investment Company Act under the Securities Act, see our discussion above.[449]

a. Nature and Management of SPAC Assets

Most SPACs hold a majority of their assets in a trust (or escrow) account, which is also required by current listing standards.[450] For example, Table 6 shows that, on average, approximately 90% of the initial offering proceeds raised in a SPAC IPO in 2021 were deposited in trust accounts.

Table 6. Average SPAC IPO Capital Raised and Amounts in Trust, 2001-2021[a]

	2001-2005	2006-2010	2011-2015	2016-2020	2021
IPO Initial Offering[b]	45.82	134.08	121.63	272.93	265.22
IPO Offering w Overallotment[c]	56.87	212.95	160.40	337.54	330.75
Trust/Initial Offering	88.53%	97.38%	94.66%	91.46%	89.55%

[a] Averages reported here are estimated over the subsample of SPAC IPOs (*see supra* Table 1 note a) after offerings withdrawn after the IPO pricing date have been removed.

[b] In millions of dollars.

[c] In millions of dollars, includes exercise of overallotment as reported in Dealogic.

It is also our understanding that SPAC assets, particularly those held in the trust account, are largely invested in Government securities or Government money market funds.[451] We also understand that SPACs generally disclose in their IPO prospectuses that any income earned on assets in the trust account will be used toward the de-SPAC transaction, after possible deductions for tax payments. Some SPACs also disclose that a portion of the interest income could be used toward any potential dissolution expenses.

[445] This estimate is based on a cross-tabulation, by unique CIK, of potentially affected parties identified as blank check companies (*see supra* note 439) and as shell companies (*see supra* note 442).

[446] *See* Section 3(a)(10) of the Securities Act; Staff Legal Bulletin No. 3A (CF) (June 18, 2008), *available at https://www.sec.gov/corpfin/staff-legal-bulletin-3a*.

[447] *See* Claude Francoeur, Yuntian Li, Zvi Singer, & Jing Zhang. *Earnings Forecasts of Female CEOs: Quality and Consequences,* Rev. Acct. Stud. (2022). IBES is a database that includes quantitative (numeric) company earnings forecasts collected from press releases and transcripts of corporate events. To the extent that some of the management earnings forecasts in the IBES database are not included in SEC filings, these figures may overstate the activity that would be affected. However, because the study sample is drawn from a period after the adoption of Regulation FD, we believe the likelihood an IBES record would not also be present in an SEC filing is low. It is more likely that these figures may understate the number of affected projections, because the database does not include all public reporting companies, and because management may provide financial projections that are not captured by the IBES database. *See, e.g.,* Zahn Bozanic, Darren T. Roulstone, and Andrew Van Buskirk, *Management earnings forecasts and other forward-looking statements,* 65 J. Acct & Econ., 1 (2018) (indicating that approximately 33% of Form 8–K filings of earnings announcements include at least one quantitative forecast.)

[448] *See supra* Sections IX.B.1 and IX.B.2

[449] *See supra* Section VI.A.1.

[450] *See supra* note 392 and accompanying text.

[451] *See, e.g.,* Rodrigues & Stegemoller, *supra* note 17.

b. SPAC Activities

Currently, the typical SPAC discloses in its IPO prospectuses that it is formed as a blank check company for the purpose of effecting a business combination with one or more businesses. In addition, SPACs usually provide disclosures in their IPO prospectuses indicating that they believe they do not meet the investment company definition under Section 3(a). They further typically disclose to prospective investors that if they are determined to be an investment company in the future, the costs and logistics of compliance with the Investment Company Act would be prohibitive.

Current exchange listing standards and SPACs' own disclosures in their initial public offering registration statements generally require that SPACs must combine with a target that is unidentified at the time of their initial public offerings.[452] As a result of exchange rules and their own disclosed commitments to investors, SPACs generally have a limited period to find a target and negotiate the terms of a de-SPAC transaction agreement.[453] Because of the incentives provided to sponsors by the SPAC structure to complete a de-SPAC transaction, the limited period provided for a SPAC to search for a target and complete a transaction deal may cause some SPACs to pursue comparatively less attractive targets as they get closer to their de-SPAC transaction deadlines.[454] In addition, the limited period to search for a target and complete a de-SPAC transaction may increase the bargaining power of target companies in negotiations with SPACs compared to other potential buyers that do not face such regulatory or self-imposed time constraints.

Most SPACs tend to pursue only one target company for a de-SPAC transaction. Of the 483 de-SPAC transactions that occurred over the 1990–2021 period involving SEC registered SPACs, 3.3% (16/483) of transactions had 2 or more targets (14 transactions had 2 targets, 2 had 3 targets).[455]

c. Duration Statistics: Announcement and Completion of De-SPAC Transactions

To rely on the proposed safe harbor from Investment Company status, a SPAC would be required to announce a de-SPAC transaction no later than 18 months after the effective date of the registration statement for the SPAC's initial public offering, and complete the transaction no later than 24 months after the date of the initial public offering. For the sake of comparison to other current requirements, this is a shorter period than the 36 months a SPAC can remain listed under current exchange rules as discussed above.[456]

Below we provide statistics on the timing of announcements and completion of de-SPAC transactions for a sample of SPACs with effective IPO dates between January 1, 2016 and December 31 2019. We chose December 31, 2019, as the end date to ensure that at there is at least a 24-month history available for each SPAC included in the sample in order to reduce potential reverse survivorship bias in the estimates.[457]

We have data on 152 SPAC initial public offerings between January 1, 2016 and December 31, 2019.[458] Among these SPACs, all disclosed in their IPO prospectus that they would be limited to a 24 month lifespan or less, where almost 59% (89 of 152) disclosed that they would be limited to a 24-month period, and the rest to a shorter time period, in some cases as short as 12 months (18, or 12%, of cases). In around 14% of the SPACs (22 of 152), there was disclosure in their IPO prospectus about a pre-commitment to hold a vote on an optional extension period ranging from three to 24 months. There were five cases in which the combination of the initial lifespan and pre-committed extension period exceeded a 24-month potential total lifespan for the SPAC. However, we recognize that SPACs may, and some currently do, ask shareholders to vote for an extension of the lifespan of the SPAC even if they did not pre-commit to such a vote or a specified extension period in the event of a vote.

As of December 31, 2021, approximately 96% (146 of 152) of the SPACs in the sample had announced an agreement to enter into a de-SPAC transaction, and approximately 91% had completed a de-SPAC transaction. Among the 13 cases (9%) in the sample where SPACs had not completed a de-SPAC transaction at this time, seven SPACs had been formally liquidated,[459] whereas six SPACs were still active (four of which had announced a de-SPAC transaction). As of December 31, 2021, the lifespan of the six still active SPACs ranged between 25 to 37 months since the IPO date.

Overall, approximately 59% (89 of 152) of the SPACs in the sample announced an agreement to enter into a de-SPAC transaction no later than 18-months after the date of the initial public offering, and 88% (134 of 152) announced a transaction agreement no later than 24 months after the IPO date. Figure 5 shows the distribution of the timing of announcements for de-SPAC transaction agreements expressed in event-time relative to the IPO effective date for the 146 sample SPACs that had made such an announcement by December 31, 2021. The longest time to an announcement was 39 months, and the shortest was four months.

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[452] *See* Nasdaq Listing Rule IM–5101–2 (listing standards for companies with a business plan to ''engage in a merger or acquisition with one or more unidentified companies''); NYSE American Company Guide Section 119 (similar).

[453] This limited period may go beyond the pre-committed lifespan SPACs disclose in their IPO registration statements. As we discuss in *infra* Section IX.B.6.c, SPACs currently may pre-commit to hold a vote on a pre-specified extension period, if needed, to complete a de-SPAC transaction. SPACs may also ask shareholders ex-post to vote for an extension of the lifespan of the SPAC, even if they did not pre-commit to such a vote. Based on the sample of SPACs analyzed in *infra* Section IX.B.6.c, the vast majority of SPACs conclude a de-SPAC transaction or liquidate the SPAC within 36 months of their IPO date.

[454] There is some evidence consistent with such incentives. *See, e.g.,* Dimitrova, *supra* note 30 (finding that four-year post-IPO buy-and-hold abnormal return is on average 8.8% lower if the acquisition is announced at the end of the (self-imposed) two-year deadline instead of at the estimated earlier optimal time).

[455] Based on data from Dealogic M&A module as of Jan. 2022.

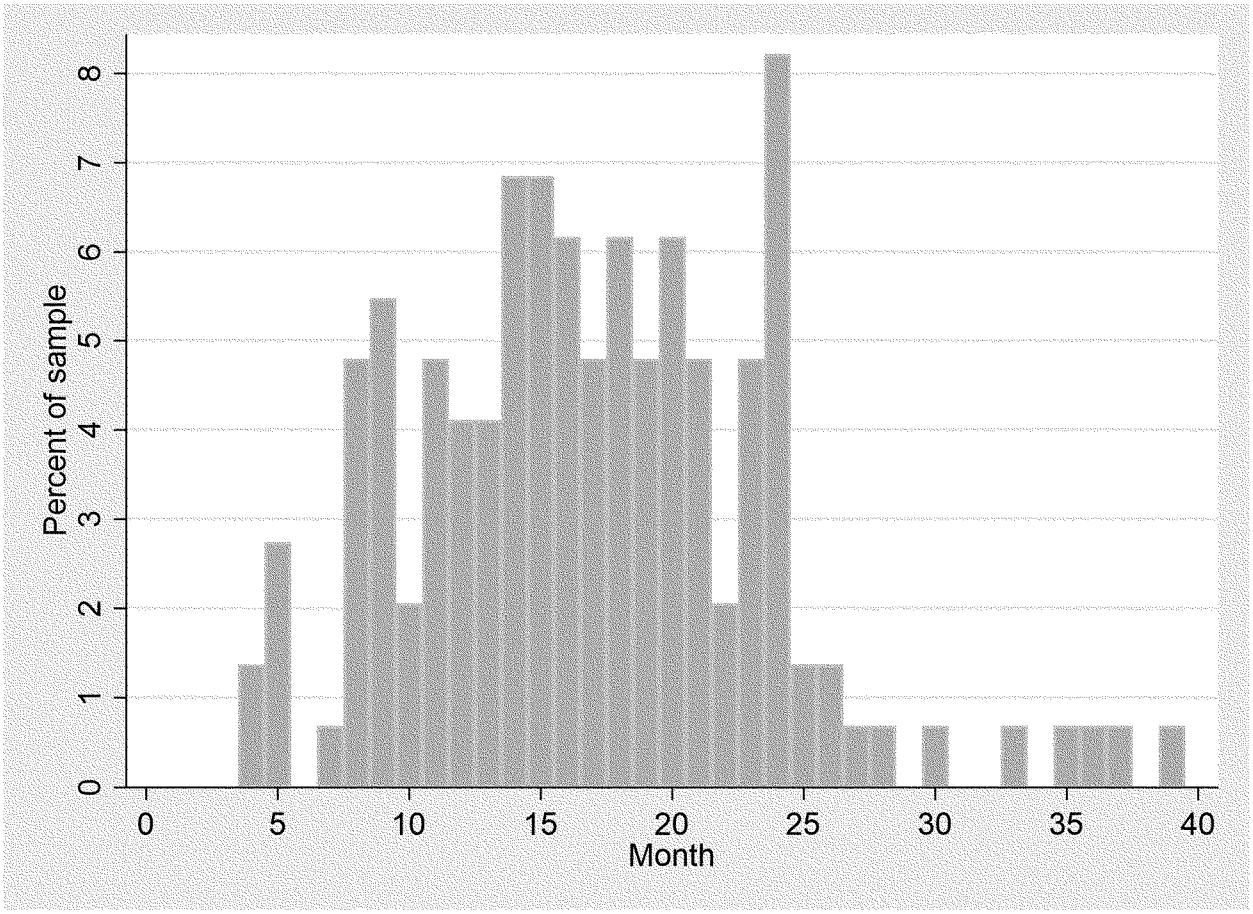
[456] *See supra* note 393 and accompanying text.

[457] Note that the number of SPAC IPOs increased significantly in the 2020–2021 period. To the extent this increase has increased competition for target companies, it may affect the time it takes for more recent SPACs to announce or complete a de-SPAC transaction, or their ability to complete a de-SPAC transaction at all. As of Dec. 31, 2021, approximately 77 of 248 SPAC IPOs in 2020 (31%) and an additional 495 of 613 SPAC IPOs in 2021 (81%) had not yet announced a target or have withdrawn an announced business combination and resumed searching (*see supra* Section IX.B.2). *See also supra* note 413 and accompanying text.

[458] Based on data from Dealogic M&A module as of Jan. 2022.

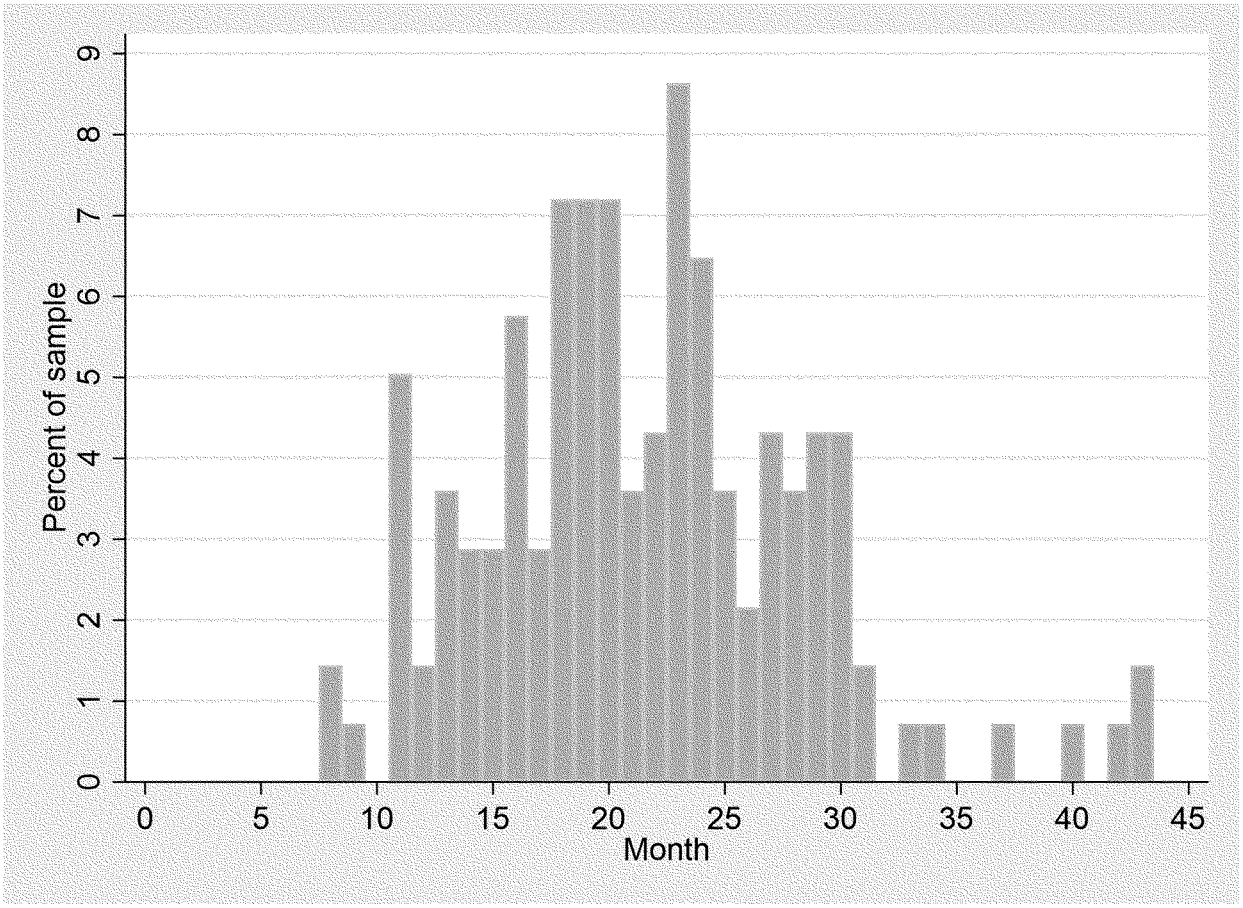
[459] In two of these cases, a de-SPAC transaction was announced but later withdrawn.

Figure 5: Distribution of De-SPAC Transaction Agreement Announcements (In SPAC IPO Event Time).



Approximately 65% (99 of 152) of the SPACs in the sample had completed a de-SPAC transaction no later than 24 months after the IPO date, whereas only 31% (47 of 152) of the SPACs in the sample had completed a de-SPAC transaction no later than 18 months after the IPO date. Figure 6 shows the distribution of the timing of de-SPAC transactions expressed in event-time relative to the IPO effective date for the 139 SPACs in the sample that completed de-SPAC transactions by December 31, 2021. The longest time to completion was 43 months, and the shortest was eight months.

Figure 6: Distribution of Completed De-SPAC Transactions (In SPAC IPO Event Time).



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Among the 139 SPACs in the sample that completed a de-SPAC transaction by December 31, 2021, the average and median times between the announcement and the completion of the transaction were respectively 150 days (approximately 5 months) and 142 days (approximately 4.7 months). The time between announcement and completion of the merger was less than 6 months in 78% of the cases, and the shortest time observed in the sample was less than two months (50 days). For the subsample of 99 SPACs that completed the de-SPAC transactions in no more than 24 months since the IPO date, the average and median times between the announcement and the completion of the transaction were respectively 142 days (approximately 4.7 months) and 125 days (approximately 4.1 months). For this subsample, approximately 79% of the de-SPAC transactions occurred less than 6 months after the announcement, and there were 12 cases in which the announcement of the transaction agreement was made more than 18 months after the IPO date.

C. Benefits and Costs of the Proposed Rules

1. Disclosure-Related Proposals

a. SPAC Initial Public Offerings and Other Registered Offerings

1. Definitions (Item 1601)

We are proposing Item 1601 to identify certain parties and transactions to which the requirements of the subpart, as well as other parts of this proposal, would apply. Defining the terms ''special purpose acquisition company,'' ''de-SPAC transaction,'' ''SPAC sponsor,'' and ''target company'' as proposed would establish the scope of the issuers and transactions subject to the requirements of Subpart 1600, and thereby provide both registrants and investors with notice of the associated obligations. The definitions may impose costs if the new definitions are not consistent with current understanding and consequently cause confusion for registrants, investors and market participants. Both the costs and benefits would be small to the extent that the new definitions are consistent with widely accepted views.

2. Prospectus Cover Page and Prospectus Summary Disclosures (Item 1602)

Proposed Item 1602 would require a prospectus filed in connection with a SPAC's initial public offering to disclose information on certain features unique to SPAC offerings and the potential associated risks, in addition to the information currently required by Item 501 and Item 503 of Regulation S–K, on the prospectus cover page and in the prospectus summary, respectively, as discussed above.[460] The proposed additional disclosures may reduce SPAC investors' information processing costs and improve their investment decisions. Investors in SPACs vary in

[460] *See supra* Section II.E for more information about current disclosure requirements.

financial sophistication and ability to process the information provided in SPAC IPO prospectuses. We expect that the potential benefits may especially accrue to investors that are less financially sophisticated.

Specifically, because investors are likely to allocate their attention selectively,[461] requiring disclosure regarding important features and associated risks of SPAC investments on the prospectus cover page (including cross-references to the locations of the more detailed related disclosures) and prospectus summary may increase the likelihood that investors pay attention to the information by making it more salient.[462] In addition, the proposed additional disclosures in the prospectus summary may further reduce information processing costs, particularly for less financially sophisticated investors, by providing information in plain English about important SPAC features in a concise format.[463]

Proposed Item 1602(b)(6) would require tabular disclosure in the prospectus summary regarding the nature and amount of the compensation received or to be received by the SPAC sponsor, its affiliates and promoters, and the extent to which this compensation may result in a material dilution of the purchasers' equity interests. There is empirical evidence that visualization improves individual perception of information.[464] For example, one experimental study shows that tabular reports can lead to better decision making.[465] Because sponsors' compensation may be a material cost to SPAC investors, the tabular format of these required disclosures may help investors (especially those that are less financially sophisticated) more easily process the financial implications of compensation of the SPAC sponsor, its affiliates and promoters, thereby potentially incrementally improving their investment decisions.[466]

Additionally, the proposed rules and amendments would standardize this disclosure across all registration statements filed for SPAC initial public offerings, which may make it easier and less costly for investors to compare terms across offerings and thereby promote better investment decisions.

Finally, to the extent the proposed additional disclosures on the cover page and in the prospectus summary would increase investors' awareness of sponsors' incentives and potential conflicts of interest, it may have an incremental disciplining effect on sponsors' behavior. For example, to the extent sponsors would face potentially greater scrutiny by more attentive investors, they may take some additional care in finding and negotiating terms with target companies, or take steps to mitigate the extent of any disclosed conflict of interests.

The proposed additional disclosures that would be required to be included on the prospectus cover page and in the prospectus summary may increase compliance costs for SPACs to the extent that they would need to provide additional information in their IPO prospectuses than they currently provide. We believe that SPACs should have this information readily available and in some cases may already be disclosing it, such as the time frame for the SPAC to consummate a de-SPAC transaction. Thus, we expect that any compliance costs resulting from these proposed items would not be significant.

There could also be some potential costs for investors. In particular, there is a risk that, by requiring more items to be added to the cover page and the prospectus summary, the salience of the current required disclosures may be reduced because they will have to compete with the new required disclosures for investors' attention compared to the baseline. In addition, because Item 501(b) of Regulation S–K limits the information on the outside cover page to one page, there is a risk that the amount of information required to be included could generally impair the readability of the cover page. As a result, some investors may pay less attention to the cover page as a whole.

3. Sponsors and Conflicts of Interest (Item 1603)

Proposed Item 1603(a) would require disclosure of certain information regarding a SPAC's sponsor, its affiliates and any promoters, both at the SPAC initial public offering stage and at the de-SPAC transaction stage. To the extent that such disclosures are not already provided or are partially provided, this proposed disclosure requirement would provide investors with information related to the experience and incentives (due to characteristics of the compensation structure, for example) of the sponsor.[467] Investors may benefit from such disclosure, as it could allow them to better evaluate the circumstances that may impact their investment decision in a specific SPAC. The proposed disclosure is likely to be beneficial to investors who may consider investing in a SPAC at a point in time that precedes the existence and disclosure of information about an acquisition target, or to investors seeking to evaluate a proposed de-SPAC transaction.[468]

Proposed Item 1603(b) would require disclosure of conflicts of interest at both the SPAC initial public offering stage and at the de-SPAC transaction stage. This disclosure would also be required in any Schedules TO filed in connection with a redemption. We believe that this proposed disclosure requirement would benefit investors by enabling them to better assess any actual or potential material conflicts of interest held by sponsors, its affiliates, officers and directors of the SPAC, and/or promoters. Such disclosure could allow investors to more accurately assess the potential risk associated with the conflicts of interest in a SPAC and thus make better investment decisions.

Further, disclosure under proposed Item 1603(c) would provide investors information about the fiduciary duties that a SPAC's officers and directors owe to other companies. We expect that this

[461] *See, e.g.,* George Loewenstein, Cass R. Sunstein, & Russell Golman, *Disclosure: Psychology Changes Everything,* 6 Ann. Rev. Econ. 391 (2014).

[462] Salience detection is a key feature of human cognition allowing individuals to focus their limited mental resources on a subset of the available information and can cause them to over-weight this information in their decision making processes. *See, e.g.,* Daniel Kahneman, Thinking, Fast and Slow (2013); Susan Fiske & Shelley E. Taylor, Social Cognition: From Brains to Culture (3d ed. 2017). Moreover, for financial disclosures, research suggests that increasing signal salience is particularly helpful in reducing limited attention of individuals with lower education levels and financial literacy. *See, e.g.,* Victor Stango & Jonathan Zinman, *Limited and Varying Consumer Attention: Evidence from Shocks to the Salience of Bank Overdraft Fees,* 27 Rev. of Fin. Stud. 990 (2014).

[463] Existing research notes that individuals bear costs in absorbing information and that the ability of individuals to process information is not unbounded. *See* Richard Nisbett & Lee Ross, Human Inference: Strategies and Shortcomings of Social Judgment (1980); David Hirshleifer & Siew Hong Teoh, *Limited Attention, Information Disclosure, and Financial Reporting,* 36 J. Acct. & Econ. 337 (2003). Thus, summary disclosure may provide benefits by focusing investors' attention and reducing information processing costs.

[464] *See* John Hattie, Visible Learning: A Synthesis of Over 800 Meta-Analyses Relating to Achievement (2008).

[465] *See* Izak Benbasat & Albert Dexter, *An Investigation of the Effectiveness of Color and Graphical Information Presentation Under Varying Time Constraints,* 10–1 MIS Q. 59 (1986).

[466] *See infra* Section IX.C.1.a.4 for the discussion of proposed Item 1602(a)(4), which would require that the prospectus cover page include a simplified dilution table depicting the estimated remaining pro forma net tangible book value per share that would be realized at quartile intervals up to the maximum redemption threshold.

[467] *See supra* Section II.B for more information about current disclosure requirements.

[468] Academic literature provides some evidence that characteristics of the SPAC sponsor, such as experience or network may be indicative of its ability to select and execute quality transactions. *See, e.g.,* Lin, *supra* note 30.

disclosure would allow the SPAC's shareholders and prospective investors to assess the extent to which the officers and directors may face outside obligations, including the possibility that they might be compelled to act in the interest of another company that compete with the SPAC. In addition, to the extent that a SPAC's officers and directors owe fiduciary duties to other companies, these obligations may limit the attention that they are able to provide to the SPAC. We expect that these disclosures would benefit investors by allowing them to better assess the actions of the officers and directors in managing the SPACs activities, including a proposed de-SPAC transaction.

Proposed Item 1603(a) may increase compliance costs for SPACs, mainly in the form of collecting, preparing, and filing the required information for disclosure on sponsors, their affiliates and any promoters. We do not expect, however, such costs to be substantial because most of this information should be readily available, and some of it is currently being provided by SPACs.

With respect to the conflicts of interest disclosures required by Item 1603(b), SPACs could bear direct costs associated with: (i) Reviewing and preparing disclosures describing any such conflicts of interest; (ii) developing and maintaining methods for tracking any such conflicts of interest; and (iii) seeking legal or other advice. While the direct costs associated with Item 1603(b) disclosure requirements would depend on the extent to which a SPAC already provides this disclosure under current practices, we expect these costs to generally be low. As a baseline matter, the common practice of a SPAC disclosing the presence of actual or potential conflicts of interest as a material risk factor predates SPACs listing on national exchanges.[469] Therefore, it would appear that most SPACs are generally aware of these actual or potential conflicts and would therefore only bear costs insofar as our proposed requirements would involve providing greater detail or specificity in the disclosures of conflicts of interest.

Similarly, we do not expect the disclosures of a SPAC officer or director's fiduciary duties to other companies, as would be required by proposed Item 1603(c) to be very costly to prepare. Given the significance of a fiduciary relationship, it is unlikely that a director or officer—and, by extension, the SPAC—would not already know what relationships would require disclosure. The incremental costs to produce, track, or review records also should be low because signed, written documents typically accompany the entrance into a relationship that engenders a fiduciary duty.

4. Dilution (Items 1602(a)(4) and 1602(c))

As discussed above,[470] SPAC shares may experience dilution from various transactions by a number of parties or combinations of parties at various stages of a SPAC's lifecycle. For example, sponsors typically obtain their ''promote'' at a nominal value (*e.g.,* $25,000) with most of their compensation typically contingent on the completion of a de-SPAC transaction. When sponsors receive compensation at the de-SPAC transaction stage, their compensation comes out of the stakes of SPAC investors who do not redeem their shares, leading to an interactive effect between redemptions and the promote that magnifies the dilution. PIPE investments, due to their typical discount to the IPO offering price and potential interactive effects with redemptions, can further dilute non-redeeming SPAC investors. Finally, investors that redeem their shares typically get to keep their warrants. Future exercises of these warrants further dilutes non-redeeming SPAC shareholders' equity. Because most of these potentially dilutive transactions may occur after the SPAC's initial public offering and both the direct and indirect dilutive effects can be unique to the specific SPAC's structure, they may be difficult for prospective investors and other interested market participants to identify, anticipate, or adequately assess. In the absence of a more complete appreciation of these dilutive effects, the decision to invest, vote, or redeem, or the price at which one might be willing to enter or exit a position, may lack relevant information and, as a consequence, be suboptimal. SPAC investors who remain investors in the combined company absorb the above-mentioned dilution effects. To the extent that investors may not understand the extent of the dilution, or may exhibit inertia regarding the decision to redeem, the dilution may not be reflected in market prices at the time of the target acquisition.[471]

Proposed Item 1602(c) would require that registration statements filed by SPACs, other than for de-SPAC transactions, describe all material potential sources of future dilution following the SPAC's initial public offering and include tabular disclosure of the amount of potential future dilution from the public offering price that will be absorbed by non-redeeming SPAC shareholders, to the extent known and quantifiable. The proposed rule would benefit investors by providing them with more detailed information on the potential impact of dilution on the value of their SPAC shares, thus enabling them to better understand the effects of dilution on their investments and ultimately make better investment decisions.

We are further proposing to require that registration statements on Form S–1 or Form F–1 filed by SPACs, including for an initial public offering, include a simplified dilution table depicting the estimated remaining pro forma net tangible book value per share that would be realized at quartile intervals up to the maximum redemption threshold. Given the empirical evidence that visualization improves individual perception of information and that dilution that may occur due to redemption may be a significant cost to investors,[472] we expect that the tabular format of this disclosure will help investors (especially those that are less financially sophisticated) more easily process the financial implications of dilution and potentially improve their investment decisions. Moreover, the tabular presentation may provide investors with this information in a format that might more accurately represent the dilution that they might experience if they choose to invest in the SPAC, as compared to current disclosures.[473] For example, Figure 7 shows the average maximum allowable number of shares eligible to be redeemed prior to the de-SPAC transaction disclosed by SPACs in their registration statements. As shown, the maximum potential dilution is fairly stable over time, on average about 90% of net tangible book value per share.

[469] For examples of such disclosures, *see* Jog & Sun, *supra* note 386.

[470] *See supra* Section II.D for more information about existing disclosure requirements under Item 506 of Regulation S–K.

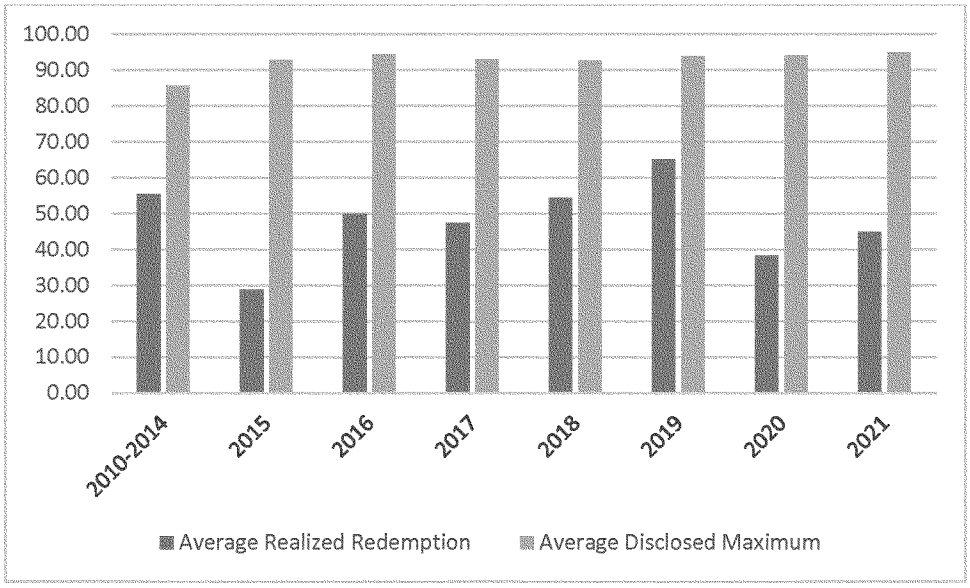
[471] *See* Gahng, Ritter, & Zhang, *supra* note 23; Klausner, Ohlrogge, & Ruan, *supra* note 17.

[472] *See* Hattie, *supra* note 464, and Benbasat & Dexter, *supra* note 465.

[473] *See supra* note 74.

Figure 7 also presents the average realized redemptions in de-SPAC transactions, which appear to vary considerably over time. Thus, despite the fact that SPACs are currently disclosing the maximum potential dilution that may occur as a function of redemptions, this information may not be as useful for investors as a presentation of the same information in a scenario table at quartile intervals of redemption, given that actual redemptions in connection with a de-SPAC transaction rarely reach the maximum allowable amount. The proposed amendments would provide investors with more granular information about potential dilution, which could allow them to better anticipate the effects of such dilution on future returns.[474] Additionally, the tabular format of the disclosure would standardize the dilution information, allowing investors to more easily analyze it and compare it across SPACs.

Figure 7. Dilution Disclosures in IPO Registration Statements vs. Realized Redemptions at de-SPAC



We expect the incremental costs of these proposed disclosure requirements to be, in most cases, low. First, registrants should already have the underlying information at their disposal and are therefore unlikely to incur significant additional costs to procure the necessary data. Second, while the proposed rules would require registrants to account for potential future sources of dilution and analyze several levels of redemption, which may require the services or input of quantitative specialists (analysts, forecasters, or other consultants), the material sources and the levels of dilution are generally common across SPAC offerings (thus a standard approach based on best practices may emerge, reducing costs over time) and are known and quantifiable. For example, sources of dilution may include shareholder redemptions, sponsor compensation, underwriting fees, outstanding warrants and convertible securities, and PIPE financings. For proposed Item 1602(a)(4), registrants will be required to analyze only four levels of redemption (*i.e.,* 25%, 50%, 75%, and maximum redemption). Third, many initial registration statements filed by SPACs already include disclosures regarding dilution. Thus, the additional burden of these disclosures becoming a formal requirement may be relatively modest. We therefore expect that the proposed disclosure requirements should benefit the market broadly and investors in particular, insofar as the enhanced information on potential sources of dilution improves price formation.

5. Structured Data Requirement (Item 1610)

Proposed Item 1610 would require all disclosures in proposed Items 1601–1609 of Regulation S–K to be tagged in Inline XBRL.[475] We expect that this requirement would augment the informational benefits of the proposed new disclosure requirements by making them more easily retrievable and usable for aggregation, comparison, filtering, and other analysis. XBRL requirements for public operating company financial statement disclosures have been observed to mitigate information asymmetry by reducing information processing costs, thereby making the disclosures easier to access and analyze.[476] This reduction in information processing cost has been observed to facilitate the monitoring of companies by external parties, and, as a result, to influence behavior of

[474] *See* Klausner, *supra* note 71.

[475] *See supra* Section II.G.

[476] *See, e.g.,* Joung W. Kim, Jee-Hae Lim, & Won Gyun No, *The Effect of First Wave Mandatory XBRL Reporting Across the Financial Information Environment,* 26 J. Info. Sys. 127, 127–53 (2012) (finding evidence that ''mandatory XBRL disclosure decreases information risk and information asymmetry in both general and uncertain information environments''); Yuyun Huang, Jerry T. Parwada, Yuan George Shan, & Joey Wenling Yang, *Insider Profitability and Public Information: Evidence From the XBRL Mandate* (SSRN Working Paper, 2020) (finding that XBRL levels the playing field between insiders and non-insiders, in line with the hypothesis that ''the adoption of XBRL enhances the processing of financial information by investors and hence reduces information asymmetry'').

companies, including their disclosure choices.[477]

While these observations are specific to operating company financial statement disclosures and not to disclosures outside the financial statements, such as the proposed specialized disclosure requirements applicable to SPACs, they indicate that the proposed Inline XBRL requirements could directly or indirectly (*i.e.,* through information intermediaries, such as financial media, data aggregators, and academic researchers) provide investors with increased insight into the proposed specialized SPAC disclosures at specific SPACs, and allow them to compare it to information provided by other SPACs at the time of their initial public offerings, perhaps through filtering by criteria, such as offering size or the name of the sponsor.[478] Also, like Inline XBRL financial statements (including footnotes), the proposed SPAC specialized disclosures would include tagged narrative disclosures in addition to tagged quantitative disclosures.[479] Tagging narrative disclosures can facilitate analytical benefits, such as automatic comparison/redlining of these disclosures against that provided by other SPACs in their initial public offerings and the performance of targeted assessments of specific SPAC specialized disclosures.[480]

We expect the proposed requirement to tag SPAC specialized disclosures in Inline XBRL would impose compliance costs on SPACs at an earlier stage of their life cycle than under the current baseline. Currently, SPACs are required to tag financial statements (including footnotes) and cover page information in certain registration statements and periodic reports in Inline XBRL. However, SPACs are not obligated to tag any disclosures until they file their first post-IPO periodic report on Form 10–Q, Form 20–F, or Form 40–F. Various preparation solutions have been developed and used by operating companies to fulfill XBRL requirements, and some evidence suggests that, for smaller companies, XBRL compliance costs have decreased over time.[481] Generally, registrants without prior experience using such compliance solutions often incur initial implementation costs associated with Inline XBRL tagging, such as costs associated with licensing Inline XBRL compliance software and training staff to use the software to tag the disclosures. Because SPACs typically operate as shell companies with no or nominal operations, it may be more likely that SPACs outsource their tagging obligations to a third-party service provider, and thus avoid the aforementioned software licensing and training costs. They would, however, incur the costs of retaining such third party services.

b. De-SPAC Transactions [482]

1. Prospectus Cover Page, Summary, and Disclosure of Dilution (Item 1604)

In connection with a de-SPAC transaction, many SPACs currently register an offering of securities using a Form S–4 or F–4. We expect most de-SPAC transactions to include a Securities Act registration statement going forward. Proposed Items 1604(a) and 1604(b) would require any prospectus accompanying a registration statement at the de-SPAC transaction stage to include certain information unique to the de-SPAC transaction on the cover page and in the summary, in a style and substance comparable to the additional disclosures that proposed Item 1602 would require at the initial public offering stage.[483] In addition, proposed Item 1604(c) would require disclosure in the prospectus of each material potential source of additional dilution that non-redeeming shareholders may experience by electing not to redeem their shares in connection with the de-SPAC transaction, a sensitivity analysis in tabular format that expresses the amount of potential dilution under a range of reasonably likely redemption levels, and a description of the model, methods, assumptions, estimates, and parameters necessary to understand the sensitivity analysis disclosure.[484]

We expect the proposed Items 1604(a) and 1604(b) would have similar potential direct benefits to investors as those we discussed for proposed Item 1602 above.[485] That is, we expect that including the additional disclosures on the de-SPAC transaction prospectus cover page and in the prospectus

[477] *See, e.g.,* Jeff Zeyun Chen, Hyun A. Hong, Jeong-Bon Kim, & Ji Woo Ryou, *Information processing costs and corporate tax avoidance: Evidence from the SEC's XBRL mandate,* 40 J. Acct. & Pub. Policy 106822 (2021) (finding XBRL reporting decreases likelihood of firm tax avoidance because ''XBRL reporting reduces the cost of IRS monitoring in terms of information processing, which dampens managerial incentives to engage in tax avoidance behavior''); Paul A. Griffin, Hyun A. Hong, Jeong-Bon Kim, & Jee-Hae Lim, *The SEC's XBRL Mandate and Credit Risk: Evidence on a Link between Credit Default Swap Pricing and XBRL Disclosure* (2014 a.m. Acct. Assoc. Annual Meeting Aug. 6, 2014) (finding XBRL reporting enables better outside monitoring of firms by creditors, leading to a reduction in firm default risk); Elizabeth Blankespoor, *The Impact of Information Processing Costs on Firm Disclosure Choice: Evidence from the XBRL Mandate,* 57 J. Acct. Research 919 (2019) (finding ''firms increase their quantitative footnote disclosures upon implementation of XBRL detailed tagging requirements designed to reduce information users' processing costs,'' and ''both regulatory and non-regulatory market participants play a role in monitoring firm disclosures,'' suggesting ''that the processing costs of market participants can be significant enough to impact firms' disclosure decisions'').

[478] *See, e.g.,* Nina Trentmann, *Companies Adjust Earnings for Covid–19 Costs, but Are They Still a One-Time Expense?,* Wall St. J., Sept. 24, 2020 (citing an XBRL research software provider as a source for the analysis described in the article); *Bloomberg Lists BSE XBRL Data, XBRL.org* (2018); Rani Hoitash & Udi Hoitash, *Measuring Accounting Reporting Complexity with XBRL,* 93 Acct. Rev. 259, 259–287 (2018).

[479] For example, proposed Item 1603 would consist largely of narrative disclosure regarding the SPAC sponsor, but would also include quantitative disclosure regarding the compensation paid (or to be paid) to the SPAC sponsor, its affiliates, and any promoters for all services rendered in all capacities to the SPAC and its affiliates.

[480] To illustrate, using the search term ''warrant'' to search through the text of all SPAC registration statements for initial public offerings to determine how many such initial public offerings disclosed the inclusion of warrants within SPAC sponsor compensation could return many narrative disclosures outside of the discussion (*e.g.,* disclosures related to warrants offered to investors as part of the initial public offering).

[481] An AICPA survey of 1,032 reporting companies with $75 million or less in market capitalization in 2018 found an average cost of $5,850 per year, a median cost of $2,500 per year, and a maximum cost of $51,500 per year for fully outsourced XBRL creation and filing, representing a 45% decline in average cost and a 69% decline in median cost since 2014. *See* Michael Cohn, *AICPA Sees 45% Drop in XBRL Costs for Small Companies,* Acct. Today (Aug. 15, 2018) (stating that a 2018 NASDAQ survey of 151 listed registrants found an average XBRL compliance cost of $20,000 per quarter, a median XBRL compliance cost of $7,500 per quarter, and a maximum, XBRL compliance cost of $350,000 per quarter in XBRL costs per quarter), *available at https://www.accountingtoday.com/news/aicpa-sees-45-drop-in-xbrl-costs-for-small-reporting-companies* (retrieved from Factiva database); Letter from Nasdaq, Inc., Mar. 21, 2019, to the Request for Comment on Earnings Releases and Quarterly Reports; Release No. 33–10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)].

[482] The benefits of proposed Item 1603 in connection with disclosures regarding sponsors and conflicts of interest in connection with a de-SPAC transaction on a proxy, information, or registration statement or Schedule TO are expected to be largely the same as the effects of those disclosures made in connection with a SPAC IPO, though they may be incrementally higher in so far as the disclosures could also guide voting and redemption decisions at the de-SPAC transaction stage, which would not occur in connection with a SPAC IPO. *See supra* Section IX.C.1.a.3. We would similarly expect the costs of compliance with Item 1603 to be comparable at the de-SPAC transaction stage as in connection with a SPAC IPO. However, to the extent that Item 1603 would require SPACs to disclose certain information in connection with their IPOs, the costs of making those same disclosures at the de-SPAC transaction stage should be lower because the materials necessary would have largely already been prepared.

[483] *See supra* Section II.E for more information about the regulatory baseline.

[484] *See supra* Section II.D for more information about the regulatory baseline.

[485] *See* discussion in *supra* Section IX.C.1.a.2.

summary may increase the likelihood that investors pay attention to and process this information by making it more salient. Additionally, the proposed additions to the de-SPAC transaction prospectus summary may reduce information-processing costs of investors, particularly less financially sophisticated investors, by providing certain SPAC-specific disclosures concisely and in plain English. Moreover, like for proposed Item 1602(b)(6), proposed Item 1604(b)(4) would require tabular disclosure in the prospectus summary regarding the terms and amount of the compensation received or to be received by the SPAC sponsor and its affiliates in connection with the de-SPAC transaction or any related financing transaction, and whether that compensation has resulted or may result in a material dilution of the equity interests of unaffiliated security holders of the SPAC. Presenting this information in tabular format may further help reduce information-processing costs for some investors.[486] Additionally, proposed Items 1604(a) and 1604(b) would standardize the required information across all registration statements filed for de-SPAC transactions, making it potentially easier and less costly for investors to compare terms across transactions. Overall, because of the aforementioned potential effects on investors' attention and information processing costs, the proposed additional disclosures on the prospectus cover page and in prospectus summary may help improve investors' investment decisions.

Certain items that proposed Items 1604(a) and 1604(b) would require SPACs to include on the prospectus cover page and in the summary may potentially benefit investors through incrementally improved SPAC governance. For example, the inclusion of disclosures regarding material potential or actual conflicts of interest could increase investors' attention to such issues. In turn, this may have an ex ante disciplining effect on sponsors that would mitigate the potential costs to investors of conflicts of interests. In addition, the SPAC would be required to state whether it reasonably believes that the de-SPAC transaction is fair or unfair to unaffiliated security holders, the bases for such belief, and whether the SPAC or SPAC sponsor received any report, opinion, or appraisal from an outside party regarding the fairness of the de-SPAC transaction. Prominent disclosure of these items may increase investor attention to the fairness or unfairness of the transaction, which may incentivize sponsors to avoid transactions that could potentially be viewed as unfair.[487]

As with proposed Item 1602, the additional items that proposed Items 1604(a) and 1604(b) would require to be included on the de-SPAC transaction prospectus cover page and in the prospectus summary may increase compliance costs for SPACs to the extent that they would need to provide additional information compared to what they currently provide. To the extent that SPACs already disclose some of this information or have most of this information readily available, these costs would be mitigated.

There could also be some potential costs to investors from proposed Items 1604(a) and 1604(b). In particular, as with proposed Item 1602, there is a risk that, by requiring more items to be added to the cover page and the summary, the salience of the current required disclosures may be reduced because they will have to compete with the new required disclosures for investors' attention compared to the baseline. In addition, because Item 501(b) of Regulation S–K limits the information on the outside cover page to one page, there is a risk that the amount of information required to be included could generally impair the readability of the cover page. As a result, some investors may pay less attention to the cover page as a whole.

We expect proposed Item 1604(c) would benefit investors by providing them with detailed information on the potential impact of dilution on the value of their SPAC shares in connection with the de-SPAC transaction, thus enabling them to better understand the effects of dilution on their investments and ultimately make better investment decisions. Besides requiring disclosure of each material potential source of future dilution that non-redeeming shareholders may experience, proposed Item 1604(c) also would require sensitivity analysis disclosure in tabular format that expresses the amount of potential dilution under a range of reasonably likely redemption levels. This sensitivity analysis may provide investors with information that could more accurately represent the dilution that they might experience if they choose not to redeem their shares as compared to current disclosures.[488] Such more granular information about potential dilution may allow investors to better anticipate the effects of the dilution on future returns. In addition, as discussed above,[489] we expect that the tabular format of this disclosure will further help investors (especially those that are less financially sophisticated) more easily process the financial implications of dilution.

We expect some incremental compliance costs of proposed Item 1604(c) to the extent registrants are not already providing disclosures similar in nature to what is required by the proposed amendment. In particular, the proposed rules would require registrants to engage in a sensitivity analysis to account for potential future sources of dilution and analyze several levels of redemption, which may require the services or input of quantitative specialists (analysts, forecasters, or other consultants). However, we expect the compliance costs of providing this disclosure would be mitigated by several factors. First, registrants should already have the underlying information at their disposal and are therefore unlikely to incur significant additional costs to procure the necessary data. Second, material sources and the levels of dilution are generally common across SPAC offerings (thus a standard approach based on best practices may emerge, reducing costs over time), and are known and quantifiable. For example, sources of dilution may include shareholder redemptions, sponsor compensation, underwriting fees, outstanding warrants and convertible securities, and PIPE financings. Third, although proposed Item 1604(c) does not specify the number of redemption levels to be analyzed, the fact that this disclosure could be calculated in a manner consistent with the methodologies and assumptions used in the disclosures provided pursuant to Item 506 elsewhere in the prospectus may reduce incremental costs. Thus, depending on how significant these mitigating factors are, the additional burden to registrants of this disclosure may be limited.

2. Background, Material Terms, and Effects of the De-SPAC Transaction (Item 1605)

Proposed Items 1605(a), (b) and (c) of Regulation S–K would require disclosure of the background (*e.g.,* description of any contacts, negotiations, or transactions concerning the transaction), material terms, and effects of the de-SPAC transaction and

[486] *See supra* notes 464 and 465 and accompanying text.

[487] Here we are considering the potential incremental benefits of the placement of this information on the cover page and in the summary. For a discussion of the incremental informational value of these disclosures, see *infra* Section IX.C.1.b.3.

[488] *See supra* note 74.

[489] *See supra* notes 464 and 465, and accompanying text.

any related financing transaction. In addition, proposed Item 1605(d) would require disclosure of any material interests of a SPAC's sponsor, officers, and directors in a de-SPAC transaction or any related financing transaction, including fiduciary or contractual obligations to other entities and any interest in, or affiliation with, the target company.[490] Such disclosure would benefit investors by providing them with more detailed information about significant aspects of de-SPAC transactions, thereby enabling them to make more informed decisions. For example, some of the proposed disclosures may enable investors to better assess whether the de-SPAC transaction or any related financing transaction has been structured in a manner that would benefit, for example, the SPAC's sponsor to the detriment of unaffiliated security holders of the SPAC.

Proposed Item 1605(e) would require disclosure as to whether or not security holders are entitled to any redemption or appraisal rights, and if so, a summary of the redemption or appraisal rights. These disclosures would help investors to better assess the impact of any redemption or appraisal rights on a proposed de-SPAC transaction, including whether the existence of such rights might lead some investors to redeem their securities after voting in favor of a de-SPAC transaction.

The proposed disclosures could increase the compliance costs for de-SPAC transactions. The magnitude of these costs would depend on the amount of information that SPACs and target companies are already disclosing in connection with de-SPAC transactions. To the extent that registrants already disclose some of this information or have most of this information readily available, these costs would be mitigated.

3. Fairness of the De-SPAC Transaction and Reports, Opinions, Appraisals and Negotiations (Items 1606 and 1607)

Proposed Item 1606(a) would require a statement from a SPAC as to whether it reasonably believes that the de-SPAC transaction and any related financing transaction are fair or unfair to the SPAC's unaffiliated security holders, as well as disclosures regarding whether any director voted against or abstained from voting on, approval of the de-SPAC transaction or any related financing transaction. In addition, proposed Item 1606(b) would require a discussion of the material factors upon which the statement as to the fairness or unfairness of the transaction is based. Proposed Items 1606(c) through 1606(e) would provide additional information about the de-SPAC transaction and any related financing transaction, including whether a majority of unaffiliated security holders is required to approve the transaction(s), the involvement of any unaffiliated representative acting on behalf of unaffiliated shareholders, and whether the transaction(s) were approved by a majority of directors of the SPAC who are not employees of the SPAC. These proposed rules could allow investors to better evaluate potential conflicts of interest and misaligned incentives in connection with the decision to proceed with a de-SPAC transaction, which in turn would assist them in assessing the fairness of a particular de-SPAC transaction and any related financing transaction to unaffiliated security holders.[491]

As discussed in the baseline, SPACs rarely report the use of a fairness opinion when evaluations of prospective target are disclosed in de-SPAC-related filings.[492] A recent review of de-SPAC transactions in 2021 reported that approximately 85% did not disclose that a fairness opinion was obtained in connection with a de-SPAC transaction.[493] To the extent that the proposed required disclosures with respect to the fairness or unfairness of the proposed business combination would increase the use of fairness opinions, the cost of obtaining such services would present a new cost to the transaction that would likely be passed along to shareholders. The average costs for fairness opinions obtained by SPAC acquirers where such information was presented in an itemized format in SEC filings was approximately $270,000.00.[494]

Thus, SPACs may incur additional costs associated with proposed Item 1606(a) to the extent that, in response to this proposed item, SPACs newly seek to obtain fairness opinions. In addition, there is some potential for indirect costs to SPACs if they respond by providing for approval by unaffiliated security holders or directors, or retain an unaffiliated representative to act on behalf of unaffiliated security holders for purposes of negotiating the terms of a de-SPAC transaction of any related financing transaction. However, some costs to collecting or producing the newly required disclosures may be mitigated by other components of the regulatory baseline, which in this case includes the requirements imposed by self-regulatory organizations such a listing standards and FINRA rules.[495]

In particular, if the SPAC obtained its fairness opinion from a FINRA member, some of the disclosures responsive to proposed Item 1606(a) may already be prepared and provided to the SPAC because of existing FINRA requirements. Specifically, FINRA Rule 5150 requires its members (*i.e.,* broker-dealers or underwriters) to provide specified disclosures in a fairness opinion if it knows, or has reason to know, that the opinion will be provided to shareholders.[496] Some of the information that is required to be disclosed includes the following: (1) Whether the FINRA member will receive any additional significant payment or compensation contingent on the completion of the merger transaction; [497] (2) if the FINRA member independently verified information provided by the company requesting the opinion, a description of the information that was verified; [498] and (3) whether or not the fairness opinion addresses the fairness of the compensation to be received by the company's officers, directors or employees relative to the compensation to the public shareholders of the company.[499]

Proposed Item 1607(a) would require disclosure about whether or not the SPAC or its sponsor has received any report, opinion, or appraisal obtained from an outside party relating to the consideration or the fairness of the consideration to be offered to security holders or the fairness of the de-SPAC transaction or any related financing transaction to the SPAC, the sponsor or security holders who are not affiliates. Proposed Item 1607(c) would require any such report, opinion, or appraisal to be filed as an exhibit to the Form S–4, Form F–4, and Schedule TO for the de-SPAC transaction or included in the Schedule 14A or 14C for the transaction, as applicable. In addition, under proposed Item 1607(b), investors would receive information regarding, among

[490] *See supra* Section II.F.1 for information about the regulatory baseline.

[491] *See supra* Sections II.F.2 and II.F.3 for additional information about the regulatory baseline.

[492] *See supra* Section IX.B.2.e.

[493] *See* Levitt, Jacob, Fain, Marcogliese, Tiger, & Basham, *supra* note 416.

[494] As calculated over the observations in the baseline sample (reference first table in de-SPAC baseline (or its footnotes)) where data is available in the Dealogic M&A module or SDC Platinum database.

[495] For example, see existing FINRA Rule 5150 requirements for disclosures required of a broker-dealer when providing a fairness opinion in the role of financial advisor.

[496] *Id.*

[497] FINRA Rule 5150(a)(2).

[498] FINRA Rule 5150(a)(4).

[499] FINRA Rule 5150(a)(6).

other things, the outside party, including its qualifications and certain material relationships with the SPAC, its sponsors and their affiliates. We expect that these disclosures would benefit investors by providing relevant information about the fairness of a de-SPAC transaction and any related financing transaction. In addition, by providing more information to investors, these disclosures may lead to improved market participation, liquidity, and price efficiency. We expect that these disclosures would increase the costs associated with the de-SPAC transaction. However, those costs should be mitigated because the disclosure requirement does not require preparation of additional reports, appraisals and opinions, rather, it requires disclosure of documents that were obtained by management.

4. Proposed Item 1608 of Regulation S–K

We are proposing Item 1608 of Regulation S–K to codify a staff position that a Schedule TO filed in connection with a de-SPAC transaction should contain substantially the same information about a target private operating company that is required under the proxy rules and clarify that a SPAC must comply with the procedural requirements of the tender offer rules when conducting the transaction for which the Schedule TO is filed.[500] For example, proposed Item 1608 would clarify that SPACs that file a Schedule TO for a redemption must comply with the procedural requirements of Rule 13e–4 and Regulation 14E, such as the requirement to keep the redemption period open for at least 20 business days.

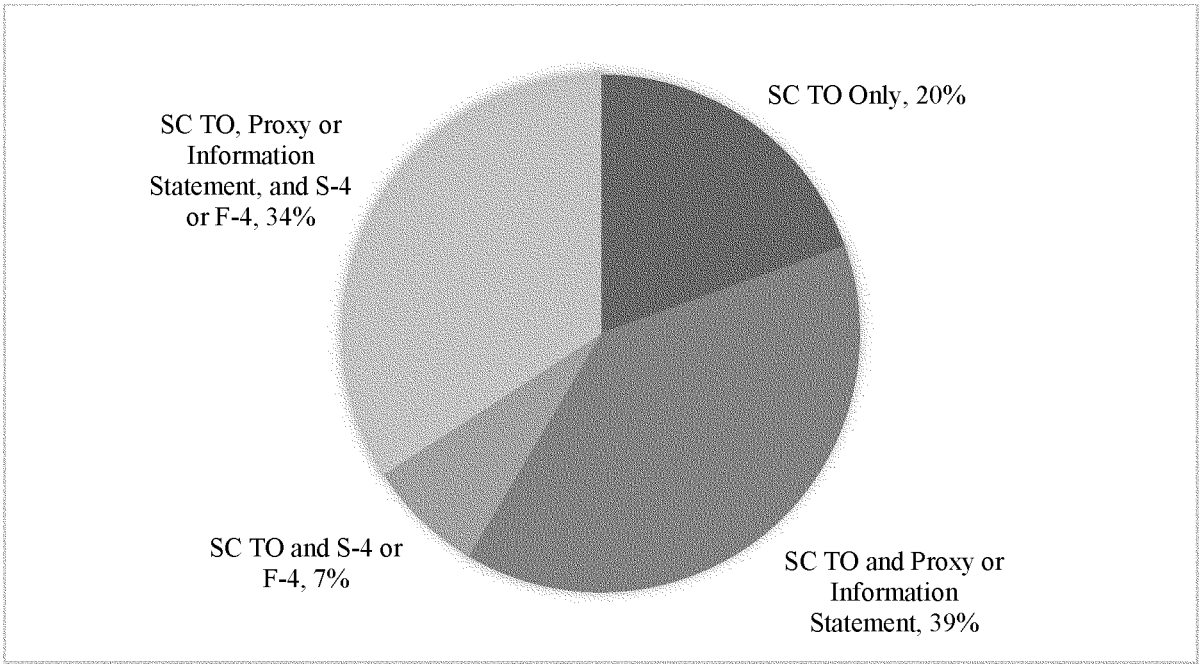
We expect that both the benefits and costs associated with this proposal to present modest changes from current practice, if any, because, historically, relatively few de-SPAC transactions have involved the filing of a Schedule TO alone and because, due to the staff position, most of the proposed disclosures are currently already provided. Between 2000 and 2021, of the approximately 575 registrants that filed a proxy statement on Schedule 14A, an information statement on Schedule 14C, a Schedule TO, or a registration statement on Form S–4 or F–4 that could relate to a de-SPAC transaction, a small portion of those registrants (approximately 7.1% or 41) filed a Schedule TO.[501] A smaller portion of these Schedule TO filings (approximately 20% or 8) occurred alone (*i.e.,* without the concurrent filing of a proxy statement, information statement, or registration statement that would provide additional disclosures regarding the de-SPAC transaction) (see Figure 8). However, given that the staff has historically expressed the view that a Schedule TO should include the same information about the target company that would be required in a Schedule 14A, in view of the requirements of Item 11 of Schedule TO and Item 1011(c) of Regulation M–A and the importance of this information in making a redemption decision, the proposed rule is unlikely to result in a meaningful difference in the nature or amount of information provided by registrants.[502]

[500] *See supra* Section II.F.4

[501] Staff review of SPACs that conducted an IPO between 2000 and 2021 and subsequently filed any type of potential de-SPAC transaction related filing (SC TO, SC13E4F, PRE 14A, PRE 14C, DEFA14A, DEFA14C, DEFM14A, DEFM 14C, DEF 14A, DEF 14C, S–4, or F–4) found that only approximately 7.1% of such SPACs, by unique CIK, filed a Schedule TO. It appears that the historic use of a Schedule TO in connection with a de-SPAC transaction corresponds to a period when share redemption was more limited and de-SPAC transactions were more commonly targeted by hedge funds engaged in 'greenmailing.' *See, e.g.,* Lucian Bebchuk, Alon Brav, Wei Jiang, Thomas Keusch, *Dancing with Activists,* 137 J. Fin. Econ. 1 (2020) (describing 'greenmail' as an event in which a company targeted by an activist shareholder such as a hedge fund, purchases shares from the activist at a premium to the market price). In the SPAC context, the activists were most commonly hedge funds that would threaten to prevent an acquisition by voting against a de-SPAC transaction and redeeming a large enough block of shares to cross the SPAC's redemption threshold if the SPAC refused to buy back its shares at a premium. *See, e.g.,* Leerskov, *supra* note 420 (''Many of these funds are arbitrage investors . . . turning a profit by voting against an acquisition, therefore recouping their initial investment while holding the associated warrants against any possible upside from a successful acquisition. Additionally, more investors began threatening to veto potential SPAC mergers in 2006 and 2007 unless they received deal sweeteners. Mostly, investors asked to be bought out at a premium in exchange for their votes in favor of a merger.''). This activity decreased, as did the use of a Schedule TO in connection with a de-SPAC transaction, as SPAC redemption thresholds increased in the early 2000s from approximately 20% on average to approximately 80% on average. *See, e.g.,* Milan Lakicevic, Yochana Shachmrove, & Milos Vulanovic, *Institutional Changes of Specified Purpose Acquisition Companies (SPACs),* 28 N. Am. J. Econ. & Fin. 149 (2014) (20.47% to 84.24% from 2003–2006 to 2009–2012); Rodrigues, *supra* note 67 (20.0% to 74.4% from 2003–2011); Vulanovic, *supra* note 414 (20% to 81.52% from 2003–2013). As such, historic use may be a poor predictor for estimates of future usage.

[502] *See supra* note 103.

Figure 8. De-SPAC Transactions Involving Schedule TO, 2000-2021



Finally, of the registrants that filed only a Schedule TO, 75% were foreign private issuers that originally registered an offering of shares via a Form F–1, while the remaining 25% were registrants incorporated or organized in a foreign jurisdiction that originally registered an offering of shares using a Form S–1. It is possible that, holding all else constant, any benefits or costs accruing as the result of proposed Item 1608 would do so to SPACs that are similar to these entities that may either not hold a shareholder vote or else hold a vote that is not subject to federal proxy rules. However, it is unclear what proportion of future SPACs would be of this type, since in the event proposed Rule 145a is also adopted, the number of SPACs may be less likely to file Schedules TO.

5. Enhanced Projections Disclosure Requirements (Item 1609)

Proposed Item 1609 complements the proposed amendments to Item 10(b) of Regulation S–K,[503] and pertains to projections made in connection with an anticipated de-SPAC transaction.[504] Proposed Item 1609 would require a registrant to disclose who prepared the projections and the purposes for which the projections were prepared. It would also require a discussion of all material bases of the disclosed projections and all material assumptions underlying projections, and any factors that may impact such assumptions. Furthermore, the proposed rule would require the board or management of the SPAC or target company to confirm at the date of the filing whether the projections reflect their current view, and if not, the purpose of disclosing the projections and the reasons for any continued reliance by management or the board on the projections.

In general, we expect that proposed Item 1609 would allow investors to better evaluate and use projections in connection with de-SPAC transactions. The required disclosure of preparers' identity and purposes for which the projections were prepared would help reveal potential conflicts of interest and the qualifications of the preparers' projection ability. The requirement to discuss material assumptions and underlying rationales would also inform investors about the verifiability of the projections. The proposed requirement to disclose whether the projections still reflect the views of management or the board should provide investors with further insight into the reliability and utility of those projections. Overall, the proposed disclosure under Item 1609 should benefit investors by helping them assess whether and to what extent they should rely on projections used in a de-SPAC transaction in making voting, redemption, and investment decisions.[505]

Proposed Item 1609, by requiring projection providers to identify themselves and related parties to confirm their reliance on the projections, would likely also increase the preparers' sense of accountability, and potentially increase their incentives to make reliable projections.[506] In turn,

[503] *See supra* Section V.B.1; *infra* Section IX.C.4.

[504] *See supra* Section III.D & Section VI. For additional information about the regulatory baseline for Item 1609, see *supra* Section V.B.2.

[505] D. Eric Hirst, Lisa Koonce, & Shankar Venkatram, *How Disaggregation Enhances the Credibility of Management Earnings Forecasts,* 45 J. Acct. Research 811 (2007), experimentally show that disaggregated forecasts, which include forecasts of individual income statement line items, *e.g.,* revenue and costs, are more credible to investors than aggregated forecasts that provide only the bottom-line earnings forecasts. Furthermore, Zahn Bozanic, Darren T. Roulston, & Andrew Van Buskirk, *Management Earnings Forecasts and Other Forward-looking Statements,* 65 J. Acct. & Econ. 1 (2018), demonstrate that non-earnings-forecast forward-looking statements can generate significant responses from both investors and analysts. Their findings indicate that the forward-looking statements, even statements unrelated to earnings, can provide value-relevant information to the capital market participants.

[506] Auditing literature provides evidence that audit quality increases and misreporting decreases when engaging partners are required to sign the audit report or when their identities are disclosed. Joseph V. Carcello & Chan Li, *Costs and Benefits of Requiring an Engagement Partner Signature: Recent Experience in the United Kingdom,* 88 Acct. Rev. 1511 (2013), document evidence that audit quality and audit fees increase in the first year when engaging partners are required to sign the audit report in the United Kingdom. Allen D. Blay, Eric S. Gooden, Mark J. Mellon, & Douglas E. Stevens, *Can Social Norm Activation Improve Audit Quality? Evidence from an Experimental Audit Market,* 156 J. Bus. Ethics 513 (2019),

investors could benefit from potentially improved projections in their investment decisions. The enhanced disclosure transparency about projections and the plausible improved projection accuracy would, in turn, facilitate more efficient allocation of capital.[507]

We do not expect the direct compliance costs to be substantial since companies should have the required information (*e.g.,* the party that provides the projections and the assumptions of growth rates or discount multiples) readily available at their disposal. To the extent that proposed Item 1609 increases contextual information related to SPAC projections, investors would incur incremental costs in processing the added information.[508] Potentially heightened accountability under proposed Item 1609 may also dampen the willingness of the managements and boards of SPACs and target companies to provide projections, which may decrease the amount of forward-looking information made available to investors and thus increases valuation uncertainty. To the extent that proposed Item 1609 dampens the willingness to provide projections, it would likely reduce projections without reasonable bases more than those with reasonable bases. Thus, the incremental costs of proposed Item 1609 would likely be justified by the incremental benefit of increased investor protection against materially misleading or speculative projections in connection with de-SPAC transactions.

6. Structured Data Requirement

As with the proposed specialized disclosure requirements applicable to SPACs at the IPO stage as discussed above, proposed Item 1610 would also require that the proposed disclosures prepared in compliance with respective sections of Regulation S–K Subpart 1600 applicable to de-SPAC transactions be tagged in Inline XBRL.[509] For the same reasons discussed above, we expect that the tagging requirement for de-SPAC transaction disclosures would augment the informational benefits to investors resulting from the proposed new disclosure requirements.[510] For example, tagging the disclosure of terms and amounts of the compensation received or to be received by a SPAC's sponsor and its affiliates in connection with a de-SPAC transaction, and the potential dilutive effects related to such compensation, could allow investors to make quantitative and qualitative comparisons to similar disclosure in other de-SPAC transactions or make it easier to compare these disclosures—including numeric values—to those presented at the SPAC's IPO stage.[511]

Unlike the proposed Inline XBRL tagging requirement for SPAC specialized disclosures which would apply to registration statements for initial public offerings, the proposed tagging requirement for de-SPAC transaction disclosures would not impose a tagging obligation on registrants that were not previously subject to tagging obligations, because SPACs are already subject to Inline XBRL tagging obligations as of their first periodic report on Form 10–Q, Form 20–F, or Form 40–F.[512] As such, the Inline XBRL tagging requirement for de-SPAC transaction disclosures would be limited to the cost of selecting, applying, and reviewing Inline XBRL tags to a new set of disclosures, or paying a third party to do so. As previously noted, there is some indication that these costs have trended downward in the years since the initial adoption of XBRL requirements for SEC filings.[513]

7. Minimum Dissemination Period

The proposed minimum dissemination period for prospectuses and proxy and information statements filed in connection with de-SPAC transactions is designed to ensure that SPAC shareholders have adequate time to review the information disclosed therein before making voting, investment and redemption decisions. To the extent that this would provide investors with more time than they would otherwise have because the SPAC's jurisdiction of incorporation or organization does not provide for a minimum dissemination period before a shareholder meeting or action by consent, or has a minimum dissemination period of fewer than 20 calendar days, this may allow them to make more informed choices. Relative to the current baseline, this proposal is likely to provide its greatest potential benefits to SPAC shareholders in de-SPAC transactions involving SPACs that do not incorporate by reference any information about the SPAC or the target, and are not incorporated in Delaware, or do not file a Schedule TO.[514] While Delaware General Corporation Law only requires that due notice of an upcoming meeting be provided 20 days prior to the event, and does not mandate a minimum period for dissemination of proxy statements or joint prospectus/proxy statements required by the federal securities laws,[515] we believe, based on staff experience reviewing filings, that the notices of the meeting mandated by Delaware law are often included in the proxy statement or joint prospectus/proxy statements, with many companies then delivering the proxy statements or joint prospectus/proxy statements in time to meet the Delaware notice requirement.[516]

While we recognize that the additional time we propose to provide to shareholders for review of de-SPAC transaction related disclosures may in effect shorten the time a SPAC may otherwise have to pursue a business combination within its limited time before dissolution, the incremental costs of formalizing a minimum review period should in most cases be low based on the existing requirements and practices discussed above and market-specific incentives. For example, as retail ownership of its shares increases, a SPAC may face increasing pressure to communicate with its investors earlier, more extensively, and with greater frequency to ensure that a quorum will be present at the shareholder meeting to approve a de-SPAC transaction and that a sufficiently high number of votes are cast in favor of the transaction.

experimentally demonstrate that PCAOB's requirement of disclosing engaging partners' identity can reduce misreporting.

[507] *See* Amy P. Hutton, Gregory S. Miller, & Gregory S. Skinner, *The Role of Supplementary Statements with Management Earnings Forecasts,* 41 J. Acct. Research 867, 867–890 (2003). They find that good news earnings forecasts are positively associated with investor reaction (*i.e.,* have information content) only when the forecasts are accompanied by verifiable supplementary forward-looking disclosures.

[508] *See* Elizabeth Blankespoor, Ed deHaan, & Iván Marinovic, *Disclosure Processing Costs, Investors' Information Choice, and Equity Market Outcomes: A review,* 70 J. Acct. & Econ. 1, 1–46 (2020). They suggest that it is costly to process firms' disclosures, even for the most sophisticated investors, and they conceptualize processing costs as awareness cost, acquisition cost, and integration cost.

[509] *See supra* Section II.G.

[510] *See supra* Section IX.C.1.a.5.

[511] *See* proposed Item 1604(a)(3) of Regulation S–K.

[512] *See supra* note 110 and accompanying text.

[513] *See supra* note 481 and accompanying text.

[514] Because a Schedule TO filed in connection with a de-SPAC transaction must already be filed 20 business days in advance of the close of the redemption period, the proposed 20 calendar day minimum dissemination period would not have an incremental effect. Similarly, there would be no incremental effect on the dissemination of Forms S–4 or F–4 in connection with a de-SPAC transaction if the registration incorporates any information about the registrant or its target by reference because a similar 20 business day requirement applies. *See supra* note 127. Further, in the event that proposed Rule 145a is adopted, we anticipate the majority of de-SPAC transactions would be accompanied by an S–4 or F–4 in which incorporation by reference is highly likely to occur.

[515] *See supra* Section II.F.5

[516] *See supra* Section III.B for more information about the regulatory baseline.

Notwithstanding this, we acknowledge that any costs associated with this proposal would likely increase as the dissolution date approaches, because, under such conditions, unique logistical costs like expedited printing and delivery would accrue. It is plausible that a de-SPAC transaction would not be able to proceed due to these proposed timing requirements, which could result in negative consequences (*e.g.,* forgone returns) for sponsors and SPAC shareholders. Given the significance of a de-SPAC transaction to SPACs and targets, however, we think it is more likely that SPACs and targets will account for the proposed dissemination period in establishing a timeline for their business combination. Another potential cost of the minimum dissemination period is that it could cause SPACs to enter into sub-optimal deals earlier in the process to avoid the risk of failing to acquire a company later in the window. However, given the state of current market practices as discussed above, we expect the incremental costs on this aspect of deal-formation uniquely attributable to the proposed minimum dissemination period are minimal.

8. Aligning Non-Financial Disclosures in De-SPAC Disclosure Documents

We are proposing that, if the target company in a de-SPAC transaction is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, the registration statement or schedule filed in connection with the de-SPAC must include disclosures relating to the target company that would be provided in a Form S–1 or F–1 for an initial public offering.[517] Currently, this information is required to be included in a Form 8–K with Form 10 information that must be filed within 4 business days after the completion of a de-SPAC transaction. In contrast, the proposed disclosure requirements would require that target company information be provided to shareholders before they make voting, investment, or redemption decisions in connection with the de-SPAC transaction. This could reduce potential opportunities to engage in regulatory arbitrage, minimize differences in informational content, timing, and presentation, and potentially provide investors with more information about the target company when making such decisions. The benefits of such alignment to unaffiliated investors would depend on the ability of investors to otherwise procure such information prior to the filing of the Form 8–K with Form 10 information.

We expect that a SPAC or its sponsors would absorb the related costs if the proposed additional information necessitates earlier or increased information production and dissemination, although a portion of these costs may accrue to non-redeeming shareholders if costs are paid from the trust or escrow account of the SPAC. Generally, we expect that such costs will be low to the extent that SPACs disclose this information about the target company prior to the completion of the de-SPAC transaction; however, we recognize that some items may be more costly to disclose earlier than others.

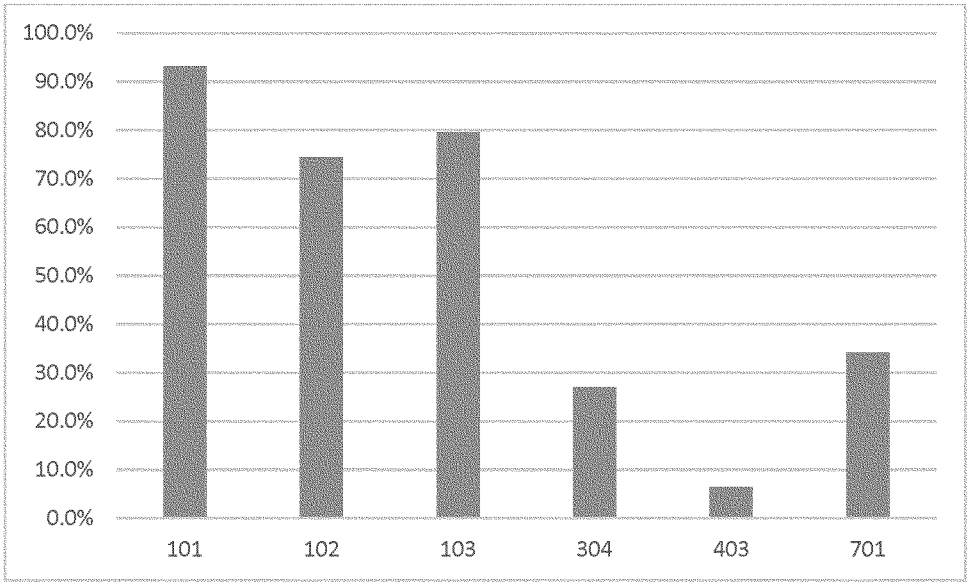
The costs and benefits of these proposed disclosures depend on the baseline level of information available that is required to be disclosed in the Form 8–K with Form 10 information that is currently disclosed in advance of the filing of the Form 8–K. To assess the extent to which registrants may already disclose Form 10 information about the target company in a different Commission filing before filing the Form 8–K, the staff examined the frequency and scope of incorporation by reference in such 8–K filings, finding that 95% of the 8–K filers incorporated at least one of the required Form 10 items by reference.[518] Most of the Form 8–K filings that incorporated items by reference referred to disclosures previously filed in a proxy or information statement (88% of filers), and 46% of these filings incorporated disclosures from a registration statement filed in connection with the de-SPAC transaction.[519]

[517] *See supra* Section III A.

[518] Items 2.01(f), 5.01(a)(8), and 9.01(c) of Form 8–K each provide that if any required disclosure under these items has been previously reported, the registrant may, in lieu of including that disclosure in the Form 8–K, identify the filing in which that disclosure is included.

[519] Because some filers incorporate disclosure by reference from more than one source, the total percentage of usage across sources exceeds 100%.

Figure 9. Incorporation by Reference in Form 8-K by Regulation S-K Disclosure Item[a]



[a] Data here represents the frequency of incorporation by reference per item that would be affected by the proposed amendment as a percent of Forms 8-K filed in connection with a de-SPAC transaction (described in Figure 3 note a) that incorporated any item by reference.

Figure 9 shows the information that is incorporated by reference in the Forms 8–K filed in connection with de-SPAC transactions, as identified by the item requirement of Regulation S–K. Disclosures pursuant to Items 101 (description of business), Item 102 (description of property), and Item 103 (legal proceedings) of Regulation S–K are most commonly incorporated by reference. Less frequently incorporated by reference are disclosures pursuant to Item 304 (changes in and disagreements with accountants on accounting and financial disclosure), Item 403 (security ownership of certain beneficial owners and management, assuming the completion of the de-SPAC transaction and any related financing transaction), and Item 701 (recent sales of unregistered securities) of Regulation S–K.[520] Thus, to the extent that registrants already provide this information in the proxy statements, information statements, registration statements, and Schedules TO filed in connection with the de-SPAC transaction, the benefits and costs of compliance with this proposed rule may be mitigated.

As a result of this proposed rule, investors may obtain disclosure required by Item 403 of Regulation S–K regarding the target company's beneficial ownership structure before making a voting, redemption, or investment decision in connection with the de-SPAC transaction, which could, in some cases, represent a meaningful change to the informational environment in advance of the completion of a de-SPAC transaction, particularly when this information may be critical to an investor's ability to evaluate potential conflicts of interest. In addition, the disclosures may allow investors to identify potential misalignments of interests between non-redeeming shareholders and other parties to the de-SPAC transaction. This proposed requirement therefore may provide increased investor protections and generally improve the information environment for investors to make a voting, redemption, or investment decision in connection with the de-SPAC transaction.

Because a SPAC and its intended target should have access to this information in advance of a de-SPAC transaction, we do not anticipate significant costs to preparing such information and incorporating it into disclosures disseminated at an earlier stage in the de-SPAC transaction process.

We believe that the proposed additional information is unlikely to impose significant changes to the information that a SPAC would otherwise disclose or the costs for incremental changes relative to current market practice. To the extent that these requirements may lead to the production and dissemination of information that would not be disclosed until after the completion of the de-SPAC transaction, the availability of this information in the registration statement or schedule filed in connection with the de-SPAC transaction may improve investor decision-making.

9. Re-Determination of Smaller Reporting Company Status

The main benefit from the proposed amendment to re-determine smaller reporting company status of a post-

[520] While these items are less frequently incorporated by reference, their absence may not indicate missing information. For example, filers may not have provided Item 304 or Item 701 disclosures in earlier filings because there were no changes in and disagreements with accountants or recent sales of unregistered securities to report. When disclosures are presented in the Form 8–K, Item 304 disclosures are incorporated by reference in approximately 32% of filings and newly disclosed in 68% of filings. Similarly, for Item 701 disclosures, the proportions of Forms 8–K that incorporate by reference and include new disclosure, are respectively approximately 35% and 65%.

business combination company following a de-SPAC transaction would be to reduce regulatory arbitrage by requiring a target company going public through a de-SPAC transaction to provide similar information to investors as a comparable company conducting a traditional initial public offering.[521] For larger target companies, this would require providing more comprehensive and more detailed disclosure to investors soon after the de-SPAC transaction. Overall, we expect this amendment to increase investor protection by allowing investors to assess the combined company more thoroughly and sooner. Large target companies may also reap the benefit of reduced cost of capital insofar as providing additional historical periods of financial statement data might further reduce information asymmetries or otherwise improve price formation.[522]

The proposed amendment would increase compliance costs compared to the current baseline for large target companies that, after combining with the SPAC, do not meet the smaller reporting company definition as of the proposed new re-determination date. Those companies may need to provide more detailed disclosure to investors soon after the de-SPAC transaction. We note, however, that some of these companies that meet the definition of emerging growth company could avail themselves of the accommodations associated with EGC reporting requirements, which could mitigate some of the disclosure costs required by the proposed amendment. We do not expect the proposed amendment to impose any costs on post-business combination companies when, at the time of the de-SPAC transaction, neither the SPAC nor the target company meet the smaller reporting company definition.

2. Liability-Related Proposals

In addition to the proposals discussed above pertaining to disclosures, we are proposing to clarify and amend the existing liability framework in an effort to resolve certain ambiguities and protect investors. In this section, we discuss the potential costs and benefits of the proposed amendment to Form S–4 and Form F–4 to require that the SPAC and the target company be treated as co-registrants when these registration statements are filed by the SPAC in connection with a de-SPAC transaction. In addition, we discuss the proposed amendment to the definition of ''blank check company'' for purposes of the PSLRA to remove the ''penny stock'' condition, and proposed Rule 140a that would clarify the underwriter status of SPAC IPO underwriters in registered de-SPAC transactions.

a. Private Operating Company as Co-Registrant to Form S–4 and Form F–4

When a de-SPAC transaction is registered on a Form S–4 or F–4, the party that files a registration statement currently depends on the structure of the merger or acquisition. While the result of any de-SPAC transaction involving a registered offering would be that the target company becomes a public reporting company, the liability it and its officers and directors face for disclosures in the registration statement that inform investors' decisions regarding the de-SPAC transaction is largely a function of how the transaction is structured. For example, when the de-SPAC transaction is structured such that the SPAC registers the offering of its shares to target shareholders and the target merges into the SPAC, the SPAC would typically sign the registration statement as the registrant and the SPAC and certain officers and directors of the SPAC that sign the registration statement would incur liability for disclosures in the registration statement. Alternatively, a de-SPAC transaction can be structured so that the target registers the offering of its shares to SPAC shareholders, such that the target would typically be the registrant, and the target and certain officers and directors of the target would sign the registration statement and incur liability for disclosures in the registration statement.[523]

We are proposing to amend Form S–4 and Form F–4 to require that the SPAC and the target company be treated as co-registrants when a registration statement is filed by the SPAC in connection with a de-SPAC transaction. As a result, both the SPAC and the target, and certain officers and directors of the SPAC and target, would be required to sign the registration statement and incur potential liability for statements and omissions therein. Treating the target as a co-registrant in this situation is intended to provide similar investor protections as if the target had entered the public market through a traditional IPO (or a de-SPAC transaction structure in which a Securities Act registration statement is filed by the target, rather than the SPAC).

The liability associated with being a co-registrant could incentivize the target company's directors and management to exercise greater care in the preparation and presentation of material information about the company, its financial condition, and its future prospects; perform more robust due diligence with respect to materials it obtains from third-party sources in connection with the de-SPAC transaction; and more closely monitor disclosures in the registration statement. Thus, the proposed requirement could improve the reliability of the disclosure provided to investors about the target company, reduce the instances of misstatements and omissions, and generally improve investors' decision making with regard to these transactions.

The proposed co-registrant requirement would increase compliance costs for targets compared to the baseline in cases where the target would not already have been the registrant at the time of the de-SPAC transaction. Under the proposed rule, a target and its signing officers and directors would be liable to investors for the accuracy of the disclosures in such a registration statement. This increase in potential liability from the current baseline for targets and their signing officers and directors could impact the decision of a private company to go public via a de-SPAC transaction. It is possible that, due to some of the ways the proposed rules would alter differences, actual or perceived, between the disclosure requirements and liabilities associated with becoming a public reporting company via a traditional IPO versus being acquired by a SPAC, some targets could reconsider a traditional initial public offering instead. It is also possible that other potential targets may determine that the liability costs (including, but not limited to, increased litigation risk and the potential need for new insurance coverage or higher premiums for existing coverage) associated with being a co-registrant would be too high and elect not to go public. Given the multifaceted benefits of being a public company, however, it is unclear that the costs of being a co-registrant would be the determining factor that would discourage a target from going public through a de-SPAC transaction or outweigh other factors that typically drive the going public decision such as liquidity for company insiders and the lower cost of capital.

b. PSLRA Safe Harbor

Defining the term ''blank check company'' for purposes of the PSLRA as proposed, would make the PSLRA safe harbor unavailable for forward-looking

[521] *See infra* Section III.C for more information on the regulatory baseline.

[522] *See supra* note 368.

[523] *See supra* Section III.C for more information about the regulatory baseline.

statements made in connection with an offering by a blank check company that is not issuing ''penny stock'' as defined in Exchange Act Rule 3a51–1, including an offering of securities by a SPAC in connection with a de-SPAC transaction.[524] As noted above, many commentators have raised concerns about the use of forward-looking statements that they believe to be unreasonable in de-SPAC transactions.[525] By providing greater clarity regarding the availability of the PSLRA safe harbor, the proposed amendment should strengthen the incentives for a blank check company that is not issuing penny stock, including a SPAC, to avoid potentially unreasonable and potentially misleading forward-looking statements, and to expend more effort or care in the preparation and review of forward-looking statements.[526] For example, if less time and effort is required to produce meaningful cautionary statements than to produce careful and robust forward-looking statements, absent the proposed changes, market participants may have an incentive to underinvest in the production of reliable forward-looking statements. By increasing the potential costs to companies of making forward-looking statements, the proposed changes are expected to increase the incentives for blank check companies that are not issuing penny stock to exercise more care in making any such statements. Similar investor protection benefits may apply to registered securities offerings of non-SPAC registrants that would meet the current definition of a ''blank check company'' but for the ''penny stock'' condition.

The net economic effect of this proposed amendment, however, would depend on, among other things: (1) The extent to which practitioners currently are willing to advise their clients that the PSLRA safe harbor is available for forward-looking statements made by blank check companies that are not issuing penny stock that otherwise meet the conditions of the safe harbor; (2) the extent to which the market does not already discount the informational value of forward-looking statements; and (3) the costs associated with valuable information that may no longer be provided due to any perceived increase in the risk of potential litigation.

While amending the definition of ''blank check company'' in this manner would clarify that the statutory safe harbor in the PSLRA is not available for forward-looking statements made in connection with offerings by SPACs or other blank check companies that are not penny stock issuers, it could impose costs on any such companies that currently attempt to rely upon the safe harbor to communicate value-relevant information to investors through forward-looking statements. For such companies, this proposed amendment could increase the perceived risk of litigation and dissuade them from including such forward-looking information. This information could be valuable in offerings involving business combinations with private operating companies given that less historical information regarding private companies is likely otherwise available.[527] In addition, we note that, while there is no prohibition on the use of forward-looking statements in connection with an initial public offering, the fact that the express terms of the PSLRA provide that the safe harbor is unavailable for such statements, and the concomitant heightened litigation risks associated with providing forward-looking statements, may have created a chilling effect given that, in staff experience, projections are almost never provided to the public in connection with an IPO. The proposed amendments similarly may lead to fewer forward-looking statements in connection with offerings by SPACs or other blank check companies that are not penny stock issuers. This effect would likely be stronger for blank check companies affected by the proposal that are considering whether to include forward-looking statements about younger target companies with fewer observable periods of profit historically, as most of their value typically comes in the form of future growth options. Such blank check companies that are not penny stock issuers might otherwise be the most likely to use forward-looking statements to communicate the potential for future value creation to investors at the time of a business combination.

Additionally, if the proposed amendment reduces the amount of potentially relevant information presented to investors in connection with a de-SPAC transaction or other business combination involving a blank check company that is not a penny stock issuer due to perceived litigation risk, this may negatively affect investors' ability to accurately value these companies and allocate their investments accordingly. For blank check companies that are SPACs, such costs could be mitigated if some of the other amendments that we are concurrently proposing are adopted and improve the flow of relevant information to investors at the de-SPAC transaction stage. Similar costs may also be mitigated for investors in non-SPAC blank check companies not issuing penny stock that would be subject to proposed Rule 145a as reporting shell-companies.[528] Because reporting shell company shareholders may, under proposed Rule 145a, receive registration statement disclosures in connection with a reporting shell company's merger activity, the proposed rule could result in incremental information about the target company being provided to reporting shell company shareholders, to the extent that those investors would not otherwise receive such information.

c. Underwriter Status and Liability in Securities Transactions

Proposed Rule 140a would clarify that a person who has acted as an underwriter in a SPAC IPO and participates in the distribution by taking steps to facilitate the de-SPAC transaction, or any related financing transaction, or otherwise participates (directly or indirectly) in the de-SPAC transaction will be deemed to be engaged in the distribution of the securities of the surviving public entity in a de-SPAC transaction within the meaning of Section 2(a)(11) of the Securities Act. The statutory definition of an ''underwriter'' under the Securities Act is broad and does not include an element of intent; as a result, a person could perform functions that would cause the person to meet the statutory definition of an ''underwriter'' within the meaning of Section 2(a)(11) of the Securities Act without appreciating that they are doing so. This may in turn lead to both deal-specific and market-wide economic inefficiencies such as underinvestment in diligence or screening. For example, an investment banker, or financial

[524] *See supra* Section IX.B.3. *See also supra* Section III.E for more information about the regulatory baseline.

[525] *See supra* note 33.

[526] *See supra* note 279.

[527] *See* Vijay Jog & Bruce J. McConomy, 30 J. Bus. Fin. & Adver. 125 (2003) (finding that the voluntary provision of earnings forecasts in connection with Canadian IPOs (subject to a two-year horizon maximum and accompanied by a statement of opinion by a public accountant) had incremental value beyond other methods of signaling firm quality such as the use of a highly reputable underwriter or auditor, including ''a favorable and noticeable impact on the degree of underpricing and the post-issue return performance'' and that benefits are most pronounced for ''small firms and those making conservative forecasts.'').

[528] *See supra* Section IX.B.4 and note 445.

advisor providing services in connection with a de-SPAC transaction may not adequately fulfill their role as a gatekeeper for disclosures in a de-SPAC transaction registration statement if they are unaware that they are an underwriter and face potential liability as such.[529]

A key benefit from proposed Rule 140a would be the incentives that it would create for SPAC IPO underwriters that may be subject to Section 11 liability for registered de-SPAC transactions to perform due diligence to ensure the accuracy of the disclosures in these transactions. Improved due diligence would enhance investor protection by allowing investors to better evaluate the target company and, in turn, potentially make better investment decisions. We expect that clarifying the application of underwriter liability, combined with the disclosures of proposed Subpart 1600 of Regulation S–K, could significantly improve the ability of SPAC shareholders to evaluate the target company. This may allow these investors to better price the securities of the combined company and decrease the likelihood that they overvalue the target company under consideration. Additionally, more clearly defined Section 11 liability may enhance shareholders' ability to pursue a remedy, if needed.

Potential Section 11 liability may deter a SPAC IPO underwriter from participating in the de-SPAC transaction or any related financing transactions by increasing their costs. The extent to which proposed Rule 140a would impose new costs on SPAC IPO underwriters would depend heavily on the extent to which they do not already perform due diligence that would be sufficient to perfect such a defense in connection with the de-SPAC transaction or a related financing transaction. If SPAC IPO underwriters decide not to provide services in connection with the de-SPAC transaction or a related financing transaction due to proposed Rule 140a, the SPAC may incur greater monetary and non-monetary costs related to identifying, negotiating with, and hiring financial advisors. Also, because a significant portion of SPAC IPO underwriting fees (typically 3.5% of IPO proceeds) is usually deferred until, and conditioned upon, the completion of the de-SPAC transaction, SPAC IPO underwriters that decide not to participate in the de-SPAC transaction as a result of this proposal may revise their compensation agreements so that they would be paid only at the time of the SPAC initial public offering. Such a change in the timing of compensation may increase the up-front transaction costs of the initial public offering for SPAC investors and sponsors. It is possible, however, that underwriter compensation may decrease if underwriters would not be expected to provide any services in connection with the de-SPAC transaction or any related financing transaction.

Alternatively, proposed Rule 140a may cause SPAC IPO underwriters to demand higher compensation for their participation in the de-SPAC transaction or any related financing transaction given the potential exposure to Section 11 liability. The fees that SPAC IPO underwriters currently charge for their efforts in connection with a SPAC initial public offering generally range between 5% and 5.5% of the initial public offering proceeds, with potentially additional merger advising fees charged at the de-SPAC transaction stage. It is difficult to predict whether these fees would increase to incentivize SPAC underwriters to participate in de-SPAC transactions or the amount of any such increase. For comparison, the underwriter fees in the traditional initial public offering process, where underwriters have Section 11 liability, are, on average, 7% of the IPO proceeds.[530] It is possible, however, that SPAC IPO underwriters could demand higher fees for potentially bearing Section 11 liability in connection with the de-SPAC transaction or any related financing transaction. Any increase in the compensation of SPAC IPO underwriters would increase the transaction costs to investors and sponsors, potentially lowering their returns on their investment.

Finally, to the extent that SPAC IPO underwriters decide not to participate in the de-SPAC transaction or any related financing transaction due to potential Section 11 liability, investors would not have the protection of any due diligence that SPAC IPO underwriters may have performed in connection with such transactions. However, if SPAC IPO underwriters are able and willing to absorb some of the costs associated with potential Section 11 liability (*e.g.,* because of other benefits, such as revenues from future repeat business with sponsors), the potential cost increase for SPAC shareholders and sponsors may be small.

3. Shell-Company Related Proposals

a. Proposed Rule 145a

Proposed Rule 145a would deem any business combination of a reporting shell company (that is not a business combination related shell company) involving an entity that is not a shell company to involve a sale of securities under the Securities Act to the reporting shell company's shareholders. Proposed Rule 145a is intended to address concerns regarding the use of reporting shell companies generally as a means by which private unregistered companies access the U.S. capital markets. One reason for these concerns is that reporting shell company shareholders may not receive the Securities Act protections (including disclosure and liability) they receive in a traditional IPO because of transaction structure. Under the proposed rule, SPACs and other reporting shell companies would have to register these deemed sales by filing a Securities Act registration statement unless there is an applicable exemption.[531]

Proposed Rule 145a would potentially provide shareholders in a reporting shell company, engaged in a business combination involving a non-shell company, with more consistent Securities Act protections, regardless of the structure used for the business combination. Currently, if a reporting shell company buys a target by issuing its shares as consideration for the interests of the target shareholders, and the reporting shell company is the surviving entity, reporting shell company investors are unlikely to receive a registration statement in connection with the transaction. In this example, the reporting shell company shareholders would not receive the protections afforded by the Securities Act, including any enhanced disclosure or liability that would be available if the transaction were registered under the Securities Act.

Proposed Rule 145a is intended to address potential disparities in the types of disclosure and liability protections available to reporting shell company shareholders depending on the transaction structure used in a reporting shell company business combination, and thus, is expected to bolster investor protection for reporting shell company shareholders. This could be of particular benefit to shareholders in reporting shell companies that may not otherwise receive information about the intended target, or potentially even notification that a specific business combination

[529] *See supra* Section III.E.3 for more regulatory baseline information.

[530] *See, e.g.,* Hsuan-Chi Chen & Jay Ritter, *The Seven Percent Solution,* 55 J. Fin. 1105 (2000).

[531] *See supra* Section IV.A.2 for more information about the regulatory baseline.

will be entered into, until after the transaction has occurred. Additionally, receipt of registration materials may provide a beneficial nudge to reporting shell company shareholders who might otherwise be vulnerable to inertia by calling attention to the nature in which their investment would be transformed should they continue to hold their securities.[532] However, these informational benefits to affected reporting shell company shareholders may be mitigated to the extent that the reporting shell company is able to rely on an exemption from registration and shareholders do not receive offering materials in connection with the deemed sale. Because it is unclear the extent to which reporting shell company shareholders may be able to anticipate which disclosure and liability protections will be available to them at the time of a business combination (as a function of whether an exemption would be available), the extent to which proposed Rule 145a might improve price or capital formation is also unclear.

As a result of proposed Rule 145a, reporting shell companies, including SPACs, would be required to register the deemed sale of their securities to their shareholders at the time of certain business combinations, unless there is an available exemption. Costs would increase to the extent that a business combination is not already structured in a manner that otherwise would have been considered a sale to the reporting shell company shareholders under the securities laws. This would include all costs associated with conducting a registered offering of securities, such as preparing a Securities Act registration statement, if no exemption is available. The proposed rule may also introduce opportunity costs in the form of transactions that might otherwise have occurred, but would be disincentivized under the new requirements. For example, under current rules, a business combination involving a reporting shell company can be structured to avoid registration, such as through the use of cash, rather than stock, as consideration. Because proposed Rule 145a would deem such a transaction to involve a sale to reporting shell company shareholders that would need to be registered unless there is an applicable exemption, affected parties may opt not to pursue such a transaction rather than incur the new transaction costs involved. There may also be financial-exclusion related costs if reporting shell companies are increasingly incentivized to pursue exemptions from registration and as a consequence pre-emptively seek to place their securities with only certain types of investors such as accredited investors or non-accredited sophisticated investors.

To the extent that this proposal would apply the strict liability standard of Section 11 to transaction-related disclosures to which it would not otherwise apply, we expect there to be extra costs associated with greater care in preparation and review of any reporting shell company registration statement.[533] Also, there could be some costs associated with timing issues generated by SEC staff review of any registration statement. Some of these costs may be mitigated to the extent that the reporting shell company or target is already preparing disclosure documents, particularly Securities Act registration statements, in connection with a business combination that would be covered by proposed Rule 145a. For example, in a de-SPAC transaction, the SPAC and/or target company may already be preparing a Schedule 14A, 14C, or TO, or a Form S–4 or F–4. Reporting shell companies and SPACs also typically prepare Forms 8–K containing Form 10 disclosures that are filed shortly after the business combination.

b. Financial Statement Requirements in Business Combination Transactions Involving Shell Companies

Proposed Article 15 of Regulation S–X and related amendments aim to align more closely the financial statement reporting requirements in business combinations involving a shell company and a private operating company with those in traditional initial public offerings. These amendments may reduce the potential for regulatory arbitrage by private companies that go public through a business combination with a shell company rather than a traditional initial public offering. Furthermore, the proposed disclosure and audit requirements (*e.g.,* proposed Rule 15–01(a)) may reduce information asymmetry surrounding shell company business combinations, including de-SPAC transactions, which may in turn benefit private operating companies going public by reducing the cost of capital.[534] The proposed rules and amendments that clarify applicable definitions and streamline compliance processes (*e.g.,* Rule 15–01(b), (c), (d), (e)), are expected to reduce ambiguity and facilitate compliance.

The proposed rules and amendments may allow investors to more readily locate and process relevant information, reduce processing costs, and increase their confidence in the reporting provided by entities involved in these business combinations.[535] In turn, the proposed rules and amendments may help investors to more efficiently make voting, redemption, and investment decisions. In addition, many of the proposed rules and amendments would codify existing staff guidance or financial reporting practices. Thus, to the extent that registrants are already preparing statements and reports consistent with the proposed rules and amendments, the incremental benefits and costs would be limited. Below, we discuss the potential benefits and costs of each individual item under proposed Rule 15–01 of Regulation S–X and the other amendments.[536]

1. Rule 15–01(a) Audit Requirements of Predecessor

Proposed Rule 15–01(a) would align the level of audit assurance required for the target private operating company in merger transactions involving a shell company with the audit requirements for an initial public offering of equity securities. The proposed rule would codify existing staff guidance that financial statements of the business, *i.e.,* target private operating company, in a transaction involving a shell company should be audited to the same extent as a registrant in an initial public offering; that is, an examination of the financial statements by an independent accountant in accordance with the standards of the PCAOB for the purpose of expressing an opinion thereon.

Proposed Rule 15–01(a) should benefit investors by requiring assurance over financial statements consistent with a traditional IPO.[537] To the extent

[532] Investor inertia refers to the tendency to avoid trading. *See, e.g.,* Laurent E. Calvert, John Y. Campbell, & Paolo Sodini, *Fight or Flight? Portfolio Rebalancing by Individual Investors,* 124 Q. J. Econ. 301 (2009) (''observing little aggregate rebalancing in the financial portfolio of participants'').

[533] *See generally supra* Section IX.C.2 discussion on costs of increased liability.

[534] *See* Michael Minnis, *The Value of Financial Statement Verification in Debt Financing: Evidence from Private U.S. Firms,* 49 J. Acct. Research 457, 457–506 (2010). Using a large sample of privately held U.S. firms, the author found that audited firms enjoy a lower interest rate than unaudited firms, and that lenders place more weight on audited financial information in setting the interest rate. *See also* Mathieu Luypaert & Tom Van Caneghem, *Can Auditors Mitigate Information Asymmetry in M&As? An Empirical Analysis of the Method of Payment in Belgian Transactions,* 33 Auditing 57, 57–91 (2014). This study finds that audits can mitigate information asymmetry about the target's value, reducing the need for a contingent payment.

[535] *See supra* note 508.

[536] *See supra* Section IV.B for additional regulatory baseline information.

[537] *See* Phillip Lamoreaux, *Does PCAOB Inspection Access Improve Audit Quality? An Examination of Foreign Firms Listed in the United*

Continued

that audited financial statements may have more predictive power of future cash flows, the proposed rule also may benefit shell companies and target private operating companies by lowering their cost of capital.[538] The proposed amendment may, however, increase the compliance costs (*e.g.,* audit costs) of the business combination. To the extent that target private operating companies are, in practice, already including financial statements audited under PCAOB standards, the above incremental benefits and costs likely would be limited.

2. Rule 15–01(b) Number of Years of Financial Statements

Under proposed Rule 15–01(b), a shell company registrant would be permitted to include in its Form S–4/F–4/proxy or information statement two years of statements of comprehensive income, changes in stockholders' equity, and cash flows for the private operating company for all transactions involving an EGC shell company and a private operating company that would qualify as an EGC, and this determination would not be dependent on whether the shell company has filed or was already required to file its annual report or not.

For such transactions, registrants may benefit from reduced cost of producing audited financial statements because this rule would potentially reduce the number of years of financial statements required from three years to two years. For those transactions, this proposed rule would cause some information loss for investors. However, at least two years' of statements of comprehensive income, changes in stockholders' equity, and cash flows for the private operating company would be provided, the same amount that would be required for an initial public offering.

3. Rule 15–01(c) Age of Financial Statements of the Predecessor

Proposed Rule 15–01(c) would provide that the age of financial statements for a private operating company that would be the predecessor to a shell company in a registration statement or proxy statement would be based on whether the private operating company would qualify as a smaller reporting company if it were filing its own initial registration statement. Because we believe that this proposed amendment would be consistent with existing practice, we do not expect it to have significant economic effects for registrants or investors. This proposed rule also should help maintain consistency in disclosure requirements across the different routes of going-public, which may reduce compliance uncertainty for registrants and their predecessors and increase investor confidence.

4. Rule 15–01(d) Acquisitions of Businesses by a Shell Company Registrant or Its Predecessor That Are Not or Will Not Be the Predecessor

Proposed Rule 15–01(d) would require application of Rules 3–05 or 8–04 (or Rule 3–14 as it relates to a real estate operation), the Regulation S–X provisions related to financial statements of an acquired business, to acquisitions of businesses by a shell company registrant, or its predecessor, that are not or will not be the predecessor to the registrant. Given our understanding that this proposed amendment codifies current market practices, we believe that the incremental benefits and costs should be limited.

We also are proposing to amend Rule 1–02(w) of Regulation S–X to require that the significance of the acquired business be calculated using the private operating company's financial information as the denominator instead of that of the shell company registrant. The current use of the shell company registrant, which has nominal activity, for the denominator results in limited to no sliding scale for business acquisitions, including those made by the private operating company that will be the predecessor to the shell company because every acquisition would be significant and thus require financial statements. Therefore, the proposed amendment may alleviate registrants' compliance burden to the extent that it would not result in disclosure related to insignificant acquisitions. Although, the proposed amendment may reduce the information available to investors about business acquisitions by the private operating company that will be the predecessor to the shell company, it may also reduce investors' information processing costs by focusing on financial statements of acquired businesses that are significant rather than all acquired businesses.

This proposed amendment to Rule 11–01(d) may change the application of Rule 11–01(b)(3) such that subsequent business acquisitions may be tested against pro forma amounts that combine the SPAC and the private operating company. This may result in fewer subsequent acquisitions being significant because the denominator of the significance tests, including the combined total assets of the private operating company and SPACs, are larger than only the private company's total assets. Accordingly, registrants' compliance burden would likely be reduced. We also believe any potential costs to investors as a result of decreases in disclosure may be mitigated by the fact that registrants must otherwise disclose material information about the acquisition that is necessary to make the required statements not misleading.

Proposed Rule 15–01(d)(2) would require a shell company that omits from a registration statement or proxy statement the financial statements of a recently acquired business that is not or will not be its predecessor pursuant to Rule 3–05(b)(4)(i) file those financial statements in an Item 2.01(f) Form 8–K. The proposed amendment would alleviate any ambiguity regarding the timing in which these financial statements are required to be filed, which would facilitate compliance for the registrant. This amendment also should help ensure that investors receive predictable and timely disclosure about the acquired business.

5. Rule 15–01(e) Financial Statements of a Shell Company Registrant After the Combination With Predecessor

Proposed Rule 15–01(e) would allow a registrant to exclude the pre-acquisition financial statements of a shell company (including a SPAC) for periods prior to the acquisition once the following conditions have been met: (1) The financial statements of the shell company have been filed for all required periods through the acquisition date, and (2) the financial statements of the registrant include the period in which the acquisition was consummated. The proposed rule could reduce disclosure that may no longer be relevant or meaningful to investors when the pre-business combination financial statements of the shell company are included in previous filings and the historical financial statements of the shell company likely are no longer representative of the combined company. Thus, this proposed rule should reduce compliance costs related to filing previous year financial statements of a shell company. Investors may also benefit from the increased

States, 61 J. Acct. & Econ. 313, 313–337 (2016). The author documented that PCAOB-inspected auditors, compared to auditors not subject to PCAOB inspections, provide higher quality audits, which are reflected by more going concern opinions, more reported material weaknesses, and less earnings management.

[538] *See* Michael Minnis, *The Value of Financial Statement Verification in Debt Financing: Evidence from Private U.S. Firms,* 49 J. Acct. Research 457, 457–506 (2010) (finding that audited financial statements have more predictive power for future cash flows, which may explain lower cost of capital as well as greater reliance by lenders).

efficiency in processing business combination filings.

6. Other Amendments

We are proposing additional amendments to Regulation S–X, as well as an amendment to Form 8–K.[539] The proposed amendment to Rule 11–01(d) would state that a SPAC is a business for purposes of the rule, which may cause an issuer that is not a SPAC to be required to file financial statements of the SPAC in a resale registration statement on Form S–1. This proposed amendment may facilitate the compliance process for companies engaging in an acquisition with a SPAC and alleviate their compliance burden. Investors also would likely benefit from having the financial statements of the SPAC, particularly when they underpin adjustments to pro forma financial information in a transaction when an operating company is the legal acquirer of a SPAC. As a result of the proposed amendment, a registrant may incur additional compliance costs if it is required to provide financial statements of the SPAC in a resale registration statement. However, any additional costs should be mitigated to the extent that financial statements of the SPAC were previously prepared, audited, and filed with the Commission.

The proposed revision to Item 2.01(f) of Form 8–K, which would apply to all shell companies, clarifies that the information provided in the Form 8–K should relate to the ''acquired business'' and not the ''registrant,'' as currently stated in the Form. The proposed amendment is intended to eliminate any potential misunderstanding as to the entity for which Item 2.01(f) disclosure is necessary. The increased clarity may reduce registrants' compliance costs to the extent there is currently any confusion. In turn, investors may also benefit from the timely disclosure of information about ''acquired businesses'' due to registrants' more consistent application of Item 2.01(f).

We are also proposing amendments to Rules 3–01, 8–02, and 10–01(a)(1) of Regulation S–X to clarify that the requirement of ''financial statements'' would apply to both the registrant and its predecessors rather than only to the registrant alone, as the existing rules may unintentionally imply for the balance sheet in Rules 3–01 and 8–02 and financial statements for Rule 10–01(a)(1). Because these proposed amendments would codify existing financial reporting practices, they should not impact registrants' compliance costs.

4. Enhanced Projections Disclosure (Amendments to Item 10(b) of Regulation S–K)

Item 10(b) of Regulation S–K sets forth the Commission's views on important factors to be considered in formulating and disclosing projections in certain filings with the Commission. The proposed amendments would update this guidance.[540] More specifically, the proposed amendments would state that the guidelines also apply to projections of future economic performance of persons other than the registrant, such as the target company in a business combination transaction, that are included in the registrant's filings. The proposed amendments to Item 10(b) would also state that projections that are not based on historical financial results or operational history should be clearly distinguished from projected measures based on historical financial results or operational history. In addition, the proposed amendments would state that it generally would be misleading to present projections that are based on historical financial results or operational history without presenting such historical financial measure or operational history with equal or greater prominence. Finally, for projections based on a non-GAAP measure, the proposed amendments to Item 10(b) would state that the presentation should include a clear definition or explanation of the non-GAAP measure, a description of the most closely related GAAP measure, and an explanation why the non-GAAP measure was selected instead of a GAAP measure. To the extent that registrants conform projections included in Commission filings to some or all of the proposed amendments to the guidance set forth in Item 10(b), investors would have additional information to evaluate the reasonableness of the projections and make more informed investment decisions. For example, the proposals related to historical financial results or operational history could inform investors about potential biases in assumptions underlying different financial projections and help them more efficiently process the underlying assumptions of the financial projections in making their investment decisions.[541] These benefits would be mitigated to the extent that registrants are already providing this information, or include projections of future economic performance that do not follow some or all of the proposed amendments.

In addition, to the extent that registrants have not previously applied the Commission's guidance in Item 10(b) to third-party projections included in the registrant's filings, and choose to do so as a result of the proposed amendments, investors may benefit from improved care and presentation with respect to any third-party projections in a registrant's filing. These benefits would be mitigated to the extent that registrants already follow the Commission's guidance set forth in Item 10(b) for third party projections included in their filings, or choose not to do so. To the extent that registrants follow the guidance in the proposed amendments to Item 10(b), the incremental compliance costs are likely to be limited. Registrants should already have information about historical financial results or operational history and GAAP financial measures, and should be able to easily obtain this information in connection with any included third-party estimates. Moreover, potential liability for false or misleading projections is likely to shape disclosure practices with respect to third-party projections in addition to the existing guidance in Item 10(b).

The proposed amendments to Item 10(b) could discourage registrants from including projections in their filings, which would provide investors with less information for their investment decisions. In addition, the proposed additional contextual disclosure, to the extent included by registrants, could increase investors' processing cost of any included financial projections.

5. Investment Company Act Safe Harbor

As discussed above, whether a SPAC meets the definition of investment company under Section 3(a)(1)(A) of the Investment Company Act in the period between its IPO and either the completion of its de-SPAC transaction or its dissolution is a question of facts and circumstances.[542] Currently, SPACs typically provide disclosures indicating that they believe they do not meet the investment company definition under Section 3(a). They further typically disclose to prospective investors that if they are determined to be an investment

[539] *See supra* Section IV.B.6 for additional regulatory baseline information.

[540] *See supra* Section V.B.1 for additional regulatory baseline information.

[541] *See* Anne Beyer, Daniel A. Cohen, Thomas Z. Lys, & Beverly R. Walther, *The Financial Reporting Environment: Review of the Recent Literature,* 50 J. Acct. & Econ. 296, 296–343 (2010) (By employing a sample from 1994 to 2007, this article shows management forecasts providing over half of accounting-based information to the market. In summary, the management forecast literature suggests that earnings projections and realizations both provide value-relevant information to the market.).

[542] *See supra* Section VI.A.

company in the future, the costs and logistics of compliance with the Investment Company Act would be prohibitive. We are, however, concerned that SPACs may fail to recognize when their activities raise the investor protection concerns addressed by the Investment Company Act. To assist SPACs in focusing on, and appreciating when, they may be subject to investment company regulation, we are proposing Rule 3a–10, which would provide a safe harbor from the definition of ''investment company'' under Section 3(a)(1)(A) of the Investment Company Act that we believe would enhance investor protection.[543]

We have designed the proposed conditions of the safe harbor to align with the structures and practices that we preliminarily believe would distinguish a SPAC that is likely to raise investor protection concerns under the Investment Company Act from those that we believe generally do not.[544] Specifically, the proposed rule would promote investor protection by highlighting to SPACs and their sponsors the potential Investment Company Act concerns that SPAC activities may raise, such that investors would benefit from a reduced risk that the SPACs they invest in will engage in activities typically associated with investment companies but without the investor protections provided by the Investment Company Act. This may, in turn, reduce the possibility for regulatory arbitrage, which may be used by some SPACs in an attempt to operate like an investment company without investment company registration.[545] A reduction of the possibility of regulatory arbitrage would also reduce costs related to potential uncertainty about a SPAC's legal status and promote confidence in the SPAC market among market participants. Finally, a reduction in the possibility of regulatory arbitrage would potentially promote competition among all companies engaging in investment management activities regulated by the Investment Company Act.

In terms of expected investor protection benefits for investors in SPACs that would rely on the proposed safe harbor, the safe harbor conditions are designed to ensure that SPACs do not engage in activities that would make them investment companies. For example, the proposed conditions on the nature and management of SPAC assets are designed to ensure that a SPAC relying on the safe harbor would not engage in portfolio management practices resembling those that management investment companies employ.[546]

In addition, the proposed conditions for SPAC activities are designed to ensure that SPACs relying on the safe harbor would have a business purpose aimed at completing a single de-SPAC transaction, after which the surviving company would be primarily engaged in the business of the target company or companies and have at least one class of exchange listed securities.[547] As a result, a SPAC relying on the safe harbor would not be engaging in activities that raise investor protection concerns addressed by the Investment Company Act.

Finally, the proposed duration conditions are designed to ensure that a SPAC relying on the safe harbor would have a limited time period to announce and complete a de-SPAC transaction before being required to distribute the SPACs assets in cash to investors.[548] The proposed 18-month condition for the announcement of a de-SPAC agreement and condition that the de-SPAC transaction close within 24 months would potentially reduce the risk that investors may come to view a SPAC holding securities for a prolonged period as a fund-like investment, thereby necessitating the regulatory protections of the Investment Company Act. We recognize that most SPACs are listed on a national securities exchange and as such are subject to exchange listing standards requiring that the SPAC completes a de-SPAC transaction within 36-months (or three years) of the effectiveness of its IPO registration statement.[549] For such SPACs the proposed safe harbor duration condition would have reduced benefits since the exchange rules already provide a limit on the duration of the SPAC, albeit 12 months longer that the proposed limit.

Beyond providing investor protection benefits, we expect that the proposed safe harbor could reduce compliance costs for some market participants. Specifically, because registering as an investment company and complying with the associated Investment Company Act requirements would be potentially cost-prohibitive for most SPACs, we expect registrants, sponsors, and investors would all benefit from the additional certainty regarding a SPAC's status to the extent it meets the conditions of the safe harbor. Such benefits would directly accrue for SPACs that already meet the conditions of the proposed safe harbor, or for future SPACs that would meet the conditions even in the absence of the proposed safe harbor. Because of the compliance costs and significant operational changes involved with investment company registration, we expect that most SPACs that do not presently meet the conditions of the proposed safe harbor would seek to fall within the safe harbor by making changes to their operations in order to meet the safe harbor conditions. However, for some SPACs that currently do not meet such conditions, there may be potentially meaningful costs related to bringing the operations in line with the new safe harbor (discussed in more detail below).[550] We also expect that most future SPACs that would otherwise under the baseline have run operations not meeting the safe harbor conditions would take advantage of the legal certainty conferred by the proposed safe harbor and elect to meet the conditions. In addition, because SPACs that operate within the boundaries of the safe harbor would be assured that they would not qualify as investment companies, there may also be an increased propensity for sponsors to launch new SPACs operating within the safe harbor conditions to the extent that they might not have otherwise chosen to create a SPAC due to the uncertainty of the Investment Company Act status. Thus, the reduced uncertainty regarding the legal status of SPACs operating within the proposed safe harbor could facilitate capital formation. Finally, the proposed safe harbor would also promote efficiency of a SPAC's compliance process by providing a clear framework for SPACs to determine their status under the Act.

To the extent the potential benefits to investors of current and future SPACs operating under the new safe harbor would be significant, we may see an increase in investor demand for SPACs that could potentially lower the cost of capital for SPACs. In turn, a lower cost of capital could increase the size and number of SPAC IPO offerings and thereby promote capital formation.

[543] *See supra* Section VI.

[544] *See supra* note 295 for a description of investor protection concerns addressed by the Investment Company Act.

[545] The significant compliance costs of investment company registration under the Investment Company Act may give some SPACs an incentive to try to engage in such regulatory arbitrage.

[546] *See supra* Section VI.B.1.

[547] *See supra* Section VI.B.2.

[548] *See supra* Section VI.B.3.

[549] *See supra* note 393 and accompanying text.

[550] As discussed in more detail below, such SPACs may alternatively seek to operate outside the safe harbor without making any operational changes or make other changes to their operations in order to avoid meeting the definition of an investment company under Section 3(a)(1)(A) of the Investment Company Act, including, for example, by avoiding investing, reinvesting or trading in securities.

For current or future SPACs that would meet the safe harbor conditions absent the proposed rule, we do not expect any direct costs from the proposed safe harbor. By contrast, for SPACs currently not meeting the proposed safe harbor conditions, or for future SPACs that would otherwise not meet the safe harbor conditions, there may be costs related to SPACs changing their operations to meet the conditions or to make other changes to their operations in order to avoid falling under the definition of an investment company under Section 3(a)(1)(A) of the Investment Company Act.

In terms of potential costs of bringing SPAC operations in line with the proposed safe harbor conditions, we do not expect that the proposed safe harbor conditions with respect to the nature and management of SPAC assets would impose significant costs on SPACs and their sponsors and investors, as it is our understanding that most SPACs' assets are already held as government securities, government money-market funds, or cash items.[551] We also understand that SPACs generally are not actively managing these assets, most of which are held in an escrow or trust account.[552] To the extent there are some SPACs that are currently holding other types of assets, they would have to liquidate such assets and move them into an allowable asset class prior to completion of the de-SPAC transaction to rely on the proposed safe harbor, and would thereby incur some transactions costs and possibly also realize some capital losses depending on how market conditions for such assets have changed.

With respect to the proposed safe harbor conditions for SPAC activities, we do not expect the condition that SPACs have to seek to complete a single de-SPAC transaction to impose any significant costs on SPAC operations under the baseline. It is our understanding that almost all current SPACs seek to complete one single de-SPAC transaction, albeit such a transaction may involve multiple target companies, which would still be feasible under this proposed safe harbor condition.

We also do not expect the proposed condition that a SPAC wishing to rely on the safe harbor to be primarily engaged in the business of seeking to complete a de-SPAC transaction would impose any significant incremental costly constraints on SPAC activities under the baseline. It is our understanding that most SPACs presently communicate to investors their sole intent to seek a target company to operate and that they do not intend to act as an investment company under the Investment Company Act.[553]

Adherence to the proposed duration conditions under the safe harbor is likely to impose costs on SPACs that would seek to avail themselves of the proposed safe harbor by limiting the time they have to search for a target company and complete a de-SPAC transaction compared to the baseline. The option of waiting to invest can be valuable, and to the extent that SPACs would have to shorten the duration of their search for an appropriate target company and complete a de-SPAC transaction in order to take advantage of the safe harbor, the proposed duration conditions would potentially reduce the value of this option for SPACs.[554] Additionally, to the extent an expected value-increasing de-SPAC transaction would not occur under the proposed duration conditions, but it could have under the baseline, the proposed rules may lead to forced liquidation of the SPAC and impose associated costs on both investors and sponsors (in particular, the loss of their respective portions of the expected value increase). However, because of the typical compensation structure of SPAC sponsors, they have strong incentives to complete a de-SPAC transaction rather than liquidating the SPAC and returning the proceeds in the trust or escrow account to the SPAC's shareholders. Therefore, SPACs that are seeking to meet the proposed safe harbor conditions may in some cases compromise on the quality of the type of targets pursued to speed up their search, or offer to pay more for the target to complete a de-SPAC transaction sooner, compared to under the baseline.[555] In some circumstances, the duration conditions may give sponsors of SPACs seeking to avail themselves of the proposed safe harbor increased incentives to complete a de-SPAC transaction even if liquidation would be the better choice for investors. That is, the duration conditions may increase the agency costs of the sponsors' managerial control. However, such agency costs would be mitigated by other provisions of this proposal, such as the proposed specialized disclosure and procedural requirements in de-SPAC transactions and the proposed amendments aligning de-SPAC transactions with traditional initial public offerings.[556]

Based on the data presented above for recent SPACs that have at least a 24-month history,[557] approximately 65% completed a de-SPAC transaction no later than 24 months after the IPO date. Thus, the proposed 24-month condition for completion of a de-SPAC transaction may be a binding constraint for a significant percentage of SPACs. For the same sample of SPACs, the condition that a SPAC would need to announce a de-SPAC transaction agreement in a Form 8–K filing no later than 18 months after the IPO date would have been met by approximately 59% of the SPACs.[558] Therefore, unconditionally, the 18-month announcement condition is potentially binding for a larger percentage of SPACs than the 24-month de-SPAC transaction completion condition. The data also show that if a sample SPAC had met the 24-month transaction completion condition, around 12% of such SPACs (12 of 99 cases) would not have met the 18-month announcement condition. Conversely, among the sample SPACs meeting the 18 month announcement condition, only approximately 2.2% of such SPACs (2 cases of 89) would not have met the 24 month condition. Among all sample SPACs, around 57% (87 of 152) would have met both the 18-month and the 24-month deadlines. Thus, we expect that the combined effect of the two proposed duration conditions would be to force a significant proportion of SPACs that would seek to take advantage of the safe harbor to conclude their search for a target sooner than they would have under the baseline or forgo a de-SPAC transaction, either of which could potentially impose costs on SPACs and their investors and sponsors, as discussed above.

A SPAC that seeks to rely on the proposed safe harbor would also be required to distribute its assets in cash to investors as soon as reasonably practicable if it does not meet either the 18 month deadline or the 24 month deadline. Because a SPAC would be required to hold only liquid assets such as cash items, government securities, or government money market funds, to rely on the proposed safe harbor, we do not expect SPACs to incur significant incremental cost from this condition in terms of direct transaction costs. Moreover, a SPAC already must plan for

[551] *See supra* Section IX.B.6.a.

[552] *Id.*

[553] *See supra* Section IX.B.6.b.

[554] The value of the option to wait derives from the fact that whereas the choice to wait is generally reversible, the choice to invest now rather than later is generally irreversible. *See, e.g.,* Robert McDonald & Daniel Siegel, *The Value of Waiting to Invest,* 101 Q. J. Econ. 707, 707–27 (1986).

[555] *See supra* note 454 for some evidence of such behavior under SPAC's current self-imposed duration limitations.

[556] *See supra* Sections II.F and III.

[557] *See supra* Section IX.B.6.c.

[558] *Id.*

the distribution of its assets back to the investors if not used in a de-SPAC transaction. Therefore, this condition should also not impose a new significant burden on a SPAC.

The proposed duration conditions may lead SPACs to complete less profitable de-SPAC transactions, or fail to complete a de-SPAC transaction at all. To the extent investors anticipate this, there may be a reduction in investor demand that leads to fewer SPAC initial public offerings and/or less capital being raised in these offerings, which could potentially reduce capital formation depending on the type of investments SPAC investors would shift their funds to instead. In addition, an increase in SPACs that liquidate without a de-SPAC transaction and/or a reduction of capital raised through SPACs may ultimately result in fewer publicly traded operating companies and therefore a reduced investment opportunity set for investors. Such negative investment opportunity effects may be mitigated to the extent potential SPAC targets would instead go public through initial public offerings without SPAC involvement.

The proposed duration conditions may also affect the bargaining environment in de-SPAC transactions. Knowing that SPACs would face a regulatory imposed deadline for when to announce an agreement in order to qualify for the safe harbor, target companies may deliberately prolong negotiations so that they can attempt to extract better terms as the regulatory imposed deadlines approaches. Such strategic behavior by targets may reduce returns to SPAC investors further, but may not be an economic loss per se if the transaction is still completed, as the immediate effect in such a case would be a pure wealth transfer from SPAC investors to target company owners. The potential for an increase in target bargaining power would be mitigated by the fact that most SPACs' securities are listed on a national securities exchange and therefore already subject to the exchanges' required deadlines (36 months or 3 years) for completion of a business combination. However, to the extent target company bargaining power would increase and lead to worse terms in de-SPAC transactions for investors it could potentially reduce *ex ante* demand among investors for SPAC investments, which could reduce the number of operating companies ultimately being traded in public markets, all else being equal. However, such effects would be mitigated if potential target operating companies instead access public capital markets in alternative ways.

Any SPAC that would find the proposed safe harbor conditions too costly to comply with could seek to not rely on the safe harbor and instead choose to bear the legal uncertainty of operating outside of it. Besides the direct compliance costs associated with being an investment company, a SPAC that operates as an investment company would also potentially be subject to delisting, as current exchange rules do not appear to provide for SPACs to operate as an investment company and maintain their listing.

As an alternative to relying on the proposed safe harbor, it is possible that current or future SPACs would seek to avoid being considered an investment company under the Investment Company Act by holding different assets than are commonly held today. However, holding different assets (such as cash items) may provide a lower return than holding the types of assets permitted under the safe harbor conditions. Thus, the possibility of switching assets to cash items to avoid being an investment company may not fully mitigate the potential costs imposed on the SPAC market from the proposed safe harbor conditions.[559]

D. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

The proposed rules and amendments would enhance and standardize disclosure about specific aspects inherent to the SPAC structure at both the SPAC initial public offering stage and the de-SPAC transaction stage. Requiring the SPAC and the target company to provide such disclosure may in some cases afford market participants greater access to information relevant to voting, redemption, and investment decisions. By increasing the standardization and comparability of disclosures, the proposed rules may make it easier for investors to properly and efficiently process information about SPACs and for market prices to reflect such information. In addition, invested capital may be more likely to be more efficiently deployed.

Additionally, the proposed rules would increase the incentives for issuers and underwriters to exercise the care necessary to ensure accuracy in disclosures by affirming the underwriter status of SPAC IPO underwriters in connection with de-SPAC transactions and proposing a new definition of ''blank check company'' for purposes of the PSLRA safe harbor. In addition, the proposed rules regarding shell company business combination transactions would make certain disclosures and liabilities more consistent with traditional IPOs, which could benefit investors and potentially decrease the cost of capital for shell companies. To the extent that disclosure accuracy is improved, investors would have access to more reliable information when making their investing decisions, which would lead to an increase in market efficiency.

2. Competition

By improving the informational environment at the SPAC initial public offering and the de-SPAC stages through changes in disclosure requirements and the scope of liability, the proposed rules and amendments could encourage greater competition between SPAC sponsors and SPAC underwriters, in both SPAC IPO and de-SPAC activities. For example, by standardizing and increasing the comparability between the disclosures provided by SPACs, the proposed rules and amendments may lead to improved investor awareness and more efficient information processing. To the extent that the proposed rules and amendments lead to an increase in competition between shell company mergers, including de-SPAC transactions, and traditional initial public offerings, they may bring down the costs of capital raising through these approaches.

If the proposed rules and amendments create significant costs that lead to a reduction in shell company mergers and overall initial public offering activity in the SPAC market, this could reduce competition for investment opportunities. Such a reduction could result in higher fees in both the traditional IPO and SPAC markets. Additionally, if some of the proposed new rules and amendments disincentivize underwriters and PIPE investors from participating in de-SPAC transactions and related financings, it could reduce competition among service and capital providers in the SPAC market and lead to higher fees.

To the extent that the proposed safe harbor from the Investment Company Act would reduce the costs of compliance, it may encourage additional sponsor participation in the SPAC market and thus encourage competition among SPACs. However, for potential SPACs that would not meet the safe harbor conditions, the proposed safe harbor may increase the costs of sponsoring a SPAC, and thus the

[559] As indicated in *supra* note 314, if a SPAC were to significantly change its asset composition contrary to its original representations, it would raise questions whether the initial representations were false and misleading.

proposed rule may have an adverse effect on competition among SPACs.

3. Capital Formation

Enhanced disclosure at both the SPAC initial public offering and the de-SPAC stages, combined with a stronger incentive to perform better due diligence in the de-SPAC transaction stage, would likely improve investor protection at both stages. In addition, the proposed rules and amendments for shell company mergers would likely improve investor protection. For example, proposed Rule 145a would help shareholders of reporting shell companies more consistently receive the full protections of the Securities Act disclosure and liability provisions in business combinations involving reporting shell companies, regardless of the transaction structure. Increased protections could incentivize more investors to invest in shell companies, including SPACs, thus enhancing capital formation. In addition, to the extent that the proposed safe harbor from the Investment Company Act reduces regulatory uncertainty and thus encourages participation in SPACs, it may also lead to an increase in capital formation.[560]

If the proposed rules and amendments create significant costs for shell companies, including SPACs, this may limit the number of private companies that go public through shell companies, including a de-SPAC transaction mechanism, or at all.[561] Given the potential increase in the cost of going public through a shell company merger such as a de-SPAC transaction compared to the current baseline, it is possible that some private companies could consider the traditional initial public offering channel a more viable alternative. We are not able to estimate how many companies would consider using a traditional initial public offering mechanism if the cost of the overall SPAC transaction structure increases. It is possible, however, that a significant increase in the cost of shell company mergers and de-SPAC transactions could deter some private companies from going public, and thus potentially reduce overall initial public offering activity and capital formation.

E. Reasonable Alternatives

1. Disclosure-Related Proposals

a. Require Disclosure of Policies and Procedures That Address Conflicts of Interest

As an alternative to Item 1603 as proposed, we could include a complementary requirement to describe any policies and procedures used or to be used by a SPAC to minimize potential or actual conflicts of interest related to disclosures provided in response to proposed Items 1603(b) and 1603(c). Such information could assist investors in gauging the economic significance, or lack thereof, of the various conflicts of interest given the presence, absence and likely degree of effectiveness of the policies and procedures designed to address or ameliorate them. On the other hand, requiring this information would increase compliance costs for SPACs and may cause some of these companies to adopt policies and procedures that would not be efficient or cost-effective given their particular organizational structure. In this regard, we note that there could be incentives to provide such disclosure voluntarily, as it would indicate to investors the degree to which conflicts of interest may be ameliorated.

b. Certain Reports, Opinions, or Appraisals

We are proposing to require the filing of reports, opinions, or appraisals provided to the SPAC or its sponsor relating to valuation and/or fairness of a de-SPAC transaction or related financing transactions (Item 1607) as exhibits to registration statements and schedules provided in connection with a de-SPAC transaction. We are also proposing to require disclosures summarizing the negotiation, report, opinion, or appraisal and certain additional disclosures, such as for example, information about who prepared the report, opinion, or appraisal, and how they were selected. As an alternative, we could require disclosure of only a summary of the reports, opinions, appraisals, and negotiations. This could reduce some of the costs of compliance to the extent that it is more costly to obtain a report that will become public. At the same time, this alternative would reduce the benefits of the disclosure, as investors and market participants would have less information available to assess the quality and robustness of the analysis underlying such report, opinion, or appraisal.

c. Require a Fixed Re-Determination Date To Measure Public Float for Smaller Reporting Company Status

When re-determining a post-business combination company's eligibility for smaller reporting company status, instead of requiring the public float threshold to be measured as of a date within four days after the consummation of the de-SPAC transaction, we could alternatively require the re-determination to occur on a fixed date, such as the consummation date or on the fourth day after consummation. A fixed re-determination date would have the benefit of establishing a consistent date for all post-business combination companies to use and remove any management judgment in the selection of a re-determination date, while still requiring that the re-determination of smaller reporting company status occur before the post-business combination company makes its first filing. However, reduced flexibility regarding the time frame within which the required re-determination must be made could increase costs for post-business combination companies without substantial additional benefits for investors.

d. Re-Determine Smaller Reporting Company Status of a Post-Business Combination Company Without a Public Float Test

As another alternative, we considered whether the re-determination for smaller reporting company status of the combined company following a de-SPAC transaction should require only a re-measurement of the revenue component of smaller reporting company test and not its public float component. Generally, smaller reporting company status is re-determined on an annual basis based on the issuer's public float as well as annual revenues. Revenues of the combined company may be more relevant to smaller reporting company status than public float because, generally, the target company has generated revenue while the SPAC has not done so. Accordingly, the revenue test may be the more determinative factor than the public float test in determining whether the combined company following de-SPAC transaction remains a smaller reporting company because, based on staff experience, the public float of most SPACs and subsequent combined companies typically is between $250

[560] As discussed in *supra* Section IX.C.5, an increase in investor demand for SPACs could potentially lower the cost of capital for SPAC, which may increase the size and number of SPAC IPO offerings.

[561] For example, as discussed in more detail in *supra* Section IX.C.5, for SPACs that would take advantage of the proposed Investment Company Act Safe Harbor, the duration requirements could potentially lead investors to anticipate less profitable de-SPAC transactions or a lower likelihood of completion of de-SPAC transactions, which, in turn, could reduce investor demand for SPAC initial public offerings. Moreover, an increase in SPACs that liquidate without a de-SPAC transaction and/or a reduction of capital raised through SPACs may ultimately result in fewer publicly traded operating companies and therefore a reduced investment opportunity set for investors.

and $700 million, which exceeds the public float threshold for smaller reporting company status. Also, the public float component of this test is measured as of the last business day of the issuer's most recently completed second fiscal quarter. Given that the public float re-measurement likely would not occur at the end of the second fiscal quarter when the annual public float measurement occurs, the combined company may have to measure its public float more than one time during the same fiscal year, which may impose additional burdens for the company.

However, compared to public float, revenue, if used as a sole basis of the significance test, may be subject to a greater degree of managerial discretion.[562] Also, using revenue alone may expose a large number of investors to business-specific risks because SPAC targets may represent nascent industries that could feature extended pre- or low-revenue periods but, as indicated above, may have a public float following a de-SPAC transaction that would exceed the threshold for smaller reporting company status. Thus, we believe it is appropriate that these companies should take the public float into account in re-determining smaller reporting company status following the consummation of a de-SPAC transaction.

e. Structured Data Requirement

We could change the scope of the proposed Inline XBRL tagging requirements for the proposed SPAC disclosures, such as by excluding certain subsets of registrants or disclosures. For example, the tagging requirements could exclude the SPAC initial public offering disclosures. Under such an alternative, SPACs would submit initial public offering disclosures in unstructured HTML or ASCII and would not incur Inline XBRL compliance costs until their first periodic filing on Form 10–Q, 20–F, or 40–F.[563] This could make it incrementally easier for SPACs to consummate an initial public offering. However, narrowing the scope of the proposed tagging requirements, whether based on filing, offering size, or other criteria, would diminish the extent of any informational benefits that would accrue as a result of the proposed disclosure requirements by making the excluded disclosures comparatively costlier to process and analyze.

As another alternative, we could require only the quantitative SPAC-related disclosures to be tagged in Inline XBRL. Excluding qualitative disclosures from the tagging requirements could provide some incremental cost savings for registrants compared to the proposal, because incrementally less time would be required to select and review the particular tags to apply to quantitative disclosures. However, we expect these incremental cost savings would be low, because SPACs would be subject to similar Inline XBRL requirements, including requirements to tag quantitative and qualitative disclosures, in other Commission filings.[564] Moreover, narrowing the scope of tagging requirements to exclude qualitative information would diminish the extent of informational benefits that would accrue to investors by inhibiting the efficient extraction and searching of narrative SPAC-related disclosures (*e.g.,* disclosures regarding conflicts of interest, fairness determinations, and financial projections), thus creating the need to manually review search results drawn from entire documents to find these disclosures.[565] Such an alternative would also inhibit the automatic comparison of narrative disclosures against prior periods. It also may be harder for investors to perform a targeted assessment of a filing for particular types of narrative SPAC-related disclosures because they would need to assess the entire filing for relevant information.

2. Liability-Related Proposals

a. PSLRA Safe Harbor

As an alternative to addressing the use of projections in de-SPAC transactions and other business combinations involving blank check companies that are not penny stock issuers by proposing to amend the ''blank check company'' definition, we could have issued interpretive guidance stating that the PSLRA safe harbor for forward-looking statements is not available because business combinations with shell companies that are not penny stock issuers are ''initial public offerings'' by target private operating companies for purposes of the PSLRA. This alternative would avoid some of the complexity associated with defining blank check companies for purposes of the PSLRA, but issuing guidance rather than a rule may result in weaker incentives for SPACs or target companies to take greater care in preparing forward-looking statements, such as projections, in de-SPAC transactions and thus result in fewer investor protection benefits than the proposed rule.

b. Issuing Guidance on Underwriter Status

Instead of proposing Rule 140a, the Commission could issue guidance that would describe the factors that should be considered in determining underwriter status in connection with de-SPAC transactions, which could potentially be relevant for parties other than SPAC IPO underwriters. Issuing guidance rather than designating an underwriter by rule within the context of these transactions might prompt the full range of parties involved in facilitating de-SPAC transactions to consider their potential liability and thus take greater care in performing their designated functions. This could result in more robust investor protections overall. On the other hand, compared to the proposed rule, this alternative would rely on the judgment of de-SPAC participants to apply the guidance and may result in weaker incentives for those parties that are potentially subject to Section 11 liability to perform robust due diligence. As a result of such weaker incentives, there could be a reduced impact on the accuracy of the disclosure in de-SPAC transactions and investor protection benefits.

3. Expanding Disclosure in Reporting Shell Company Business Combinations

Proposed Rule 145a would deem any business combination of a reporting shell company (that is not a business combination-related shell company) involving another entity that is not a shell company to involve a sale of securities to the reporting shell company's shareholders. As an alternative, instead of deeming all such transactions to be a sale that would need

[562] *See* Jenny Zha Giedt, *Modelling Receivables and Deferred Revenues to Detect Revenue Management,* 54 (2) Abacus 181, 181–209 (2018) (focusing on the SEC Accounting and Auditing Enforcement Releases, *i.e.,* AAER, from 1982 to 2016, and documenting that forty-seven percent of all financial misstatements are related to revenue).

[563] The Commission's EDGAR electronic filing system generally requires filers to use ASCII or HTML for their document submissions, subject to certain exceptions. *See* EDGAR Filer Manual (Volume II) version 61 (Mar. 2022), at 5–1; 17 CFR 232.301 (incorporating EDGAR Filer Manual into Regulation S–T). *See also* 17 CFR 232.101 (setting forth the obligation to file electronically on EDGAR).

[564] *See supra* Section IX.C.1.a.5.

[565] To illustrate, without Inline XBRL, using a search string such as ''dilution'' to search through the text of all de-SPAC filings, so as to determine the extent to which dilutive effects are among the material factors being considered by SPACs at arriving at fairness determinations, could return many narrative disclosures outside of the fairness determination disclosure that would be required by proposed Item 1606(b) of Regulation S–K, such as disclosures in the risk factors section or in the description of stock incentive plans. However, if Inline XBRL is used, it would enable a user to search for the term ''dilution'' exclusively within the proposed fairness determination disclosure, thereby likely reducing the number of irrelevant results.

to be registered under the Securities Act, absent an applicable exemption, we could expand the disclosure requirements applicable to reporting shell company business combinations such that the disclosure requirements would be the same as what would have been required if the transaction was registered under the Securities Act. Under this alternative, regardless of the document that is filed with the Commission (*e.g.,* proxy or information statement, Schedule TO, or Form 8–K), the set of disclosures investors receive would be the same as they would receive had a registration statement been filed for the transaction. This would ensure that the reporting shell company's shareholders receive the same information regardless of how the transaction is structured and would reduce regulatory arbitrage opportunities stemming from different disclosure requirements in different documents that may be filed with the Commission to report a shell company business combination. As a registration statement would not necessarily be required in all transaction structures, the costs of such an alternative would also be less that the costs of liability associated with the purchase and sale of securities and potential Securities Act registration of shell company business combinations under proposed Rule 145a, to the extent no exemption is available for the transaction.

However, merely expanding the set of disclosures investors receive regardless of transaction structure does not provide investors with the same level of protection because the liability standards differ based on the type of filing that is required. Only by deeming the transaction to be a sale would investors necessarily receive the protections that apply in connection with a purchase and sale of securities under the federal securities laws, such as the availability of private actions under Section 10(b) and Rule 10b–5. In addition, to the extent there is not an available exemption for the reporting shell company business combination, only with Securities Act registration do investors receive the full panoply of available protections under that Act that they would receive in a traditional IPO, such as a private right of action under Section 11.

4. Enhanced Projections Disclosures

The proposed amendments to Item 10(b) of Regulation S–K present our updated views on projected performance measures and include a statement that projections based on a non-GAAP financial measure should include a clear definition or explanation of the non-GAAP measure, and a description of the GAAP financial measure to which it is most closely related. As an alternative to this guidance, we could adopt a rule requiring firms, when providing projections, to present a reconciliation of projections based on a non-GAAP measure to those based on the nearest GAAP measure. While the reconciliation would further help investors understand the bases of projections involving non-GAAP measures, it would likely also increase compliance costs and in turn might reduce the provision of otherwise useful projections.

5. Investment Company Act Safe Harbor

a. Shorter Duration Limitations

As an alternative, we considered shorter duration limitations by instead requiring a SPAC to announce a transaction no later than 12-months from the IPO registration date, and to complete a de-SPAC transaction or liquidate the SPAC no later than 18-months after the IPO registrations date. The benefit of this alternative is that it would further decrease the possibility of regulatory arbitrage. It would also reduce the risk that investors may come to view a SPAC holding securities as a fund-like investment, and the related risk of investor protection concerns. We expect this alternative would impose the same type of costs we discussed above for the proposed duration conditions, but at a greater magnitude. Based on a sample of SPACs with effective IPO dates from January 1, 2016 to June 30, 2020 (*i.e.,* a sample of SPACs with at least an 18-month history since the IPO date as of December 31, 2021; 189 SPACs in total), we find that approximately 36% of the SPACs in the sample announced a transaction agreement no later than 12-months after the date of the initial public offering and 40% of the SPACs had completed a de-SPAC transaction no later than 18-months after the date of the initial public offering. The proportion of SPACs in the sample that both announced a de-SPAC transaction by 12-months and completed the de-SPAC transaction by 18-months was approximately 33%, which is a significantly lower proportion compared to 57% of sample SPACs that would have managed to meet both of the proposed duration conditions, as discussed above. Thus, we expect that costs would be greater under this alternative by forcing a greater proportion of SPACs to conclude their search for a target or liquidate earlier than they may otherwise do. In addition, because of the tighter deadlines this alternative would impose, those SPACs that would be at risk of not being able to meet the proposed longer duration conditions would likely be at comparatively greater risk of not meeting the deadlines under this alternative, which may also increase the costs such SPACs would face in trying to meet these alternative duration conditions.

b. No Announcement Condition

We also considered an alternative that would keep the 24-month condition for completion of a de-SPAC transaction, but remove the duration condition for the announcement of a transaction. This alternative would increase the proportion of SPACs meeting the duration condition to 65% compared to 57% under the proposal. The benefit of this alternative would thus be to increase the proportion of SPACs not having to potentially sub-optimally come to a merger agreement earlier (or, in some circumstances, potentially inefficiently liquidating the SPAC), while still imposing a firm 24-month maximum lifespan for SPACs seeking to take advantage of the proposed safe harbor. However, by not imposing an 18-month announcement condition investors would lose any investor protection benefits that may be associated with an earlier signal of a SPAC's intent to complete a de-SPAC transaction than they might receive under this alternative.

c. Longer Duration Limitations

As an alternative, we could require a longer duration before a SPAC would have to complete a de-SPAC transaction. For example, if we increase this duration to no later than 36 months after the IPO date (with no announcement condition), less than 4% of the sample SPACs that completed a de-SPAC transition would not have met such a condition. As discussed above, the national securities exchanges already require SPACs to complete a de-SPAC transaction within 36 months (or 3 years). Thus, based on both the recent evidence and the current exchange rules for SPACs, we expect that this alternative would not impose the potential costs of a truncated search period for a target company for most SPACs, in particular SPACs with exchange-traded securities. However, as discussed above, the longer the SPAC operates with its assets invested in securities and its income derived from securities, the more likely investors will come to view the SPAC as a fund-like investment and the more likely the SPAC appears to be deviating from its

stated business purpose. In turn, this may raise investor protection concerns and increase the possibility of regulatory arbitrage compared to the proposed duration conditions.

F. Requests for Comment

155. Because of the potential for one or more of the proposed amendments to have interactive effects, we are requesting public input on the extent to which such interactive effects are likely to conflict with the overall aims of this rulemaking, if adopted as proposed.

156. Have we correctly characterized the benefits and costs from the proposed new disclosure requirements at the SPAC IPO stage? Are there any other benefits or costs that should be considered? Please provide supportive data to the extent available.

157. Our analysis suggests the proposed rules and amendments would generally strengthen the investor protection in SPAC transactions at the initial public offering stage. Are there any significant costs or benefits associated with adopting these rules and amendments that we have not considered that would lead to a different characterization? Please provide supportive data to the extent available.

158. Have we correctly characterized the benefits and costs from the proposed new disclosure requirements at the de-SPAC transaction stage and the alignment of disclosure requirements in the de-SPAC disclosure documents with IPOs? Are there any other benefits or costs that should be considered? Please provide supportive data to the extent available.

159. Our analysis suggests the proposed rules and amendments would generally strengthen investor protection in de-SPAC transactions. Are there any significant costs or benefits associated with adopting these rules and amendments that we have not considered that would lead to a different characterization? Please provide supportive data to the extent available.

160. Have we correctly characterized the benefits and costs from proposed Item 1608 holding all other aspects of the proposed amendments constant? Have we correctly characterized the benefits and costs that would accrue given the potential interactive effects with proposed Rule 145a? Are there other interactive effects with respect to other proposed items that, had we considered, would substantially alter our assessment of the associated costs, benefit, or anticipated effects on efficiency, competition, or capital formation?

161. Have we correctly characterized the benefits and costs from the proposed amendments to the enhanced projections disclosure requirements (Item 1609 of Regulation S–K)? Are there any other benefits and costs that should be considered? Please provide supportive data to the extent available.

162. Would the effects of the proposed amendments related to the PSLRA safe harbor have significant interactive effects with proposed Item 1609 of Regulation S–K such that our estimates of the incremental costs and benefits of adopting Item 1609 should be revised? Please provide either qualitative or quantitative data to the extent available.

163. How, and to what extent, would investors benefit from the proposed requirement to tag the SPAC specialized disclosures in Inline XBRL? What would be the costs of the proposed requirement to registrants? Should we consider alternative tagging requirements for the proposed SPAC disclosures? If so, what would be their benefits and costs?

164. Have we correctly characterized the benefits and costs from the proposed re-determination of smaller reporting company status? Are there any other benefits and costs that should be considered? Please provide supportive data to the extent available.

165. For the re-determination of a post-business combination company's smaller reporting company status, what would be the benefits and costs of requiring a fixed date to measure public float? If the benefits outweigh the costs of requiring a fixed date, do the relative benefits and costs of different possible fixed dates indicate that one approach would be preferential?

166. What would be the costs and benefits of relying solely on revenues to re-determine a post-business combination company's smaller reporting company status rather than including the public float?

167. Have we correctly characterized the benefits and costs from the proposal to require target companies to be co-registrants to Form S–4 and F–4? Are there any other benefits and costs that should be considered? Please provide supportive data to the extent available.

168. Would the relative benefits and costs associated with the proposed amendments related to de-SPAC-transaction disclosures and liability have additional effects on the calculus of pursuing a de-SPAC business combination versus a traditional IPO that we have not considered? In terms of the market choice to utilize a de-SPAC transaction versus a traditional IPO, would the change in relative benefits and costs associated with the proposed rules and amendments be beneficial or detrimental in terms of their effects on efficiency, competition and capital formation? Please provide supportive evidence or data to the extent available.

169. Have we correctly characterized the benefits and costs from the proposed amendments related to the PSLRA safe harbor? Are there any other benefits and costs that should be considered? Please provide supportive data to the extent available.

170. With respect to the proposed changes to the definition of ''blank check company'' for purposes of the PSLRA safe harbor, are there any additional benefits and costs that would apply primarily to blank check companies that are not penny stock issuers and not SPACs? Please provide supportive data to the extent available.

171. Have we correctly characterized the benefits and costs of the underwriter status and liability proposals? Are there any other benefits and costs for SPACs, SPAC IPO underwriters, target companies and investors that should be considered? Please provide supportive data to the extent available.

172. Have we correctly characterized the scope and scale of both SPAC and non-SPAC shell companies that would be affected by proposed Rule 145a? Please provide data or analysis to the extent available.

173. Have we correctly characterized the benefits and costs of proposed Rule 145a? Are there any other benefits and costs that should be considered? Are there any additional benefits and costs that would apply primarily to non-SPAC shell companies that are not business-combination related shell companies? Please provide supportive data to the extent available.

174. As noted above, we are unable to estimate the number of shell companies that are currently private that could be impacted by proposed Article 15 of Regulation S–X. We request data on the number of these entities that may be impacted by the proposed rule. Would analysis of the economic effects on these currently private entities broadly impact the balance of costs and benefits to adopting Article 15 of Regulation S–X as proposed?

175. Have we correctly characterized the benefits and costs of proposed new Article 15 of Regulation S–X and the related proposed amendments? Are there any other benefits and costs that should be considered? Please provide supportive data to the extent available.

176. Have we correctly characterized the benefits and costs to proposed Rule 15–01(b)? Are there additional costs,

particularly to investors, of permitting a shell company registrant to include in its Form S–4/F–4/proxy or information statement two (rather than three) years of statements of comprehensive income, changes in stockholders' equity, and cash flows for the private operating company for all transactions involving an EGC shell company and a private operating company that would qualify as an EGC that would affect our assessment of the likely effects of this proposed rule on investor protection?

177. Have we correctly characterized the benefits and costs of the enhanced projection guidance (amendments to Item 10(b) of Regulation S–K)? Are there any other benefits and costs that should be considered? Please provide supportive data to the extent available.

178. Have we correctly characterized the benefits and costs of the proposed Investment Company Act safe harbor? Are there any other benefits and costs that should be considered? Please provide supportive data to the extent available.

179. Is it feasible for SPACs to hold most of their assets in cash accounts rather than Government securities or Government money market funds? What would be the costs to SPACs of holding their assets in cash? How costly would it be for SPACs that are currently invested in Government securities or Government funds to switch to cash? Please provide supportive data or estimates to the extent available.

180. Have we correctly characterized the effects on efficiency, competition and capital formation from the proposed rules and amendments? Are there any effects that should be considered? Please provide supportive data to the extent available.

X. 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 new rules and amendments contain ''collection of information'' requirements within the meaning of the PRA.[566] We are submitting the proposed new rules and amendments to the Office of Management and Budget (''OMB'') for review and approval in accordance with the PRA and its implementing regulations.[567] The hours and costs associated with preparing, filing and sending the schedules and forms, and retaining records constitute reporting and cost burdens imposed by each collection of information.[568] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information requirement unless it displays a currently valid OMB control number. The titles for the collections of information are:

- Regulation 14A (Commission Rules 14a–1 through 14a–21 and Schedule 14A) (OMB Control No. 3235–0059);
- Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C) (OMB Control No. 3235–0057);
- Schedule TO (OMB Control No. 3235–0515);
- Form S–1 (OMB Control No. 3235–0065);
- Form S–4 (OMB Control No. 3235–0324);
- Form F–1 (OMB Control No. 3235–0258);
- Form F–4 (OMB Control No. 3235–0325);
- Form 10–K (OMB Control No. 3235–0063);
- Form 10–Q (OMB Control No. 3235–0070); and
- Rule 3a–10 under the Investment Company Act (a proposed new collection of information).[569]

The forms, schedules, and regulations listed above were adopted under the Securities Act, the Exchange Act, and/or the Investment Company Act. These regulations, schedules, and forms set forth the disclosure requirements for registration statements, annual and quarterly reports, current reports, proxy and information statements, and tender offer statements filed by registrants to provide investors with information to make informed investment, voting, and redemption decisions. In addition, we are proposing a new requirement that certain entities adopt a board resolution in order to rely on the safe harbor provided by proposed Rule 3a–10 of the Investment Company Act. Compliance with these information collections is mandatory to the extent applicable to each registrant.[570] Other than the proposed new collection of information (Rule 3a–10 under the Investment Company Act), responses to these information collections are not kept confidential, and there is no mandatory retention period for the information disclosed. Responses to the information collection under the Investment Company Act are kept confidential, subject to the provisions of applicable law.

A description of the proposed new rules and amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Sections II through VI above, and a discussion of the economic effects of the proposed new rules and amendments can be found in Section IX above.

B. Estimates of the Effects of the Proposed New Rules and Amendments on the Collections of Information

The following Table 1 summarizes the estimated effects of the proposed new rules and amendments on the paperwork burdens associated with the affected forms and schedules.

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[566] 44 U.S.C. 3501 *et seq.*

[567] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[568] The paperwork burdens for Regulation S–X, Regulation S–K, Regulation C, Regulation 12B, and Regulation S–T are imposed through the forms, schedules and reports that are subject to the requirements in these regulations and are reflected in the analysis of those documents.

[569] We estimate that there would be a negligible or no change in burden to Form 20–F and Form 8–K as a result of the proposed amendments to Regulation S–X, in that these proposed amendments would be codifying existing interpretations of existing rules. Accordingly, we are not making any revisions to the PRA burden estimates for Form 20–F and Form 8–K at this time.

[570] Registrants claiming smaller reporting company status have the option to comply with the scaled disclosures available to them on an item-by-item basis. In addition, if an entity determines not to rely on the safe harbor provided in Rule 3a–10 of the Investment Company Act, it would not be required to adopt the board resolution contemplated in that proposed rule.

PRA Table 1. Estimated Paperwork Burden Effects of the Proposed New Rules and Amendments Applicable to SPACs

Proposed Requirement and Effects	Affected Forms and Schedules	Estimated Effect Per Affected Response*
Item 1602: Registered offerings by special purpose acquisition companies • Require certain information on the prospectus cover page and in the prospectus summary of registration statements for offerings by SPACs other than de-SPAC transactions. • Require enhanced dilution disclosure in these registration statements.	Forms S-1 and F-1	• 1 hour increase in compliance burden per Form S-1 or F-1
Item 1603: SPAC sponsor; conflicts of interest • Require certain disclosure regarding the sponsor and its affiliates and any promoters of SPACs. • Require disclosure regarding conflicts of interest between the sponsor or its affiliates or promoters and unaffiliated security holders.	• Forms S-1, F-1, S-4, and F-4 • Schedules 14A and 14C • Schedule TO	• 2 hour increase in compliance burden per Form S-1, F-1, S-4, or F-4 • 2 hour increase in compliance burden per Schedule 14A or 14C • 2 hour increase in compliance burden per Schedule TO
Item 1604: De-SPAC transactions • Require certain information on the prospectus cover page and in the prospectus summary of registration statements for de-SPAC transactions. • Require enhanced dilution disclosure in these registration statements.	• Forms S-4 and F-4 • Schedules 14A and 14C • Schedule TO	• 1 hour increase in compliance burden per Form S-4 or F-4 • 1 hour increase in compliance burden per Schedule 14A or 14C • 1 hour increase in compliance burden per Schedule TO
Item 1605: Background of and reasons for the de-SPAC transaction; terms of the de-SPAC transaction; effects • Require disclosure on the background, material terms and effects of the de-SPAC transaction.	• Forms S-4 and F-4 • Schedules 14A and 14C • Schedule TO	• 1 hour increase in compliance burden per Form S-4 or F-4 • 1 hour increase in compliance burden per Schedule 14A or 14C • 1 hour increase in compliance burden per Schedule TO

Proposed Requirement and Effects	Affected Forms and Schedules	Estimated Effect Per Affected Response*
Item 1606: Fairness of the de-SPAC transaction and any related financing transaction • Require disclosure on whether a SPAC reasonably believes that a de-SPAC transaction and any related financing transactions are fair or unfair to investors. • Require a discussion of the bases for this reasonable belief.	• Forms S-4 and F-4 • Schedules 14A and 14C • Schedule TO	• 4 hour increase in compliance burden per Form S-4 or F-4 • 4 hour increase in compliance burden per Schedule 14A or 14C • 4 hour increase in compliance burden per Schedule TO
Item 1607: Reports, opinions, appraisals and negotiations • Require disclosure regarding any report, opinion or appraisal received by a SPAC or its sponsor from an outside party relating to the fairness of a de-SPAC transaction or any related financing transaction, including disclosure on the qualifications of the outside party, method of selection, and certain material relationships that existed during the past two years.	• Forms S-4 and F-4 • Schedules 14A and 14C • Schedule TO	• 1 hour increase in compliance burden per Form S-4 or F-4 • 1 hour increase in compliance burden per Schedule 14A or 14C • 1 hour increase in compliance burden per Schedule TO
Item 1608: Tender offer filing obligations in de-SPAC transactions • Require additional disclosures in a Schedule TO filed in connection with a de-SPAC transaction.	• Schedule TO	• 3 hour increase in compliance burden per Schedule TO
Item 1609: Financial projections in de-SPAC transactions • Require additional disclosures regarding financial projections disclosed in a disclosure document for a de-SPAC transaction.	• Forms S-4 and F-4 • Schedules 14A and 14C • Schedule TO	• 2 hour increase in compliance burden per Form S-4 or F-4 • 2 hour increase in compliance burden per Schedule 14A or 14C • 2 hour increase in compliance burden per Schedule TO

Proposed Requirement and Effects	Affected Forms and Schedules	Estimated Effect Per Affected Response*
Item 1610: Structured data requirement • Require information disclosed pursuant to Subpart 1600 to be tagged in a structured, machine-readable data language.	• Forms S-1, F-1, S-4, and F-4 • Schedules 14A and 14C • Schedule TO	• 1 hour increase in compliance burden per Form S-1, F-1, S-4, or F-4 • 1 hour increase in compliance burden per Schedule 14A or 14C • 1 hour increase in compliance burden per Schedule TO
Proposed Amendments to Regulation S-X Amend financial statement requirements and the forms and schedules filed in connection with business combination transactions involving shell companies (other than business combination related shell companies), including de-SPAC transactions, to more closely align required disclosures about the target private operating company with those required in a Form S-1 or F-1 for an initial public offering, including: • Expanding the circumstances in which target companies may report two years, instead of three years, of audited financial statements (resulting in a net decrease in burden) (proposed Rule 15-01(b)); and • Further aligning the requirements for audited financial statements in these transactions with those required in a registered initial public offering (resulting in a net decrease in burden) (proposed Rule 15-01(c), (d) and (e)).	• Forms S-4 and F-4 • Schedules 14A and 14C • Schedule TO	• 50 hour net decrease in compliance burden per affected Form S-4 or F-4** • 50 hour net decrease in compliance burden per affected Schedule 14A or 14C** • 50 hour net decrease in compliance burden per affected Schedule TO**
Proposed Amendments to Align Non-Financial Statement Disclosures in De-SPAC Transactions • Amend the forms and schedules filed in connection with de-SPAC transactions to more closely align required non-financial statement disclosures about the target private operating company with those required in a Form S-1 or F-1 for an initial public offering.	• Forms S-4 and F-4 • Schedules 14A and 14C • Schedule TO	• 8 hour increase in compliance burden per Form S-4 or F-4 • 8 hour increase in compliance burden per Schedule 14A or 14C • 8 hour increase in compliance burden per Schedule TO

Proposed Requirement and Effects	Affected Forms and Schedules	Estimated Effect Per Affected Response*
Proposed Amendment to Forms S-4 and F-4 • Amend Form S-4 and Form F-4 to require that the SPAC and the target private operating company be treated as co-registrants when the Form S-4 or Form F-4 is filed by the SPAC in connection with a de-SPAC transaction	• Forms S-4 and F-4	• 100 hour increase in compliance burden per Form S-4 or F-4***
Proposed Rule 3a-10 under the Investment Company Act • Require the board of directors of a SPAC relying on Rule 3a-10 to adopt an appropriate resolution evidencing that SPAC is primarily engaged in the business of seeking to complete a single de-SPAC transaction.	• None	• 1 hour increase in compliance burden per SPAC

Notes:

* Estimated effect expressed as increase or decrease of burden hours on average and, as applicable, derived from Commission staff review of samples of relevant sections of the affected forms.

** We arrive at an estimate for these amendments to Regulation S-X on the assumption that approximately 30% of affected responses would require one fewer year of audited financial statements under proposed Rule 15-01(b) than under the current rules from registrants that would not otherwise have prepared financial statements for such year. Coupled with an incremental increase in burden for the proposed amendments to Regulation S-X other than proposed Rule 15-01(b), when this decrease is spread across all affected responses, we arrive at a net burden decrease of 50 hours.

*** The estimated 100 hour increase in burden is based on an estimate of the additional time that a target company, as a co-registrant, would spend on preparing disclosures in a Form S-4 or F-4 filed by a SPAC for a de-SPAC transaction.

In addition, we are proposing to require that a post-business combination company re-determine whether it is a smaller reporting company (SRC) following a de-SPAC transaction. As proposed, the post-business combination company would be required to reflect this re-determination in its first periodic report after the de-SPAC transaction and in Commission filings thereafter until its next annual re-determination of SRC status. We estimate that the proposed re-determination of SRC status would result in increased burdens in filing Forms 10–K, Forms 10–Q, Schedules 14A, Schedules 14C, and Forms S–1 for those post-business combination companies that would lose SRC status, which takes into account the increased incremental burden in providing disclosures pursuant to non-SRC disclosure requirements. The following Table 2 sets forth our estimates regarding the increase in compliance burden when a post-business combination company loses SRC status:

PRA Table 2. Increase in Compliance Burden After Losing SRC Status

Form / Schedule	Estimated Increase in Internal Hours per Filing	Estimated Increase in Outside Professional Hours per Filing	Estimated Increase in Outside Professional Costs per Filing
Form 10-K*	439	147	$58,800
Form 10-Q*	36.57	11.88	$4,752
Schedule 14A**	0.75	0.25	$100
Schedule 14C***	0.75	0.25	$100
Form S-1*	5.75	17.25	$6,900

Notes:

* The estimated increases in compliance burdens are based on the difference between the current estimates for the applicable form and the estimated burden for SRCs in filing the form. We estimate the compliance burden for an SRC in filing these forms using the same methodology as in 2018 when the Commission amended the smaller reporting company definition. *See Smaller Reporting Company Definition*, Release No. 33-10513 (June 28, 2018) [83 FR 31992 (July 10, 2018)], at section V.

** In regard to Schedule 14A, we estimate that a company that loses SRC status would experience an increased compliance burden of 0.75 internal burden hours and a cost of $100 (0.25 professional hours x $400/hour) per schedule, based on our estimate of the compliance burden for 17 CFR 229.407(d)(5) and (e)(4) and (5) (Item 407(d)(5) and (e)(4) and (5) of Regulation S-K), with which smaller reporting companies are not required to comply.

*** Similar to Schedule 14A, we estimate that, in regard to Schedule 14C, a company that loses SRC status would experience an increased compliance burden of 0.75 burden hours and a cost of $100 (0.25 professional hours x $400/hour) per report, based on our estimate of the compliance burden for Item 407(d)(5) and (e)(4) and (5) of Regulation S-K.

C. Incremental and Aggregate Burden and Cost Estimates

We estimate below the incremental and aggregate increase in paperwork burden as a result of the proposed new rules and amendments. These estimates represent the average burden for all respondents, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual respondents based on a number of factors, including the size and complexity of their business. These estimates include the time and the cost of preparing and reviewing disclosure, filing documents, and retaining records. We believe that some registrants will experience costs in excess of this average and some registrants will experience less than the average costs. Our methodologies for deriving these estimates are discussed below.

Our estimates represent the burden for all SPACs that file registration statements with the Commission for registered offerings and all registrants that file disclosure documents in connection with a de-SPAC transaction or a business combination involving a shell company or a reporting shell company.[571] Additionally, our estimates take into account an expected increase in the number of Securities Act registration statements as a result of proposed Rule 145a. Based on a review of Commission filings during the period 2011–2021 and an analysis of the effects of the proposed new rules and amendments,[572] the staff estimates that:

- SPACs will file an average of 90 registration statements each year for registered offerings on Form S–1 and 8 registration statements on Form F–1, other than for de-SPAC transactions;
- An average of 30 registration statements on Form S–4 and 4 registration statements on Form F–4, 30 definitive proxy statements on Schedule 14A, 4 definitive information statements on Schedule 14C, and 2 tender offer statements on Schedule TO will be filed each year in connection with de-SPAC transactions; and
- An average of 20 registration statements on Form S–4 and 2 registration statements on Form F–4 will be filed each year for business combination transactions involving a reporting shell company and a non-shell company, other than de-SPAC transactions.[573]

[571] Throughout this release and as stated earlier, we use ''shell company'' and ''reporting shell company'' in lieu of the phrases ''shell company, other than a business combination related shell company'' and ''reporting shell company, other than a business combination related shell company.''

[572] We based our estimates, in part, on a review of Commission filings over a 10-year period because we believe that this longer timeframe would more accurately reflect the average number of registration statements filed by SPACs and disclosure documents for de-SPAC transactions in a given year.

[573] This estimate represents the upper bound of the estimated number of Forms S–4 and F–4 filed for these transactions.

For purposes of the PRA, the burden is allocated between internal burden hours and outside professional costs. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. The following Table 3 sets forth the percentage estimates we use for the burden allocation for each form and schedule, consistent with current OMB estimates and recent Commission rulemakings. We estimate that the average cost of retaining outside professionals is $400 per hour.[574]

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PRA Table 3. Standard Estimated Burden Allocation for Specified Forms, Schedules, and Records

Form / Schedule / Record Type	Internal	Outside Professionals
Forms S-1, F-1, S-4, and F-4	25%	75%
Schedules 14A and 14C	75%	25%
Schedule TO	25%	75%
Form 10-K and Form 10-Q	75%	25%
Resolution prepared in accordance with Rule 3a-10	50%	50%

[574] 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. This is the rate we typically estimate for outside legal services used in connection with public company reporting.

The following Table 4 summarizes the estimated effects of the proposed new rules and amendments, other than Rule 145a, on the paperwork burdens associated with the affected forms, schedules, and records:

PRA Table 4. Calculation of the Incremental Change in Burden Estimates of Current Responses Resulting from the Proposed New Rules and Amendments, Other Than Rule 145a

Form / Schedule / Record	Number of Estimated Affected Responses	Estimated Burden Hour Increase or Decrease / Affected Response	Total Incremental Increase or Decrease in Burden Hours	Estimated Increase or Decrease in Internal Burden Hours	Estimated Increase or Decrease in Outside Professional Hours	Total Increase or Decrease in Outside Professional Costs
	(A)	(B)	(C) = (A) * (B)	(D) = (C) * (Allocation %)	(E) = (C) * (Allocation %)	(F) = (E) * $400
Schedule 14A	30	(30)	(900)	(675)	(225)	($90,000)
Schedule 14C	4	(30)	(120)	(90)	(30)	($12,000)
Schedule TO	2	(27)	(54)	(14)	(41)	($16,200)
Form S-1	90	6	540	135	405	$108,000
Form S-4	30	95	2,850	713	2,138	$855,000
Form F-1	8	6	48	12	36	$9,600
Form F-4	4	95	380	95	285	$114,000
Resolution prepared in accordance with Rule 3a-10[+]	98	1	98	49	49	$19,600
Total	266	112	2,842	225	2,617	$988,000

Notes:

+ As discussed above, we believe that proposed Rule 3a-10 would offer market participants a number of benefits, including the reduction of compliance costs for some market participants. As a result, while no SPAC would be required to rely on Rule 3a-10, for purposes of this analysis, we assume that all SPACs conducting an initial public offering subsequent to adoption of the proposed rule would rely on proposed Rule 3a-10 and, therefore, prepare a board resolution in accordance with the conditions of Rule 3a-10.

The following Table 5 summarizes the estimated effects of proposed Rule 145a on the paperwork burdens associated with the affected forms:

PRA Table 5. Calculation of the Change in Burden Estimates of the Affected Forms Resulting from Proposed Rule 145a

Form / Schedule / Record	Estimated Increase in the Number of Responses	Estimated Burden Per Form	Total Incremental Increase or Decrease in Burden Hours	Estimated Increase in Internal Burden Hours	Estimated Increase in Outside Professional Hours	Total Increase in Outside Professional Costs
	(A)	(B)	(C) = (A) * (B)	(D) = (C) * (Allocation %)	(E) = (C) * (Allocation %)	(F) = (E) * $400
Form S-4	20	3,826	76,512	19,128	57,384	$22,953,551
Form F-4	2	1,441	2,882	720	2,161	$864,554
Total	22	5,267	79,394	19,848	59,545	$23,818,105

In addition, we estimate that an average of 50 fewer post-business combination companies following a de-SPAC transaction will qualify as smaller reporting companies than under the current rules until the next annual re-determination date.[575] While we cannot predict with certainty the number of these post-business combination companies, we estimate for purposes of our PRA calculations that currently all post-business combination companies qualify as SRCs following de-SPAC transactions in which the SPAC is the legal acquirer and that 80% of these companies that are eligible to use the scaled SRC disclosure provisions do so.[576] We estimate that these registrants would file, on average, one Form 10–K, 1.5 Forms 10–Q, one Schedule 14A, and one registration statement on Form S–1 prior to the next re-determination of SRC status.

[575] This estimate is based, in part, on our estimate of the number of de-SPAC transactions in which the SPAC is the legal acquirer.

[576] This estimated realization rate is based on the same methodology and data set forth in Release No. 33–10513, Section V.D. Though the estimated realization rate in Release No. 33–10513 preceded the effective date of the amendments to the smaller reporting company definition in 2018, we expect that the current realization rate for eligible companies using the scaled SRC disclosure provisions to be generally consistent with the estimated realization rate in 2018.

The following Table 6 summarizes the estimated effects of the proposed re-determination of SRC status on the paperwork burdens associated with the affected forms and schedules:

PRA Table 6. Calculation of the Incremental Change in Burden Estimates of Current Responses Resulting from the Proposed Re-Determination of SRC Status

Form / Schedule / Record	Number of Estimated Affected Responses	Estimated Burden Hour Increase or Decrease / Affected Response	Total Incremental Increase or Decrease in Burden Hours	Estimated Increase or Decrease in Internal Burden Hours	Estimated Increase or Decrease in Outside Professional Hours	Total Increase or Decrease in Outside Professional Costs
	(A)	(B)	(C) = (A) * (B)	(D) = (C) * (Allocation %)	(E) = (C) * (Allocation %)	(F) = (E) * $400
Schedule 14A	40	1	40	30	10	$4,000
Schedule 14C	4	1	4	3	1	$400
Form S-1	40	23	920	230	690	$276,000
Form 10-K	40	586	23,440	17,560	5,880	$2,352,000
Form 10-Q	60	48	2,880	2,194	713	$285,120
Total	184	659	27,284	20,017	7,294	$2,917,520

The following Table 7 summarizes the requested paperwork burden changes to existing information collections, including the estimated total reporting burdens and costs, under the proposed new rules and amendments.

PRA Table 7. Requested Paperwork Burden under the Proposed New Rules and Amendments+

+ Figures in this table have been rounded to the nearest whole number.

Form / Schedule	Current Burden			Program Change			Requested Change in Burden		
	Current Annual Responses	Current Burden Hours	Current Cost Burden	Number of Affected Responses	Estimated Increase or Decrease in Outside Prof. Hours	Increase or Decrease in Outside Professional Costs	Annual Responses	Burden Hours	Cost Burden
	(A)	(B)	(C)	(D)	(E)	(F)	(G) = (A)	(H) = (B) + (E)	(I) = (C) + (F)
Schedule 14A	6,369	777,590	$103,678,712	++	(645)	($86,000)	6,369	776,945	$103,592,712
Schedule 14C	569	56,356	$7,514,944	4	(90)	($12,000)	569	56,266	$7,502,944
Schedule TO	1,378	29,972	$11,988,600	2	(14)	($16,200)	1,378	29,959	$11,972,400
Form S-1	898	146,062	$178,916,043	+++	320	$384,000	898	178,916,363	$179,300,043
Form S-4	588	562,362	$677,255,579	++++	19,840	$23,890,904	608	563,075	$701,146,483
Form F-1	66	26,707	$32,293,375	8	12	$14,400	66	26,719	$32,307,775
Form F-4	39	14,049	$17,073,825	++++	815	$989,581	41	14,144	$18,063,406
Form 10-K	8,272	14,188,040	$1,893,793,119	40	17,560	$2,352,000	8,292	14,205,600	$1,896,145,119
Form 10-Q	22,925	3,182,333	$421,490,754	60	2,194	$285,120	22,925	3,184,527	$421,775,874
Total	41,124	18,983,471	$3,334,004,951	370	20,190	$3,944,320	41,124	197,773,642	$3,347,949,271

++See PRA Tables 4 and 6 for the number of affected responses for Schedule 14A.

+++ See PRA Tables 4 and 6 for the number of affected responses for Form S-1.

++++ See PRA Tables 4 and 5 for the number of affected responses for Form S-4 and Form F-4.

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D. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed changes to the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our estimates of the additional burden hours that would result from adoption of the proposed new rules and amendments;
- 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 collections 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 new rules and 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 these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–13–22. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–13–22 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

XI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[577] the Commission must advise the OMB as to whether a proposed regulation constitutes 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.

[577] Public Law 104–121, Tit. II, 110 Stat. 857 (1996).

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review.

We request comment on whether our proposed amendments would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

We request those submitting comments to provide empirical data and other factual support for their views to the extent possible.

XII. Initial Regulatory Flexibility Analysis and Certification

The Regulatory Flexibility Act [578] requires an agency, when issuing a rulemaking proposal, to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (''IRFA'') that describes the impact of the proposed rule on small entities, unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[579] This IRFA has been prepared in accordance with the Regulatory Flexibility Act. It relates to the proposed new rules and amendments described in Sections II through VI above.

A. Reasons for, and Objectives of, the Proposed Action

As discussed throughout the release, we are proposing new Subpart 1600 of Regulation S–K and amendments to existing forms and schedules to require specialized disclosures in registered offerings by SPACs, including initial public offerings, and in disclosure documents for de-SPAC transactions with respect to, among other things, compensation paid to sponsors, conflicts of interest, and dilution. For de-SPAC transactions, we are also proposing to require disclosure of a fairness determination, additional disclosures on the target private operating company, a re-determination of smaller reporting company status following the completion of a de-SPAC transaction, and a minimum dissemination period for certain disclosure documents in these transactions. These proposed rules and amendments would be applicable to, depending on the circumstances, registration statements on Forms S–1, F–1, S–4 and F–4 filed under the Securities Act and Schedules 14A, 14C and TO under the Exchange Act. The proposed rules would also clarify the underwriter status of SPAC IPO underwriters in connection with de-SPAC transactions and would require that the target company be named as a co-registrant in a Form S–4 or F–4 filed by a SPAC for a de-SPAC transaction. Further, we are proposing to amend the definition of ''blank check company'' for purposes of the PSLRA such that the safe harbor under the PSLRA for forward-looking information would not be available to SPACs and certain other blank check companies; to update and expand our guidance in Item 10(b) of Regulation S–K regarding the use of projections in Commission filings; [580] and to require additional disclosure when projections are disclosed in connection with de-SPAC transactions.

In regard to business combination transactions involving a reporting shell company,[581] we are proposing Securities Act Rule 145a to deem these transactions with a non-shell company to involve a sale of securities to the shell company's shareholders. In addition, we are proposing amendments to the financial statement reporting requirements for transactions involving shell companies in Regulation S–X. Finally, we are proposing a new safe harbor, Rule 3a–10, under the Investment Company Act that would provide that a SPAC that satisfies the conditions of the safe harbor would not be an investment company and therefore would not be subject to regulation as an investment company under the Investment Company Act.

The need for and objectives of the proposed rules and amendments are discussed in more detail in Sections II–VI above. We discuss the economic impact, including the estimated costs and burdens, of the proposed rules and amendments on all registrants, including small entities, in Sections IX and X above.

B. Legal Basis

We are proposing the new rules and rule amendments under the authority set forth in Sections 6, 7, 10, 19(a), and 28 of the Securities Act; Sections 3, 12, 13, 14, 15, 23(a), and 36 of the Exchange Act; and Sections 6(c) and 38(a) of the Investment Company Act.

C. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission hereby certifies that proposed Rule 3a–10 under the Investment Company Act would not, if adopted, have a significant economic impact on a substantial number of small entities.[582] Based on information available to the Commission, there were 861 initial public offerings conducted by SPACs in 2020 and 2021, of which 6 were for SPACs that sold $50 million or less in units.[583] As a result, we believe that approximately 0.7% of SPACs directly affected by proposed Rule 3a–10 would be small entities.[584] Accordingly, the Commission believes that proposed Rule 3a–10 would not, if adopted, have a significant economic impact on a substantial number of small entities.

D. Small Entities Subject to the Proposed Rules and Amendments

The proposed rules and amendments would apply to registrants that are small entities. The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [585] 17 CFR 230.157 (Securities Act Rule 157) defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding $5 million. 17 CFR 240.0–10(a) (Exchange Act Rule 0–10(a)) defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[586]

[578] 5 U.S.C. 601 *et seq.*

[579] 5 U.S.C. 603(a); 5 U.S.C. 605(b).

[580] Item 10(b) sets forth guidelines representing the Commission's views on important factors to be considered in formulating and disclosing management's projections of future economic performance in Commission filings.

[581] Throughout this release and as stated earlier, we use ''shell company'' and ''reporting shell company'' in lieu of the phrases ''shell company, other than a business combination related shell company'' and ''reporting shell company, other than a business combination related shell company.''

[582] The definition of ''small entity'' is set forth in Section XII.D below.

[583] Based on data from Dealogic M&A module as of Jan. 2022.

[584] While no SPAC would be required to rely on proposed Rule 3a–10, for purposes of this analysis, we assume that all SPACs conducting an initial public offering subsequent to adoption of the proposed rule would rely on proposed Rule 3a–10.

[585] 5 U.S.C. 601(6).

[586] See 17 CFR 270.0–10(a).

The proposed specialized disclosure and other requirements applicable to SPACs would not apply to issuers that raise less than $5 million at the time of their initial public offerings.[587] However, we acknowledge that there may be instances where a SPAC may be a small entity at the time of a subsequent registered offering or at the time of a de-SPAC transaction.[588] While we are not aware to date of any such instances, we request comment on the number of these small entities. In addition, due to data limitations, we are unable to estimate the number of potential target private operating companies in de-SPAC transactions that may be small entities;[589] therefore, we request comment on the number of these small entities.

In regard to proposed Rule 145a and the proposed amendments to Regulation S–X, we estimate that there are 163 reporting shell companies that are small entities.[590] However, due to data limitations, we are unable to estimate the number of private operating companies and private shell companies that are small entities that may engage in a business combination transaction.[591] We request comment on the number of these small entities.

E. Reporting, Recordkeeping, and Other Compliance Requirements

We expect that the proposed specialized disclosure and other requirements applicable to SPACs and target private operating companies would have an incremental effect on reporting, recordkeeping and other compliance burdens for registrants, including small entities. These proposed requirements would increase compliance costs for registrants, and compliance with these proposed requirements would require the use of professional skills, including accounting, legal, and technical skills. We generally expect that the nature of any benefits and costs associated with the proposed rules and amendments to be similar for large and small entities. We also anticipate that the economic benefits and costs likely could vary among small entities based on a number of factors, such as the nature and conduct of their businesses, which makes it difficult to project the economic impact on small entities with precision.[592] The proposed rules and amendments are discussed in detail in Sections II–VI above. We discuss the economic effect, including the estimated costs and burdens, of the proposed rules and amendments on all registrants, including small entities, in Section IX above.

Proposed Rule 145a, in deeming certain business combination transactions involving a reporting shell company to involve a sale of securities to the reporting shell company's shareholders, may impose reporting, recordkeeping, or compliance requirements and related costs on small entities that are reporting shell companies to the extent such a deemed sale of securities would require such a small entity to register the transaction under the Securities Act or comply with an exemption from registration. These costs could also include the costs associated with the proposed amendments to Regulation S–X, which would require an issuer in a business combination transaction involving a shell company to comply with financial statement reporting requirements that would align with those applicable in traditional initial public offerings. The proposed changes to the financial statement requirements would increase compliance costs for small entities when these transactions are registered under the Securities Act, although we do not expect the increase in incremental compliance costs resulting from the proposed amendments to be significant because the proposed amendments would codify existing staff guidance on financial statement requirements for these transactions.

F. Duplicative, Overlapping or Conflicting Federal Rules

The proposed disclosure requirements in Subpart 1600 may partially duplicate and overlap with a number of existing disclosure requirements under Regulation S–K that are currently applicable to SPAC registered offerings and in de-SPAC transactions. To the extent that the disclosure requirements in proposed Subpart 1600 overlap with these existing disclosure requirements, the requirements of proposed Subpart 1600 would be controlling. Other than these proposed disclosure requirements, the Commission believes that the proposed new rules and amendments would not duplicate, overlap or conflict with other federal rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. Accordingly, we considered several alternatives, including the following:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

The proposed specialized disclosure and other requirements with respect to SPAC registered offerings and de-SPAC transactions are intended to improve the usefulness and clarity of the information provided to investors so that they can make better informed decisions as to whether to purchase securities in SPAC registered offerings, or in secondary trading markets, and in voting, investment and redemption decisions in connection with de-SPAC transactions. They are also intended to enhance investor protections as well as provide additional clarity regarding the legal obligations of target companies and others in connection with a de-SPAC transaction. We believe that these proposed requirements are equally appropriate for SPACs of all sizes that are engaged in a registered offering and for SPACs and target private operating companies that are engaged in a de-SPAC transaction. As a result, we do not believe that it is appropriate to propose different compliance or reporting requirements for small entities; clarify, consolidate or simplify compliance and

[587] *See supra* note 12 and the discussion of the proposed definition of ''special purpose acquisition company'' in Section II.A.

[588] As noted above, the vast majority of initial public offerings by SPACs in 2020 and 2021 raised more than $50 million. In 2020, the smallest amount raised in an initial public offering by a SPAC was $40 million, and, in 2021, the smallest amount raised in an initial public offering by a SPAC was $44 million. When viewed over a 10-year period, we do not expect the outcome to be different due to how SPACs are structured to address Rule 419. *See supra* note 12. Further, with respect to proposed Rule 140a, we do not expect any underwriters in SPAC initial public offerings to be small entities.

[589] In this regard, we note that exchange listing requirements and provisions in the governing instruments of many SPACs, along with how SPACs are structured to avoid the application of Rule 419, make it less likely that SPACs would merge with or acquire a small entity. *See supra* notes 12 and 13.

[590] This estimate does not include business combination related shell companies.

[591] We believe that it is unlikely that a reporting company would engage in a business combination transaction with a shell company such that it would be subject to proposed Rule 145a. Therefore, we are not estimating the number of reporting companies for purposes of this analysis.

[592] We do not expect the proposed re-determination of smaller reporting company status following a de-SPAC transaction to have any effect on small entities because we do not expect any small entities to lose smaller reporting company following this re-determination, based on the public float and revenue thresholds in the smaller reporting company definition.

reporting requirements for small entities; or to exempt small entities from these requirements. As noted above, in our view, a private operating company's method of becoming a public company should not negatively impact investor protection.

With respect to using performance rather than design standards, these proposed requirements use primarily design standards in order to promote uniform compliance requirements for all registrants. Further, we believe that the proposed requirements would be more beneficial to investors if there are specific disclosure requirements that apply to all registrants, regardless of size, for the reasons discussed above.

Proposed Rule 145a would deem business combinations involving a reporting shell company and a non-shell company to involve a sale of securities to the reporting shell company's shareholders. Given that proposed Rule 145a is intended to address potential disparities in the disclosure and liability protections available to reporting shell company shareholders, we do not believe that it is appropriate to propose different compliance or reporting requirements for small entities; clarify, consolidate or simplify compliance and reporting requirements for small entities; or to exempt small entities from the proposed rule.

The proposed amendments to Regulation S–X would generally codify existing staff guidance on financial statement requirements for certain business combinations involving shell companies, and, based on staff analysis of disclosures in these transactions, we believe that most companies already report consistent with this staff guidance. Further, the amendments are not expected to have any significant adverse effect on small entities (and are, in fact, expected to relieve burdens for some of these entities). Accordingly, we do not believe that it is necessary to exempt small entities from all or part of the proposed amendments to Regulation S–X; establish different compliance or reporting requirements for such entities; or clarify, consolidate or simplify compliance and reporting requirements for small entities. Likewise, while we primarily use design standards to promote consistency, we do not believe it is necessary to use performance standards in connection with this aspect of the proposed rules.

H. Request for Comment

We encourage the submission of comments with respect to any aspect of this IRFA and certifications. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed rules and amendments;
- The existence or nature of the potential impact of the proposed rules and amendments on small entities discussed in the analysis;
- How the proposed amendments could further lower the burden on small entities; and
- How to quantify the impact of the proposed rules and amendments.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules and amendments are adopted, and will be placed in the same public file as comments on the proposed rules and amendments themselves.

Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the rule and form amendments contained in this document under the authority set forth in Sections 6, 7, 10, 19(a), and 28 of the Securities Act; Sections 3, 12, 13, 14, 15, 23(a), and 36 of the Exchange Act; and Sections 6(c) and 38(a) of the Investment Company Act.

List of Subjects

17 CFR Parts 210

Accountants, Accounting, Banks, Banking, Employee benefit plans, Holding companies, Insurance companies, Investment companies, Oil and gas exploration, Reporting and recordkeeping requirements, Securities, Utilities.

17 CFR Parts 229, 230, 232, 239, 240, and 249

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we are proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

■ 2. Amend § 210.1–02 by revising paragraph (d) and paragraph (w)(1) introductory text to read as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(d) *Audit (or examination).* The term *audit* (or *examination*), when used in regard to financial statements of issuers as defined by Section 2(a)(7) of the Sarbanes-Oxley Act of 2002, means an examination of the financial statements by an independent accountant in accordance with the standards of the Public Company Accounting Oversight Board (United States) (''PCAOB'') for the purpose of expressing an opinion thereon. See § 210.15–01(a) for definition of an audit when used in regard to financial statements of a company that will be a predecessor to an issuer that is a shell company (other than a business combination related shell company). When used in regard to financial statements of entities that are not issuers as defined by Section 2(a)(7) of the Sarbanes-Oxley Act of 2002, the term means an examination of the financial statements by an independent accountant in accordance with either the standards of the PCAOB or U.S. generally accepted auditing standards (''U.S. GAAS'') as specified or permitted in the regulations and forms applicable to those entities for the purpose of expressing an opinion thereon. The standards of the PCAOB and U.S. GAAS may be modified or supplemented by the Commission.

* * * * *

(w) * * *

(1) The term *significant subsidiary* means a subsidiary, including its subsidiaries, which meets any of the conditions in paragraph (w)(1)(i), (ii), or (iii) of this section; however if the registrant is a registered investment company or a business development company, the tested subsidiary meets any of the conditions in paragraph (w)(2) of this section instead of any of the conditions in this paragraph (w)(1). In either an acquisition by a shell company (other than a business combination related shell company) of a business that is not the predecessor or an acquisition by the shell company's predecessor, use the predecessor's financial statements instead of the registrant and the subsidiaries

consolidated in applying the significance tests in paragraphs (w)(1)(i), (ii), and (iii) of this section.

* * * * *

■ 3. Amend § 210.3–01 by revising paragraph (a) to read as follows:

§ 210.3–01 Consolidated balance sheets.

(a) There shall be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited balance sheets as of the end of each of the two most recent fiscal years. If the registrant has been in existence for less than one fiscal year, there shall be filed an audited balance sheet as of a date within 135 days of the date of filing the registration statement.

* * * * *

■ 4. Amend § 210.3–05 by revising paragraph (b)(4)(ii) to read as follows:

§ 210.3–05 Financial statements of businesses acquired or to be acquired.

* * * * *

(b) * * *

(4) * * *

(ii) A registrant, other than a foreign private issuer required to file reports on Form 6–K (§ 249.306 of this chapter) or a shell company (other than a business combination related shell company), that omits from its initial registration statement financial statements of a recently consummated business acquisition pursuant to paragraph (b)(4)(i) of this section must file those financial statements and any pro forma information specified by §§ 210.11–01 through 210.11–03 (Article 11) under cover of Form 8–K (§ 249.308 of this chapter) no later than 75 days after consummation of the acquisition. A shell company (other than a business combination related shell company) that acquires a business, which is not or will not be its predecessor, that omits from a registration statement or proxy statement the financial statements of that recently consummated business acquisition pursuant to (b)(4)(i) of this section shall refer to § 210.15–01(d)(2).

* * * * *

■ 5. Amend § 210.3–14 by revising paragraph (b)(3)(ii) to read as follows:

§ 210.3–14 Special instructions for financial statements of real estate operations acquired or to be acquired.

* * * * *

(b) * * *

(3) * * *

(ii) A registrant, other than a foreign private issuer required to file reports on Form 6–K (§ 249.306 of this chapter) or shell company (other than a business combination related shell company), that omits from its initial registration statement financial statements of a recently consummated acquisition of a real estate operation pursuant to paragraph (b)(3)(i) of this section must file those financial statements and any pro forma information specified by §§ 210.11–01 through 210.11–03 (Article 11) under cover of Form 8–K (§ 249.308 of this chapter) no later than 75 days after consummation of the acquisition. A shell company (other than a business combination related shell company) that acquires a real estate operation, which is not or will not be its predecessor that omits from a registration statement or proxy statement the financial statements of a recently consummated business acquisition pursuant to (b)(4)(i) of this section shall refer to § 210.15–01(d)(2).

* * * * *

■ 6. Amend § 210.8–02 by revising it to read as follows:

§ 210.8–02 Annual financial statements.

Smaller reporting companies shall file an audited balance sheet for the registrant and for its predecessors as of the end of each of the most recent two fiscal years, or as of a date within 135 days if the issuer has existed for a period of less than one fiscal year, and audited statements of comprehensive income, cash flows and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent audited balance sheet (or such shorter period as the registrant has been in business).

■ 7. Amend § 210.10–01 by revising paragraph (a)(1) to read as follows:

§ 210.10–01 Interim financial statements.

(a) * * *

(1) Interim financial statements required by this rule need only be provided as to the registrant and its subsidiaries consolidated and its predecessors and may be unaudited. Separate statements of other entities which may otherwise be required by this regulation may be omitted.

* * * * *

■ 8. Amend § 210.11–01 by revising paragraph (d) introductory text to read as follows:

§ 210.11–01 Presentation requirements.

* * * * *

(d) For purposes of this rule, the term *business* should be evaluated in light of the facts and circumstances involved and whether there is sufficient continuity of the acquired entity's operations prior to and after the transactions so that disclosure of prior financial information is material to an understanding of future operations. A presumption exists that a separate entity, a subsidiary, or a division is a business. A special purpose acquisition company, as defined in § 229.1601(a), is a business for purposes of this rule. However, a lesser component of an entity may also constitute a business. Among the facts and circumstances which should be considered in evaluating whether an acquisition of a lesser component of an entity constitutes a business are the following:

* * * * *

■ 9. Add an undesignated center heading and § 210.15–01 to read as follows:

Acquisitions of Businesses by a Shell Company (Other Than a Business Combination Related Shell Company)

§ 210.15–01 Acquisitions of businesses by a shell company (other than a business combination related shell company).

(a) *Audit requirements of predecessor.* The term *audit* (or *examination*), when used in regard to financial statements of a business that is or will be a predecessor to a shell company (other than a business combination related shell company), means an examination of the financial statements by an independent accountant in accordance with the standards of the PCAOB for the purpose of expressing an opinion thereon.

(b) *Financial statements.* When the registrant is a shell company (other than a business combination related shell company) and the financial statements of a business that will be a predecessor to the registrant are required in a registration statement or proxy statement, the registrant must file financial statements of the business in accordance with §§ 210.3–01 through 210.3–12 and 210.10–01 (Articles 3 and 10 of Regulation S–X) as if the filing were a Securities Act registration statement for the initial public offering of the business's equity securities. The financial statements of the business may be filed pursuant to §§ 210.8–01 through 210.8–08 (Article 8) when that business would qualify to be a smaller reporting company based on its annual revenues as of the most recently completed fiscal year, if it were filing a registration statement itself.

(c) *Age of financial statements of the predecessor.* The financial statements of a business that will be a predecessor to a shell company (other than a business combination related shell company) shall comply with the requirements in § 210.3–12 (§ 210.8–08 when that business would qualify to be a smaller reporting company based on its annual revenues as of the most recently completed fiscal year, if it were filing a registration statement itself) in determining the age of financial

statements of the predecessor business in the registration statement or proxy statement of the registrant.

(d) *Acquisitions of businesses by a shell company or its predecessor that are not or will not be the predecessor.* Registrants shall apply § 210.3–05 (§ 210.8–04 when that business would qualify to be a smaller reporting company based on its annual revenues as of the most recently completed fiscal year if it were filing a registration statement itself) to acquisitions of businesses by a shell company (other than a business combination related shell company) or its predecessor that are not or will not be the predecessor to the registrant.

(1) See § 210.1–02(w)(1) for rules on applying the significance tests to acquisitions of businesses by a shell company (other than a business combination related shell company) or its predecessor that are not or will not be the predecessor.

(2) A shell company (other than a business combination related shell company) that omits from a registration statement or proxy statement the financial statements of a recently acquired business that is not or will not be its predecessor pursuant to Rule 3–05(b)(4)(i) of Regulation S–X (§ 210.1–02(b)(4)(i)) must file those financial statements in its Form 8–K filed pursuant to Item 2.01(f).

(e) *Financial statements of shell company.* After a shell company (other than a business combination related shell company) acquires a business that is its predecessor, the financial statements of the shell company for periods prior to consummation of the acquisition are not required to be included in a filing once the financial statements of the predecessor have been filed for all required periods through the acquisition date and the financial statements of the registrant include the period in which the acquisition was consummated.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 10. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 11. Amend § 229.10 by:
■ a. Revising paragraph (b); and
■ b. Adding paragraph (f)(2)(iv).

The revisions and additions read as follows.

§ 229.10 (Item 10) General.

* * * * *

(b) *Commission policy on projections.* The Commission encourages the use in documents specified in Rule 175 under the Securities Act (§ 230.175 of this chapter) and Rule 3b–6 under the Exchange Act (§ 240.3b–6 of this chapter) of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. The guidelines set forth herein represent the Commission's views on important factors to be considered in formulating and disclosing such projections. These guidelines also apply to projections of future economic performance of persons other than the registrant, such as the target company in a business combination transaction, that are included in the registrant's Commission filings.

(1) *Basis for projections.* The Commission believes that management must have the option to present in Commission filings its good faith assessment of a registrant's future performance. Management, however, must have a reasonable basis for such an assessment. Although a history of operations or experience in projecting may be among the factors providing a basis for management's assessment, the Commission does not believe that a registrant always must have had such a history or experience in order to formulate projections with a reasonable basis. An outside review of management's projections may furnish additional support for having a reasonable basis for a projection. If management decides to include a report of such a review in a Commission filing, there also should be disclosure of the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant, and other material factors concerning the process by which any outside review was sought or obtained. Moreover, in the case of a registration statement under the Securities Act, the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

(2) *Format for projections.* (i) In determining the appropriate format for projections included in Commission filings, consideration must be given to, among other things, the financial items to be projected, the period to be covered, and the manner of presentation to be used. Although traditionally projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss) and earnings (loss) per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items. Revenues, net income (loss) and earnings (loss) per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There may be instances, however, when it is appropriate to present earnings (loss) from continuing operations in addition to or in lieu of net income (loss). It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income. The period that appropriately may be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year. Accordingly, management should select the period most appropriate in the circumstances. In addition, management, in making a projection, should disclose what, in its opinion, is the most probable specific amount or the most reasonable range for each financial item projected based on the selected assumptions. Ranges, however, should not be so wide as to make the disclosures meaningless. Moreover, several projections based on varying assumptions may be judged by management to be more meaningful than a single number or range and would be permitted.

(ii) The presentation of projected measures that are not based on historical financial results or operational history should be clearly distinguished from projected measures that are based on historical financial results or operational history.

(iii) It generally would be misleading to present projections that are based on historical financial results or operational history without presenting such historical financial measure or operational history with equal or greater prominence.

(iv) The presentation of projections that include non-GAAP financial measures should include a clear definition or explanation of those financial measures, a description of the Generally Accepted Accounting Principles (GAAP) financial measure to which it is most closely related, and an explanation why the non-GAAP measure was selected instead of a GAAP measure.

* * * * *

(f) * * *

* * * * *

(2) * * *

(iv) Upon the consummation of a de-SPAC transaction, as defined in Item 1601(a) of Regulation S–K (17 CFR 229.1601(a)), an issuer must re-determine its status as a smaller reporting company pursuant to the thresholds set forth in paragraph (f)(1) of this section prior to its first filing, other than pursuant to Items 2.01(f), 5.01(a)(8), and/or 9.01(c) of Form 8–K, following the de-SPAC transaction and reflect this re-determination in its next periodic report.

(A) Public float is measured as of a date within four business days after the consummation of the de-SPAC transaction and is computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates as of that date by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; and

(B) Annual revenues are the annual revenues of the target company, as defined in Item 1601(d) of Regulation S–K (17 CFR 229.1601(d)), as of the most recently completed fiscal year reported in the Form 8–K filed pursuant to Items 2.01(f), 5.01(a)(8), and/or 9.01(c) of Form 8–K.

* * * * *

■ 12. Amend § 229.601 by adding paragraph (b)(101)(i)(D) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(101) * * *

(i) * * *

(D) Any filing that is subject to the exceptions listed in paragraphs (A), (B), or (C), and contains any disclosure required by subpart 229.1600 of this part, must include an Interactive Data File consisting solely of that disclosure.

* * * * *

■ 13. Amend part 229 by adding subpart 229.1600 to read as follows:

Subpart 229.1600—Special Purpose Acquisition Companies

Sec.

Subpart 229.1600—Special Purpose Acquisition Companies

§ 229.1601 (Item 1601) Definitions.

For the purposes of this subpart 229.1600:

(a) *De-SPAC transaction.* The term *de-SPAC transaction* means a business combination such as a merger, consolidation, exchange of securities, acquisition of assets, or similar transaction involving a special purpose acquisition company and one or more target companies (contemporaneously, in the case of more than one target company).

(b) *Special purpose acquisition company (SPAC).* The term *special purpose acquisition company* means a company that has indicated that its business plan is to:

(1) Register a primary offering of securities that is not subject to the requirements of § 230.419 (Rule 419 under the Securities Act);

(2) Complete a de-SPAC transaction within a specified time frame; and

(3) Return all remaining proceeds from the registered offering and any concurrent offerings to its shareholders if the company does not complete a de-SPAC transaction within the specified time frame.

(c) *SPAC sponsor.* The term *SPAC sponsor* means the entity and/or person(s) primarily responsible for organizing, directing or managing the business and affairs of a special purpose acquisition company, other than in their capacities as directors or officers of the special purpose acquisition company as applicable.

(d) *Target company.* The term *target company* means an operating company, business or assets.

§ 229.1602 (Item 1602) Registered offerings by special purpose acquisition companies.

(a) *Forepart of registration statement and outside cover page of the prospectus.* In addition to the information required by § 229.501 (Item 501 of Regulation S–K), provide the following information on the outside front cover page of the prospectus in plain English as required by § 230.421(d) of this chapter:

(1) State the time frame for the special purpose acquisition company to consummate a de-SPAC transaction and whether this time frame may be extended.

(2) State whether security holders will have the opportunity to redeem the securities offered and whether the redemptions will be subject to any limitations.

(3) State the amount of the compensation received or to be received by the SPAC sponsor and its affiliates, and whether this compensation may result in a material dilution of the purchasers' equity interests. Provide a cross-reference, highlighted by prominent type or in another manner, to the locations of related disclosures in the prospectus.

(4) Disclose in the tabular format specified below the estimated remaining pro forma net tangible book value per share at quartile intervals up to the maximum redemption threshold, consistent with the methodologies and assumptions used in the disclosure provided pursuant to § 229.506 (Item 506 of Regulation S–K), and provide a cross-reference, highlighted by prominent type or in another manner, to the locations of related disclosures in the prospectus:

TABLE 1 TO PARAGRAPH (a)(4)

Remaining pro forma net tangible book value per share				
Offering price of ____	25% of maximum redemption	50% of maximum redemption	75% of maximum redemption	Maximum redemption

Instruction 1 to Item 1602(a)(4). If the offering includes an over-allotment option, include separate rows in the tabular disclosure showing remaining pro forma net tangible book value per share with and without the exercise of the over-allotment option.

(5) State whether there may be actual or potential conflicts of interest between the SPAC sponsor or its affiliates or promoters and purchasers in the offering. Provide a cross-reference, highlighted by prominent type or in another manner, to the locations of related disclosures in the prospectus.

(b) *Prospectus summary.* The information required by § 229.503(a) (Item 503(a) of Regulation S–K) shall include, but not be limited to, a brief description of the following in plain English as required by § 230.421(d) of this chapter:

(1) The manner in which the special purpose acquisition company will identify and evaluate potential business combination candidates and whether it will solicit shareholder approval for the de-SPAC transaction;

(2) The material terms of the trust or escrow account and the amount or percentage of the gross offering proceeds that the special purpose acquisition company will place in the trust or escrow account;

(3) The material terms of the securities being offered, including redemption rights, and whether the securities are the same class as those held by the SPAC sponsor and its affiliates;

(4) The period of time in which the special purpose acquisition company intends to consummate a de-SPAC transaction and its plans in the event that it does not consummate a de-SPAC transaction within this time period, including whether, and if so, how, it may extend the time period; any limitations on extensions, including the number of times; the consequences to the SPAC sponsor of not completing an extension of this time period; and whether security holders will have voting or redemption rights with respect to such an extension;

(5) Any plans to seek additional financings and how the terms of additional financings may impact unaffiliated security holders;

(6) In a tabular format, the nature and amount of the compensation received or to be received by the SPAC sponsor, its affiliates and promoters, and the extent to which this compensation may result in a material dilution of the purchasers' equity interests; and

(7) Any material actual or potential conflicts of interest between the SPAC sponsor or its affiliates or promoters and purchasers in the offering, including those that may arise in determining whether to pursue a de-SPAC transaction.

(c) *Dilution.* In addition to the disclosure required by § 229.506 (Item 506 of Regulation S–K), describe material potential sources of future dilution following the registered offering by the special purpose acquisition company. Disclose in tabular format the amount of future dilution from the public offering price that will be absorbed by purchasers of the securities being offered, to the extent known and quantifiable.

§ 229.1603 (Item 1603) SPAC sponsor; conflicts of interest.

(a) *SPAC sponsor, its affiliates and promoters.* Provide the following information about the SPAC sponsor, its affiliates and promoters of the special purpose acquisition company:

(1) State the SPAC sponsor's name and describe the SPAC sponsor's form of organization.

(2) Describe the general character of the SPAC sponsor's business.

(3) Describe the experience of the SPAC sponsor, its affiliates and any promoters in organizing special purpose acquisition companies and the extent to which the SPAC sponsor, its affiliates and the promoters are involved in other special purpose acquisition companies.

(4) Describe the material roles and responsibilities of the SPAC sponsor, its affiliates and any promoters in directing and managing the special purpose acquisition company's activities.

(5) Describe any agreement, arrangement or understanding between the SPAC sponsor and the special purpose acquisition company, its executive officers, directors or affiliates in determining whether to proceed with a de-SPAC transaction.

(6) Disclose the nature (*e.g.,* cash, shares of stock, warrants and rights) and amounts of all compensation that has or will be awarded to, earned by, or paid to the SPAC sponsor, its affiliates and any promoters for all services rendered in all capacities to the special purpose acquisition company and its affiliates. In addition, disclose the nature and amounts of any reimbursements to be paid to the SPAC sponsor, its affiliates and any promoters upon the completion of a de-SPAC transaction.

(7) Identify the controlling persons of the SPAC sponsor. Disclose, as of the most recent practicable date, the persons who have direct and indirect material interests in the SPAC sponsor, as well as the nature and amount of their interests. Provide an organizational chart that shows the relationship between the special purpose acquisition company, the SPAC sponsor, and the SPAC sponsor's affiliates.

(8) Describe any agreement, arrangement or understanding, including any payments, between the SPAC sponsor and unaffiliated security holders of the special purpose acquisition company regarding the redemption of outstanding securities of the special purpose acquisition company.

(9) Disclose, in a tabular format to the extent practicable, the material terms of any agreement, arrangement or understanding regarding restrictions on whether and when the SPAC sponsor and its affiliates may sell securities of the special purpose acquisition company, including the date(s) on which the agreement, arrangement or understanding may expire; the natural persons and entities subject to such an agreement, arrangement or understanding; any exceptions under such an agreement, arrangement or understanding; and any terms that would result in an earlier expiration of such an agreement, arrangement or understanding.

(b) *Conflicts of interest.* Describe any actual or potential material conflict of interest, including any material conflict of interest in determining whether to proceed with a de-SPAC transaction and any material conflict of interest arising from the manner in which the special purpose acquisition company compensates the SPAC sponsor, executive officers and directors or the manner in which the SPAC sponsor compensates its executive officers and directors, between:

(1) The SPAC sponsor or its affiliates or the special purpose acquisition company's officers, directors, or promoters; and

(2) Unaffiliated security holders.

(c) Briefly describe the fiduciary duties of each officer and director of the special purpose acquisition company to other companies to which they have fiduciary duties.

§ 229.1604 (Item 1604) De-SPAC transactions.

(a) *Forepart of registration statement and outside cover page of the prospectus.* In addition to the information required by § 229.501 (Item 501 of Regulation S–K), provide the following information on the outside front cover page of the prospectus in plain English as required by § 230.421(d) of this chapter:

(1) State whether the special purpose acquisition company reasonably believes that the de-SPAC transaction is fair or unfair to unaffiliated security holders, and whether the special purpose acquisition company or the SPAC sponsor has received a report, opinion or appraisal from an outside party regarding the fairness of the transaction.

(2) Describe briefly any material financing transactions that have occurred since the initial public offering of the special purpose acquisition company or will occur in connection with the consummation of the de-SPAC transaction.

(3) State the amount of the compensation received or to be received by the SPAC sponsor, its affiliates and promoters in connection with the de-SPAC transaction or any related financing transaction, and whether this compensation may result in a material dilution of the equity interests of non-redeeming shareholders who hold the securities until the consummation of the de-SPAC transaction. Provide a cross-reference, highlighted by prominent type or in another manner, to the locations of related disclosures in the prospectus.

(4) State whether there may be material actual or potential conflicts of interest between the SPAC sponsor or its affiliates or promoters and unaffiliated security holders in connection with the de-SPAC transaction. Provide a cross-reference, highlighted by prominent type or in another manner, to the locations of related disclosures in the prospectus.

(b) *Prospectus summary.* The information required by § 229.503(a) (Item 503(a) of Regulation S–K) shall include, but not be limited to, a brief description of the following in plain English as required by § 230.421(d) of this chapter:

(1) The background and material terms of the de-SPAC transaction;

(2) Whether the special purpose acquisition company reasonably believes that the de-SPAC transaction is fair or unfair to unaffiliated security holders, the bases for such belief, and whether the special purpose acquisition company or the SPAC sponsor has received any report, opinion or appraisal from an outside party concerning the fairness of the de-SPAC transaction;

(3) Any material actual or potential conflicts of interest between the SPAC sponsor or its affiliates or promoters and unaffiliated security holders in connection with the de-SPAC transaction;

(4) In a tabular format, the terms and amount of the compensation received or to be received by the SPAC sponsor and its affiliates in connection with the de-SPAC transaction or any related financing transaction, and whether that compensation has resulted or may result in a material dilution of the equity interests of unaffiliated security holders of the special purpose acquisition company;

(5) The material terms of any financing transactions that have occurred or will occur in connection with the consummation of the de-SPAC transaction, the anticipated use of proceeds from these financing transactions and the dilutive impact, if any, of these financing transactions on unaffiliated security holders; and

(6) The rights of security holders to redeem the outstanding securities of the special purpose acquisition company and the potential impact of redemptions on the value of the securities owned by non-redeeming shareholders.

(c) *Dilution.* Describe each material potential source of future dilution that non-redeeming shareholders may experience by electing not to tender their shares in connection with the de-SPAC transaction.

(1) Provide sensitivity analysis disclosure in tabular format that expresses the amount of potential dilution under a range of reasonably likely redemption levels. At each redemption level in the sensitivity analysis, quantify the dilutive impact on non-redeeming shareholders of each source of dilution, such as the amount of compensation paid or to be paid to the SPAC sponsor, the terms of outstanding warrants and convertible securities, and underwriting and other fees. For each redemption level in the sensitivity analysis, state the company valuation at or above which the potential dilution results in the amount of the non-redeeming shareholders' interest per share being at least the initial public offering price per share of common stock.

(2) Provide a description of the model, methods, assumptions, estimates, and parameters necessary to understand the sensitivity analysis disclosure.

§ 229.1605 (Item 1605) Background of and reasons for the de-SPAC transaction; terms of the de-SPAC transaction; effects.

(a) Furnish a summary of the background of the de-SPAC transaction. Such summary shall include, but not be limited to, a description of any contacts, negotiations or transactions that have occurred concerning the de-SPAC transaction.

(b) State the material terms of the de-SPAC transaction, including but not limited to:

(1) A brief description of the de-SPAC transaction;

(2) A brief description of any related financing transaction, including any payments from the SPAC sponsor to investors in connection with the financing transaction;

(3) A reasonably detailed discussion of the reasons for engaging in the de-SPAC transaction and for the structure and timing of the de-SPAC transaction and any related financing transaction;

(4) An explanation of any material differences in the rights of security holders of the combined company as a result of the de-SPAC transaction after the completion of the de-SPAC transaction;

(5) A brief statement as to the accounting treatment of the de-SPAC transaction, if material; and

(6) The Federal income tax consequences of the de-SPAC transaction, if material.

(c) Describe the effects of the de-SPAC transaction and any related financing transaction on the special purpose acquisition company and its affiliates, the SPAC sponsor and its affiliates, the target company and its affiliates, and unaffiliated security holders of the special purpose acquisition company. The description must include a

reasonably detailed discussion of both the benefits and detriments of the de-SPAC transaction and any related financing transaction to the special purpose acquisition company and its affiliates, the SPAC sponsor and its affiliates, the target company and its affiliates, and unaffiliated security holders. The benefits and detriments of the de-SPAC transaction and any related financing transaction must be quantified to the extent practicable.

(d) Disclose any material interests in the de-SPAC transaction or any related financing transaction held by the SPAC sponsor and the special purpose acquisition company's officers and directors, including fiduciary or contractual obligations to other entities as well as any interest in, or affiliation with, the target company.

(e) State whether or not security holders are entitled to any redemption or appraisal rights. If so, summarize the redemption or appraisal rights. If there are no redemption or appraisal rights available for security holders who object to the de-SPAC transaction, briefly outline any other rights that may be available to security holders.

§ 229.1606 (Item 1606) Fairness of the de-SPAC transaction and any related financing transaction.

(a) *Fairness.* State whether the special purpose acquisition company reasonably believes that the de-SPAC transaction and any related financing transaction are fair or unfair to unaffiliated security holders of the special purpose acquisition company. If any director voted against, or abstained from voting on, approval of the de-SPAC transaction or any related financing transaction, identify the director, and indicate, if known, after making reasonable inquiry, the reasons for the vote against the transaction or abstention.

(b) *Factors considered in determining fairness.* Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this section is based and, to the extent practicable, the weight assigned to each factor. Such factors shall include, but not be limited to, the valuation of the target company, the consideration of any financial projections, any report, opinion or appraisal described in § 229.1607 (Item 1607 of Regulation S–K), and the dilutive effects described in § 229.1604(c) (Item 1604(c) of Regulation S–K).

(c) *Approval of security holders.* State whether or not the de-SPAC transaction or any related financing transaction is structured so that approval of at least a majority of unaffiliated security holders is required.

(d) *Unaffiliated representative.* State whether or not a majority of directors who are not employees of the special purpose acquisition company has retained an unaffiliated representative to act solely on behalf of unaffiliated security holders for purposes of negotiating the terms of the de-SPAC transaction or any related financing transaction and/or preparing a report concerning the fairness of the de-SPAC transaction or any related financing transaction.

(e) *Approval of directors.* State whether or not the de-SPAC transaction or any related financing transaction was approved by a majority of the directors of the special purpose acquisition company who are not employees of the special purpose acquisition company.

Instruction 1 to Item 1606: A statement that the special purpose acquisition company has no reasonable belief as to the fairness or unfairness of the de-SPAC transaction or any related financing transaction to unaffiliated security holders will not be considered sufficient disclosure in response to paragraph (a) of this section.

§ 229.1607 (Item 1607) Reports, opinions, appraisals and negotiations.

(a) *Report, opinion or appraisal.* State whether or not the special purpose acquisition company or SPAC sponsor has received any report, opinion or appraisal from an outside party relating to the consideration or the fairness of the consideration to be offered to security holders or the fairness of the de-SPAC transaction or any related financing transaction to the special purpose acquisition company, SPAC sponsor or security holders who are not affiliates.

(b) *Preparer and summary of the report, opinion or appraisal.* For each report, opinion or appraisal described in response to paragraph (a) of this section or any negotiation or report described in response to § 229.1606(d) (Item 1606(d) of Regulation S–K) concerning the terms of the transaction:

(1) Identify the outside party and/or unaffiliated representative;

(2) Briefly describe the qualifications of the outside party and/or unaffiliated representative;

(3) Describe the method of selection of the outside party and/or unaffiliated representative;

(4) Describe any material relationship that existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of the relationship between:

(i) The outside party, its affiliates, and/or unaffiliated representative; and

(ii) The special purpose acquisition company, the SPAC sponsor and/or their respective affiliates,

(5) State whether the special purpose acquisition company or SPAC sponsor determined the amount of consideration to be paid to the target company or its security holders, or the valuation of the target company, or whether the outside party recommended the amount of consideration to be paid or the valuation of the target company; and

(6) Furnish a summary concerning the negotiation, report, opinion or appraisal. The summary must include, but need not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the special purpose acquisition company or SPAC sponsor; and any limitation imposed by the special purpose acquisition company or SPAC sponsor on the scope of the investigation.

Instruction 1 to Item 1607(b): The information called for by paragraphs (b)(1), (2), and (3) of this section must be given with respect to the firm that provides the report, opinion, or appraisal rather than the employees of the firm that prepared the report.

(c) All reports, opinions or appraisals referred to in paragraph (a) of this section shall be, as applicable, filed as exhibits to the registration statement or schedule or included in the schedule if the schedule does not have exhibit filing requirements.

§ 229.1608 (Item 1608) Tender offer filing obligations in de-SPAC transactions.

If the special purpose acquisition company files a Schedule TO (§ 240.14d–100) pursuant to § 240.13e–4(c)(2) (Rule 13e–4(c)(2)) for any redemption of securities offered to security holders, such Schedule TO must provide the information required by General Instruction L.2. to Form S–4, General Instruction I.2. to Form F–4, and Item 14(f) of Schedule 14A, as applicable, in addition to the information otherwise required by Schedule TO. Such redemption shall be conducted in compliance with all other provisions of Rule 13e–4 and Regulation 14E.

§ 229.1609 (Item 1609) Financial projections in de-SPAC transactions.

(a) With respect to any projections disclosed in the filing, disclose the purpose for which the projections were prepared and the party that prepared the projections.

(b) Disclose all material bases of the disclosed projections and all material assumptions underlying the projections, and any factors that may impact such assumptions. The disclosure referred to in this section should include a discussion of any material growth rates or discount multiples used in preparing the projections, and the reasons for selecting such growth rates or discount multiples.

(c) If the projections relate to the performance of the special purpose acquisition company, state whether the projections reflect the view of the special purpose acquisition company's management or board about its future performance as of the date of the filing. If the projections relate to the target company, disclose whether the target company has affirmed to the special purpose acquisition company that its projections reflect the view of the target company's management or board about its future performance as of the date of the filing. If the projections no longer reflects the views of the special purpose acquisition company's or the target company's management or board regarding the future performance of their respective companies as the date of the filing, state the purpose of disclosing the projections and the reasons for any continued reliance by the management or board on the projections.

§ 229.1610 (Item 1610) Structured data requirement.

Provide the disclosure required by this subpart 229.1600 in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 14. The general authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Public Law 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 15. Revise § 230.137(d)(1) to read as follows:

§ 230.137 Publications or distributions of research reports by brokers or dealers that are not participating in an issuer's registered distribution of securities.

* * * * *

(d) * * *

(1) A blank check company issuing penny stock, as defined in § 230.405 (Rule 405);

* * * * *

■ 16. Revise § 230.138(a)(4)(i) to read as follows:

§ 230.138 Publications or distributions of research reports by brokers or dealers about securities other than those they are distributing.

(a) * * *

(4) * * *

(i) A blank check company issuing penny stock, as defined in § 230.405 (Rule 405);

* * * * *

■ 17. Revise § 230.139(a)(1)(ii)(A) to read as follows:

§ 230.139 Publications or distributions of research reports by brokers or dealers distributing securities.

(a) * * *

(1) * * *

(ii) * * *

(A) A blank check company issuing penny stock, as defined in § 230.405 (Rule 405);

* * * * *

■ 18. Add § 230.140a to read as follows:

§ 230.140a Definition of ''distribution'' in section 2(a)(11) for certain parties.

A person who has acted as an underwriter of the securities of a special purpose acquisition company and takes steps to facilitate the de-SPAC transaction, or any related financing transaction, or otherwise participates (directly or indirectly) in the de-SPAC transaction will be deemed to be engaged in the distribution of the securities of the surviving public entity in a de-SPAC transaction within the meaning of section 2(a)(11) of the Act. Terms used in this subsection have the same definitions as in Item 1601 of Regulation S–K (17 CFR 229.1601).

■ 19. Add § 230.145a to read as follows:

§ 230.145a Business combinations with reporting shell companies.

With respect to a reporting shell company's shareholders, any direct or indirect business combination of a reporting shell company that is not a business combination related shell company involving another entity that is not a shell company, as those terms are defined in § 230.405, is deemed to involve an offer, offer to sell, offer for sale, or sale within the meaning of section 2(a)(3) of the Act. For purposes of this rule, a reporting shell company is a company other than an asset-backed issuer as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

(1) No or nominal operations;

(2) Either:

(i) No or nominal assets;

(ii) Assets consisting solely of cash and cash equivalents; or

(iii) Assets consisting of any amount of cash and cash equivalents and nominal other assets; and

(3) an obligation to file reports under Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

* * * * *

■ 20. Amend § 230.163A by:

■ a. Removing the preliminary note;

■ b. Adding an introductory paragraph; and

■ c. Revising paragraph (b)(3)(i).

The revision and addition read as follows:

§ 230.163A Exemption from section 5(c) of the Act for certain communications made by or on behalf of issuers more than 30 days before a registration statement is filed.

Attempted compliance with this section does not act as an exclusive election and the issuer also may claim the availability of any other applicable exemption or exclusion. Reliance on this section does not affect the availability of any other exemption or exclusion from the requirements of section 5 of the Act.

* * * * *

(b) * * *

(3) * * *

(i) A blank check company issuing penny stock, as defined in § 230.405 (Rule 405);

* * * * *

■ 21. Amend § 230.164 by:

■ a. Removing the preliminary notes;

■ b. Adding an introductory paragraph; and

■ c. Revising paragraph (e)(2)(i).

The revision and addition read as follows:

§ 230.164 Post-filing free writing prospectuses in connection with certain registered offerings.

This section is not available for any communication that, although in technical compliance with this section, is part of a plan or scheme to evade the requirements of section 5 of the Act. Attempted compliance with this section does not act as an exclusive election and the person relying on this section also may claim the availability of any other applicable exemption or exclusion. Reliance on this section does not affect the availability of any other exemption or exclusion from the requirements of section 5 of the Act.

* * * * *

(e) * * *

(2) * * *

(i) A blank check company issuing penny stock, as defined in § 230.405 (Rule 405);

* * * * *

■ 22. Amend § 230.174 by revising the heading and paragraph (g) to read as follows:

§ 230.174 Delivery of prospectus by dealers; exemptions under section 4(a)(3) of the Act.

* * * * *

(g) If the registration statement relates to an offering of securities of a blank check company issuing penny stock, as defined in Rule 405 (§ 230.405), the statutory period for prospectus delivery specified in section 4(a)(3) of the Act shall not terminate until 90 days after the date funds and securities are released from the escrow or trust account pursuant to Rule 419 under the Act (17 CFR 230.419).

* * * * *

■ 23. Amend § 230.405 by:
■ a. Adding the definition for ''blank check company'' in alphabetical order;
■ b. Adding the definition for ''blank check company issuing penny stock'' in alphabetical order;
■ c. Revising paragraph (1)(ii)(A) in the definition for ''ineligible issuer''; and
■ d. Adding paragraph (3)(iv) to the definition for ''smaller reporting company''.

The additions and revisions read as follows:

§ 230.405 Definitions of terms.

* * * * *

Blank check company. The term *blank check company* means a company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

* * * * *

Blank check company issuing penny stock. The term *blank check company issuing penny stock* means a company that is subject to § 230.419 of this chapter.

* * * * *

Ineligible issuer. (1) * * *

(ii) * * *

(A) A blank check company issuing penny stock (as defined in § 230.405);

* * * * *

Smaller reporting company. * * *

(3) * * *

(iv) Upon the consummation of a de-SPAC transaction, as defined in § 229.1601(a) (Item 1601(a) of Regulation S–K), an issuer must re-determine its status as a smaller reporting company pursuant to the thresholds set forth in paragraphs (1) and (2) of this definition prior to its first filing, other than pursuant to Items 2.01(f), 5.01(a)(8), and/or 9.01(c) of Form 8–K, following the de-SPAC transaction and reflect this re-determination in its next periodic report.

(A) Public float is measured as of a date within four business days after the consummation of the de-SPAC transaction and is computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates as of that date by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; and

(B) Annual revenues are the annual revenues of the target company, as defined in § 229.1601(d) (Item 1601(d) of Regulation S–K), as of the most recently completed fiscal year reported in the Form 8–K filed pursuant to Items 2.01(f), 5.01(a)(8), and/or 9.01(c) of Form 8–K.

* * * * *

■ 24. Amend § 230.419 by:
■ a. Revising the heading;
■ b. Revising paragraph (a)(1);
■ c. Removing paragraph (a)(2);
■ d. Redesignating paragraph (a)(3) as paragraph (a)(2); and
■ e. Revising paragraph (b)(1)(i).

The revisions read as follows:

§ 230.419 Offerings by blank check companies issuing penny stock.

(a) * * *

(1) The provisions of this section shall apply to every registration statement filed under the Act relating to an offering by a blank check company that:

(i) Is a development stage company; and

(ii) Is issuing ''penny stock,'' as defined in § 240.3a51–1 of this chapter (Rule 3a51–1) under the Securities Exchange Act of 1934 (''Exchange Act'').

* * * * *

(b) * * *

(1) * * *

(i) Except as otherwise provided in this section or prohibited by other applicable law, all securities issued in connection with an offering by a blank check company subject to this section and the gross proceeds from the offering shall be deposited promptly into:

* * * * *

■ 25. Revise § 230.430B(b)(2)(iv)(A) to read as follows:

§ 230.430B Prospectus in a registration statement after effective date.

(b) * * *

(2) * * *

(iv) * * *

(A) A blank check company issuing penny stock, as defined in § 230.405 (Rule 405);

* * * * *

■ 26. Revise § 230.437a(a)(1) to read as follows:

§ 230.437a Written consents.

(a) * * *

(1) Are not a blank check company issuing penny stock, as defined in § 230.405 (Rule 405); and

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 27. The general authority citation for part 232 continues to read in part 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.

* * * * *

■ 28. Amend § 232.405 by:
■ a. Revising the introductory text and paragraphs (a)(2) and (4);
■ b. Removing ''and'' from the end of the paragraph (b)(1)(i);
■ c. Removing the period and adding in its place ''; and'' in paragraph (b)(1)(ii);
■ d. Adding paragraph (b)(1)(iii);
■ e. Adding paragraph (b)(4); and
■ f. Revising Note 1 to § 232.405.

The revisions and additions read as follows:

§ 232.405 Interactive Data File Submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), Note D.5 of Exchange Act Rule 14a–101 (§ 240.14a–101 of this chapter), General Instruction L of Exchange Act Rule 14d–100 (240.14d–100 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of

this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format, and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), Note D.5 of Exchange Act Rule 14a–101 (§ 240.14a–101 of this chapter), General Instruction L of Exchange Act Rule 14d–100 (240.14d–100 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable;

* * * * *

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), Note D.5 of Exchange Act Rule 14a–101 (§ 240.14a–101 of this chapter), General Instruction L of Exchange Act Rule 14d–100 (240.14d–100 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter); or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter).

* * * * *

(b) * * *

(1) * * *

(iii) The disclosure set forth in paragraph (4) of this section.

* * * * *

(4) The disclosure provided under Regulation S–K (17 CFR 229) and related provisions that is required to be tagged, including, as applicable:

(a) The information required by Subpart 1600 of Regulation S–K (§ 229.1601 through § 229.1610 of this chapter*).*

* * * * *

Note 1 to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 239.11 of this chapter (Form S–1), § 239.13 of this chapter (Form S–3), § 239.25 of this chapter (Form S–4), § 239.18 of this chapter (Form S–11), § 239.31 of this chapter (Form F–1), § 239.33 of this chapter (Form F–3), § 239.34 of this chapter (Form F–4), § 249.310 of this chapter (Form 10–K), § 249.308a of this chapter (Form 10–Q), and § 249.308 of this chapter (Form 8–K). Note D.5 of Section 240.14a–101 of this chapter (Note D.5 of Exchange Act Rule 14a–101) specifies the circumstances under which an Interactive Data File must be submitted with respect to § 240.14a–101 of this chapter (Schedule 14A). General Instruction L of Section 240.14d–100 of this chapter (General Instruction L) of Exchange Act Rule 14d–100) specifies the circumstances under which an Interactive Data File must be submitted with respect to § 240.14d–100 of this chapter (Schedule TO). Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6–K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 249.240f of this chapter (Form 40–F) and § 249.306 of this chapter (Form 6–K). Section 229.601(b)(101) (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, paragraph 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.(15) of the General Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq*.) or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 29. The general authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 30. Amend Form S–1 (referenced in § 239.11) by adding General Instruction VIII to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–1

* * * * *

General Instructions

* * * * *

VIII. Offering by a Special Purpose Acquisition Company

If a registration statement on this Form S–1 is being used to register an offering of securities of a special purpose acquisition company, as defined in Item 1601(b) of Regulation S–K (17 CFR 229.1601(b)), other than in connection with a de-SPAC transaction, as defined in Item 1601(a) of Regulation S–K (17 CFR 229.1601(a)), the registrant must furnish in the prospectus the information required by Items 1602 and 1603 of Regulation S–K (17 CFR 229.1602 and 229.1603), in the manner set forth by the structured data provision of Item 1610 of Regulation S–K (17 CFR 229.1610), in addition to the Items that are otherwise required by this Form. If the securities to be registered on this Form will be issued in a de-SPAC transaction, attention is directed to the requirements of Form S–4 applicable to de-SPAC transactions, including, but not limited to, General Instruction L.

■ 31. Amend Form S–4 (referenced in § 239.25) by:

■ a. Adding General Instruction L;

■ b. Revising paragraph (b)(7) introductory text of Item 17 and Instruction 1 of paragraph (b)(7) of Item 17; and

■ c. Revising Instruction 1 to the signature block.

The addition and revisions read as follows:

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–4

* * * * *

General Instructions

* * * * *

L. De-SPAC Transactions

1. If securities to be registered on this Form will be issued in a de-SPAC transaction, as defined in Item 1601(a) of Regulation S–K (17 CFR 229.1601(a)), then the disclosure provisions of Items 1603 through 1607 and 1609 of Regulation S–K (17 CFR 229.1603 through 229.1607 and 229.1609), as well as the structured data provision of Item 1610 of Regulation S–K (17 CFR 229.1610), shall apply in addition to the provisions of this Form. To the extent that the applicable disclosure requirements of Subpart 229.1600 are inconsistent with the disclosure requirements of this Form, the requirements of Subpart 229.1600 are controlling. If the securities to be registered on this Form will be issued by a special purpose acquisition company, as defined in Item 1601(b) of Regulation S–K (17 CFR 229.1601(b)), in a de-SPAC transaction, the term ''registrant'' for purposes of the disclosure requirements of this Form shall mean the special purpose acquisition company.

2. If the target company, as defined in Item 1601(d) of Regulation S–K (17 CFR 229.1601(d)), in a de-SPAC transaction is not subject to the reporting requirements of either Section 13(a) or 15(d) of the Exchange Act, provide the following additional information with respect to the target company:

a. Item 101 of Regulation S–K (§ 229.101 of this chapter), description of business;

b. Item 102 of Regulation S–K (§ 229.102 of this chapter), description of property;

c. Item 103 of Regulation S–K (§ 229.103 of this chapter), legal proceedings;

d. Item 304 of Regulation S–K (§ 229.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure;

e. Item 403 of Regulation S–K (§ 229.403 of this chapter), security ownership of certain beneficial owners and management, assuming the completion of the de-SPAC transaction and any related financing transaction; and

f. Item 701 of Regulation S–K (§ 229.701 of this chapter), recent sales of unregistered securities.

If the target company is a foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), information with respect to the target company may be provided in accordance with Items 3.C, 4, 6.E, 7.A, 8.A.7, and 9.E of Form 20–F, in lieu of the information specified above.

3. If securities to be registered on this Form will be issued in a de-SPAC transaction, as defined in Item 1601(a) of Regulation S–K (17 CFR 229.1601(a)), the prospectus must be distributed to security holders no later than the lesser of 20 calendar days prior to the date on which action is to be taken or the maximum number of days permitted for disseminating the prospectus under the applicable laws of the jurisdiction of incorporation or organization.

* * * * *

Item 17. Information With Respect to Companies Other Than S–3 Companies

* * * * *

(7) Financial statements that would be required in an annual report sent to security holders under Rules 14a–3(b)(1) and (b)(2) (§ 240.14b–3 of this chapter), if an annual report was required. In a de-SPAC transaction, provide the financial statements required by § 240.15–01 (Rule 15–01 of Regulation S–X). If the registrant's security holders are not voting, the transaction is not a roll-up transaction (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)), and:

* * * * *

Instructions

1. The financial statements required by paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited. If the company being acquired will be a predecessor to a registrant that is a shell company, see § 210.15–01(a).

* * * * *

Signatures

* * * * *

Instructions

1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement. If the securities to be registered on this Form will be issued by the special purpose acquisition company in a de-SPAC transaction, as such terms are defined in Items 1601(b) and (a) of Regulation S–K, the term ''registrant'' for purposes of this instruction shall mean the special purpose acquisition and the target company, as such term is defined in Item 1601(d) of Regulation S–K.

* * * * *

■ 32. Amend Form F–1 (referenced in § 239.31) by adding General Instruction VII to read as follows:

Note: The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–1

* * * * *

General Instructions

* * * * *

VII. Offering by a Special Purpose Acquisition Company

If a registration statement on this Form F–1 is being used to register an offering of securities of a special purpose acquisition company, as defined in Item 1601(b) of Regulation S–K (17 CFR 229.1601(b)), other than in connection with a de-SPAC transaction, as defined in Item 1601(a) of Regulation S–K (17 CFR 229.1601(a)), the registrant must furnish in the prospectus the information required by Items 1602 and 1603 of Regulation S–K (17 CFR 229.1602 and 229.1603), in the manner set forth by the structured data provision of Item 1610 of Regulation S–K (17 CFR 229.1610), in addition to the Items that are otherwise required by this Form. If the securities to be registered on this Form will be issued in a de-SPAC transaction, attention is directed to the requirements of Form F–4 applicable to de-SPAC transactions, including, but not limited to, General Instruction I.

* * * * *

■ 33. Amend Form F–4 (referenced in § 239.34) by:
■ a. Adding General Instruction I;
■ b. Revising Instruction 1 to paragraph (b)(5) of Item 17; and
■ c. Revising the Instructions to paragraph (b)(5) and (b)(6) of Item 17; and
■ d. Revising Instruction 1 to the signature block.

The addition and revisions read as follows:

Note: The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–4

* * * * *

General Instructions

* * * * *

I. De-SPAC Transactions

1. If securities to be registered on this Form will be issued in a de-SPAC transaction, as defined in Item 1601(a) of Regulation S–K (17 CFR 229.1601(a)), then the disclosure provisions of Items 1603 through 1607 and 1609 of Regulation S–K (17 CFR 229.1603 through 229.1607 and 1609), as well as the structured data provision of Item 1610 of Regulation S–K (17 CFR 229.1610), shall apply in addition to the provisions of this Form. To the extent that the disclosure requirements of Subpart 229.1600 are inconsistent with the disclosure requirements of this Form, the requirements of Subpart 229.1600 are controlling. If the securities to be registered on this Form will be issued by a special purpose acquisition company, as defined in Item 1601(b) of Regulation S–K (17 CFR 229.1601(b)), in a de-SPAC transaction, the term ''registrant'' for purposes of the disclosure requirements of this Form shall mean the special purpose acquisition company.

2. If the target company, as defined in Item 1601(d) of Regulation S–K (17 CFR 229.1601(d)), in a de-SPAC transaction is not subject to the reporting requirements of either Section 13(a) or 15(d) of the Exchange Act, provide the following additional information with respect to the company:

a. Item 101 of Regulation S–K (§ 229.101 of this chapter), description of business;

b. Item 102 of Regulation S–K (§ 229.102 of this chapter), description of property;

c. Item 103 of Regulation S–K (§ 229.103 of this chapter), legal proceedings;

d. Item 403 of Regulation S–K (§ 229.403 of this chapter), security ownership of certain beneficial owners and management, assuming the completion of the de-SPAC transaction and any related financing transaction; and

e. Item 701 of Regulation S–K (§ 229.701 of this chapter), recent sales of unregistered securities.

If the target company is a foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), information with respect to the target company may be provided in accordance with Items 3.C, 4, 6.E, 7.A, 8.A.7, and 9.E of Form 20–F, in lieu of the information specified above.

3. If securities to be registered on this Form will be issued in a de-SPAC transaction, as defined in Item 1601(a) of Regulation S–K (17 CFR 229.1601(a)), the prospectus must be distributed to security holders no later than the lesser of 20 calendar days prior to the date on which action is to be taken or the maximum number of days permitted for disseminating the prospectus under the applicable laws of the jurisdiction of incorporation or organization.

* * * * *

Part I

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F–3 Companies

* * * * *

Instructions

1. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited. If the foreign company being acquired will be a predecessor to a registrant that is a shell company, see § 210.15–01(a).

* * * * *

Instructions to Paragraph (b)(5) and (b)(6)

If the financial statements required by paragraphs (b)(5) and (b)(6) are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 18 of Form 20–F (§ 249.220f of this chapter) if the foreign business being acquired will be a predecessor to the issuer that is a shell company or, in all other circumstances, with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. when the financial statements are prepared on a basis other than U.S. GAAP.

Signatures

* * * * *

Instructions

1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement. If the securities to be registered on this Form will be issued by the special purpose acquisition company in a de-SPAC transaction, as such terms are defined in Items 1601(b) and (a) of Regulation S–K, the term ''registrant'' for purposes of this instruction shall mean the special purpose acquisition and the target company, as such term is defined in Item 1601(d) of Regulation S–K.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 34. The general authority citation for part 240 continues to read 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, 78o4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 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. 1887 (2010); and sec. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 35. Amend § 240.12b–2 by adding paragraph (3)(iv) to the definition of ''smaller reporting company'' to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Smaller reporting company. * * *

(3) * * *

(iv) Upon the consummation of a de-SPAC transaction, as defined in Item 1601(a) of Regulation S–K (17 CFR 229.1601(a)), an issuer must re-determine its status as a smaller reporting company pursuant to the thresholds set forth in paragraphs (1) and (2) of this definition prior to its first filing, other than pursuant to Items 2.01(f), 5.01(a)(8), and/or 9.01(c) of Form 8–K, following the de-SPAC transaction and reflect this re-determination in in its next periodic report.

(A) Public float is measured as of a date within 4 business days after the consummation of the de-SPAC transaction and is computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates as of that date by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; and

(B) Annual revenues are the annual revenues of the target company, as defined in Item 1601(d) of Regulation S–K (17 CFR 229.1601(d)), as of the most recently completed fiscal year reported in the Form 8–K filed pursuant to Items 2.01(f), 5.01(a)(8), and/or 9.01(c) of Form 8–K.

* * * * *

■ 36. Amend § 240.14a–6 by adding paragraph (q) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(q) *De-SPAC transactions.* If a transaction is a de-SPAC transaction, as defined in § 229.1601(a) of this chapter (Item 1601(a) of Regulation S–K), the proxy statement of the special purpose acquisition company as defined in § 229.1601(b) of this chapter (Item 1601(b) of Regulation S–K) must be distributed to security holders no later than the lesser of 20 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for disseminating the proxy statement under the applicable laws of the jurisdiction of incorporation or organization.

■ 37. Amend § 240.14a–101 by adding paragraph D.5 to the Notes and paragraph (f) to Item 14 to read as follows:

* * * * *

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Notes * * *

D. * * *

5. *Interactive Data File.* An Interactive Data File must be included in accordance with § 232.405 of this chapter (Rule 405 of Regulation S–T) and the EDGAR Filer Manual where applicable pursuant to Item 14(f) of this Schedule and § 229.1610 of this chapter (Item 1610 of Regulation S–K).

* * * * *

Item 14. * * *

* * * * *

(f) *De-SPAC transactions.* (1) If the transaction is a de-SPAC transaction, as defined in § 229.1601(a) (Item 1601(a) of Regulation S–K), then the disclosure provisions of §§ 229.1603 through 229.1607 and 229.1609 (Items 1603 through 1607 and 1609 of Regulation S–K), as well as the structured data provision of § 229.1610 (Item 1610 of Regulation S–K), shall apply to the transaction in addition to the provisions of this schedule. To the extent that the disclosure requirements of Subpart 229.1600 are inconsistent with the disclosure requirements of this schedule, the requirements of Subpart 229.1600 are controlling.

(2) Provide the following additional information for the target company:

(i) Information required by § 229.101 of this chapter (Item 101 of Regulation S–K), description of business;

(ii) Information required by § 229.102 of this chapter (Item 102 of Regulation S–K), description of property;

(iii) Information required by § 229.103 of this chapter (Item 103 of Regulation S–K), legal proceedings;

(iv) Section 229.304 of this chapter (Item 304 of Regulation S–K), changes in and disagreements with accountants on accounting and financial disclosure;

(v) Information required by § 229.403 of this chapter (Item 403 of Regulation S–K), security ownership of certain beneficial owners and management, assuming the completion of the de-SPAC transaction and any related financing transaction;

(vi) Information required by § 229.701 of this chapter (Item 701 of Regulation S–K), recent sales of unregistered securities; and

(vii) If any directors are appointed without action by the security holders of the special purpose acquisition company, §§ 229.103(c)(2), 229.401, and 229.404(a) and (b) of this chapter (Items 103(c)(2), 401, and 404(a) and (b) of Regulation S–K).

* * * * *

■ 38. Amend § 240.14c–2 by adding paragraph (e) to read as follows:

§ 240.14c–2 Distribution of information statement.

* * * * *

(e) If a transaction is a de-SPAC transaction, as defined in § 229.1601(a) of this chapter (Item 1601(a) of Regulation S–K), the information statement of the special purpose acquisition company as defined in § 229.1601(b) (Item 1601(b) of Regulation S–K) must be distributed to security holders no later than the lesser of 20 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for disseminating the information statement under the applicable laws of the jurisdiction of incorporation or organization.

■ 39. Amend § 240.14d–100 by:

■ a. Redesignating General Instruction K as General Instruction M; and

■ b. Adding new General Instructions K and L.

The additions read as follows:

* * * * *

§ 240.14d–100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

* * * * *

General Instructions:

* * * * *

K. De-SPAC Transactions. If the filing relates to a de-SPAC transaction, as defined in § 229.1601(a) of this chapter (Item 1601(a) of Regulation S–K), then the disclosure provisions of §§ 229.1603 through 229.1609 of this chapter (Items 1603 through 1609 of Regulation S–K), as well as the structured data provision of § 229.1610 of this chapter (Item 1610

of Regulation S–K), shall apply to the transaction in addition to the provisions of this statement. To the extent that the disclosure requirements of Subpart 229.1600 of this chapter are inconsistent with the disclosure requirements of this filing, the requirements of Subpart 229.1600 of this chapter are controlling.

L. Interactive Data File. An Interactive Data File must be included in accordance with § 232.405 of this chapter (Rule 405 of Regulation S–T) and the EDGAR Filer Manual where applicable pursuant to Item 14(f) of § 240.14a–101 of this chapter (Schedule 14A) and § 229.1610 of this chapter (Item 1610 of Regulation S–K).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 40. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745, and secs. 2 and 3, Pub. L. 116–222, 134 Stat. 1063.

* * * * *

Section 249.308 is also issued under 15 U.S.C. 80a–29 and 80a–37.

* * * * *

■ 41. Amend Form 20–F (referenced in § 249.220f) by adding Instruction 4 to Item 8 to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 8. Financial Information

* * * * *

Instructions to Item 8:

* * * * *

4. When the issuer is a shell company that will acquire a business that will be its predecessor, provide the information required by § 240.15–01 (Rule 15–01 of Regulation S–X).

* * * * *

■ 42. Amend Form 8–K (referenced in § 249.308) by revising paragraph (f) of Item 2.01 by removing the phrase ''the registrant were filing a general form for registration of securities on Form 10'' and adding in its place ''the acquired business were filing a general form for registration of securities on Form 10''. The revision reads as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

* * * * *

Item 2.01 Completion of Acquisition or Disposition of Assets

* * * * *

(f) if the registrant was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), immediately before the transaction in which the registrant acquired a business, disclose the information that would be required if the acquired business were filing a general form for registration of securities on Form 10 under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the transaction. Notwithstanding General Instruction B.3. to Form 8–K, if any disclosure required by this Item 2.01(f) is previously reported, as that term is defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in this report.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 43. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376, unless otherwise noted.

■ 44. Add § 270.3a–10 to read as follows:

§ 270.3a–10 Special Purpose Acquisition Companies.

(a) Notwithstanding section 3(a)(1)(A) of the Act, a special purpose acquisition company (''SPAC'') will not be deemed to be an investment company; *provided that:*

(1) The SPAC's assets consist solely of Government securities, securities issued by government money market funds as defined in § 270.2a–7(a)(14), and cash items prior to completion of the de-SPAC transaction;

(2) The assets set forth in paragraph (a)(1) of this section are not at any time acquired or disposed of for the primary purpose of recognizing gains or decreasing losses resulting from market value changes;

(3) The SPAC:

(i) Seeks to complete a single de-SPAC transaction as a result of which:

(A) The surviving company, either directly or through a primarily controlled company, will be primarily engaged in the business of the target company or companies, which business is not that of an investment company, and

(B) The surviving company will have at least one class of securities listed for trading on a national securities exchange;

(ii) Files a Form 8–K with the Commission, no later than 18 months after the effective date of its initial registration statement, disclosing an agreement to engage in the de-SPAC transaction with at least one target company; and

(iii) Completes the de-SPAC transaction no later than 24 months after the effective date of its initial registration statement.

(4) Any assets of the SPAC:

(i) That are not used in connection with the de-SPAC transaction; or

(ii) In the event of a failure of the SPAC to file a Form 8–K within the time frame set forth in paragraph (a)(3)(ii) of this section or complete a de-SPAC transaction within the time frame set forth in paragraph (a)(3)(iii) of this section will be distributed in cash to investors as soon as reasonably practicable thereafter;

(5) The SPAC is primarily engaged in the business of seeking to complete a single de-SPAC transaction, as set forth in paragraphs (a)(3) of this section and evidenced by:

(i) The activities of its officers, directors and employees;

(ii) Its public representations of policies;

(iii) Its historical development; and

(iv) An appropriate resolution of its board of directors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents; and

(6) The SPAC does not hold itself out as being primarily engaged in the business of investing, reinvesting or trading in securities.

(b) For purposes of this section:

(1) *Initial registration statement* means the registration statement that the SPAC filed under the Securities Act of 1933 for its initial public offering.

(2) *Primarily controlled company* means an issuer that:

(i) Is controlled within the meaning of section 2(a)(9) of the Act by the

surviving company following a de-SPAC transaction with a degree of control that is greater than that of any other person; and

(ii) Is not an investment company.

(3) *Surviving company* means the public company issuer that survives a de-SPAC transaction and in which the shareholders of the SPAC immediately prior to the de-SPAC transaction will own equity interests immediately following the de-SPAC transaction.

(4) *De-SPAC transaction* has the same meaning as defined in § 229.1601(a) of this chapter (Item 1601(a) of Regulation S–K).

(5) *Special purpose acquisition company* has the same meaning as defined in § 229.1601(b) of this chapter (Item 1601(b) of Regulation S–K).

(6) *Target company* has the same meaning as defined in § 229.1601(d) of this chapter (Item 1601(d) of Regulation S–K).

By the Commission.

Dated: March 30, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–07189 Filed 5–9–22; 11:15 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 87 Friday,
No. 93 May 13, 2022

Part III

Department of Energy

10 CFR Part 430
Energy Conservation Program: Test Procedure for Consumer Furnace Fan; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–TP–0041]

RIN 1904–AE15

Energy Conservation Program: Test Procedure for Consumer Furnace Fans

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedure for consumer furnace fans to: Clarify the scope of applicability; incorporate by reference the most recent version of industry test methods; establish a test method for furnace fans incapable of operating at the required external static pressure; clarify testing of certain products, including furnace fans with modulating controls, furnace fans and modular blowers tested with electric heat kits, certain two-stage furnaces that operate at reduced input only for a preset period of time, dual-fuel furnaces, and certain oil-fired furnaces; and make updates to improve test procedure repeatability and reproducibility. DOE is seeking comment from interested parties on the proposals.

DATES: DOE will accept comments, data, and information regarding this proposal no later than July 12, 2022. See section V, ''Public Participation,'' for details. DOE will hold a webinar on Thursday, May 19, 2022, from 1:00 p.m. to 3:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–TP–0041, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *FurnFans2020TP0041@ee.doe.gov.* Include docket number EERE–2020–BT–TP–0041 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/EERE-2020-BT-TP-0041.* 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:

Ms. Catherine Rivest, 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) 586–7335. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@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 maintains a previously approved incorporation by reference (ASHRAE 41.1–1986 (Reapproved (''RA'') 2006)), and proposes to incorporate by reference the following industry standards into 10 CFR part 430:

ANSI/AMCA 210–07, ANSI/ASHRAE 51–07 (''AMCA 210–2007''), *Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating,* approved 2007.

ANSI/ASHRAE Standard 37–2009 (RA 2019) (including Errata Sheets issued October 3, 2016 and April 25, 2019) (''ASHRAE 37–2009 (RA 2019)''), *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* approved 2019.

ANSI/ASHRAE Standard 41.2–1987 (RA 92), (''ASHRAE 41.2–1987 (RA 1992)''), *Standard Methods for Laboratory Airflow Measurement,* approved 1992.

ANSI/ASHRAE 103–2017 (''ASHRAE 103–2017''), *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,* approved 2017.

Copies of AMCA 210–2007 can be obtained from Air Movement and Control Association International, Inc. (AMCA), 30 West University Drive, Arlington Heights, IL 60004, (847) 394–0150, or by going to *http://www.amca.org/store/item.aspx?ItemId=81.*

Copies of ANSI/ASHRAE 37–2009 (RA 2019), ASHRAE 41.2–1987 (RA 1992), and ASHRAE 103–2017, can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Publication Sales, 1791 Tullie Circle NE, Atlanta, GA 30329, 800–527–4723 or (404) 636–8400, or go to *www.ashrae.org.*

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

Table of Contents

I. Authority and Background

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to establish and amend energy conservation standards and test procedures for consumer furnace fans. (42 U.S.C. 6295(f)(4)(D)) DOE's energy conservation standards and test procedures for consumer furnace fans are currently prescribed at title 10 of the Code of Federal Regulations (''CFR''), part 430 section 32(y); and 10 CFR part 430 subpart B appendix AA, *Uniform Test Method for Measuring the Energy Consumption of Furnace Fans* (''appendix AA''), respectively. The following sections discuss DOE's authority to establish test procedures for consumer furnace fans and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

EPCA 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 consumer furnace fans, the subject of this document. (42 U.S.C. 6295(f)(4)(D))

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 also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including consumer furnace fans, 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.

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

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

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

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

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

B. Background

As discussed, DOE's existing test procedures for consumer furnace fans appear at appendix AA. Appendix AA provides procedures and calculations to determine the fan energy rating (''FER''), expressed as watts per 1,000 cubic feet per minute of airflow (''W/1000 cfm'').

DOE established the test procedure for consumer furnace fans at appendix AA in a final rule published on January 3, 2014 (''January 2014 Final Rule''). 79 FR 499. The test procedure is applicable to furnace fans used by weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers.[5] Section 1, appendix AA. For each of these categories, the test procedure covers both mobile home and non-mobile home models. The test procedure is not applicable to non-ducted products, such as whole-house ventilation systems without ductwork, central air-conditioning (''CAC'') condensing unit fans, room fans, and furnace draft inducer fans, since a ''furnace fan'' is defined as ''an electrically-powered device used in a consumer product for the purpose of circulating air through ductwork.'' 10 CFR 430.2.

As established in the January 2014 Final Rule, appendix AA incorporates by reference the definitions, test setup and equipment, and procedures for measuring steady-state combustion efficiency from the 2007 version of American National Standards Institute (''ANSI'')/American Society of Heating, Refrigerating and Air Conditioning Engineers (''ASHRAE'') Standard 103, *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers* (''ASHRAE 103–2007''). In addition to these provisions, appendix AA includes provisions for apparatuses and procedures for measuring temperature rise, external static pressure (''ESP''), and furnace fan electrical input power. Appendix AA also incorporates by reference provisions for measuring temperature and ESP from ANSI/ASHRAE 37–2009, *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment* (''ASHRAE 37–2009'') including its reference in Section 5.1 to ASHRAE 41.1–1986 (RA 2006), *Standard Method for Temperature Measurement.*

In the January 2014 Final Rule, DOE determined that there is no need to address standby and off mode energy use in the test procedure for consumer furnace fans, as the standby mode and off mode energy use associated with furnace fans is measured by test procedures for the products in which furnace fans are used (*i.e.,* consumer furnaces and consumer central air conditioners and heat pumps). 79 FR 499, 504.

On July 7, 2021, DOE published in the **Federal Register** a request for information (''July 2021 RFI'') seeking comments on the existing DOE test procedure for consumer furnace fans to determine whether amendments are warranted for the test procedure for consumer furnace fans. 86 FR 35660. More specifically, DOE requested comments, information, and data about a number of issues, mainly concerning: Test settings (including selection of airflow control settings and ESP requirement for airflow settings other than the maximum setting); incorporation by reference of the most recent industry test method; clarifications for testing of certain products, including furnace fans with modulating controls, furnace fans and modular blowers tested with electric heat kits, certain two-stage furnaces that operate at reduced input only for a preset period of time, dual-fuel furnaces, and certain oil-fired furnaces; and issues related to test procedure repeatability and reproducibility. *Id.*

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

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

Commenter(s)	Reference in this NOPR	Commenter type
Carrier Corporation	Carrier	Manufacturer.
Air Conditioning, Heating & Refrigeration Institute	AHRI	Trade Association.
Pacific Gas and Electric Company, Southern California Edison, San Diego Gas & Electric Company; collectively, the California Investor-Owned Utilities.	CA IOUs	Utilities.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.

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 the pre-NOPR process for test procedure rulemakings. Section 8(b) of appendix A states if DOE determines that it is appropriate to continue the test procedure rulemaking after the early assessment process, it

[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).

[5] DOE defines the term ''modular blower'' in section 2.9 of appendix AA as a product which only uses single-phase electric current, and which: (a) Is designed to be the principal air circulation source for the living space of a residence; (b) Is not contained within the same cabinet as a furnace or central air conditioner; and (c) Is designed to be paired with HVAC products that have a heat input rate of less than 225,000 Btu per hour and cooling capacity less than 65,000 Btu per hour.

[6] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for consumer furnace fans. (Docket No. EERE–2020–BT–STD–0041, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

will provide further opportunities for early public input through **Federal Register** documents, including notices of data availability and/or requests for information. DOE is opting to deviate from this provision due to the substantial feedback and information supplied by commenters in response to the July 2021 RFI. As discussed previously, DOE requested comment on a number of specific topics in the July 2021 RFI, and comments received in response to the July 2021 RFI informed the proposals included in this NOPR, as addressed in the following sections.

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update appendix AA of 10 CFR part 430, *Uniform Test Method for Measuring the Energy Consumption of Furnace Fans* as follows:

(1) Specify testing instructions for furnace fans incapable of operating at the required ESP.

(2) Incorporate by reference the most recent versions of industry standards, ASHRAE 103–2017 and ASHRAE 37–2009 (RA 2019), in 10 CFR 430.3.

(3) Define dual-fuel furnace fans and exclude them from the scope of appendix AA.

(4) Change the term ''default airflow-control settings'' to ''specified airflow-control settings''.

(5) Add provisions to directly measure airflow.

(6) Revise the ambient temperature conditions allowed during testing to between 65 degreees Fahrenheit (''°F'') and 85 °F for all units (both condensing and non-condensing).

(7) Assign an allowable range of relative humidity during testing to be between 20 percent and 80 percent.

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
Does not specify instructions for testing furnace fans that are incapable of operating at the specified ESP.	Specifies testing instructions for furnace fans incapable of operating at the specified ESP.	Response to granted waiver from the test procedure.
Incorporates by reference ASHRAE 103–2007 and ASHRAE 37–2009.	Incorporates by reference ASHRAE 103–2017 and ASHRAE 37–2009 (RA 2019).	Incorporate the most recent industry test procedure.
Does not address dual-fuel furnace fans	Defines dual-fuel furnace fans in appendix AA and explicitly excludes them from the scope of the test method.	Clarify scope of coverage of the test procedure.
Defines ''default airflow-control settings''	Defines ''specified airflow-control settings'' to differentiate the settings used in testing from the as-shipped settings.	Clarifying selection of airflow control settings during testing.
Calculates airflow using ESP and temperature rise measurements.	Requires measuring airflow directly	Improve repeatability and reproducibility of test results.
Ambient temperature must remain between 65 °F and 100 °F for non-condensing furnaces and between 65 °F and 85 °F for condensing furnaces.	Ambient temperature must remain between 65 °F and 85 °F for all furnaces.	Improve repeatability and reproducibility of test results.
Does not specify an allowable range of relative humidity.	Requires ambient relative humidity to be maintained between 20% and 80% for all furnaces.	Improve repeatability and reproducibility of test results.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR would not alter the measured efficiency of consumer furnace fans, or require retesting or recertification solely as a result of DOE's adoption of the proposed amendments to the test procedures, if made final. Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

A. Scope and Definitions

As discussed, a ''furnace fan'' is ''an electrically-powered device used in a consumer product for the purpose of circulating air through ductwork.'' 10 CFR 430.2. As stated, DOE's test procedure is applicable to furnace fans used in weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers. Section 1, appendix AA. The test procedure is not applicable to non-ducted products, such as whole-house ventilation systems without ductwork, CAC condensing unit fans, room fans, and furnace draft inducer fans, since a ''furnace fan'' is defined as ''an electrically-powered device used in a consumer product for the purpose of circulating air through ductwork.'' 10 CFR 430.2.

In the July 2021 RFI, DOE sought comment on whether any changes are warranted to the scope of applicable products currently covered by the test procedure in appendix AA and if so, how the scope should be revised. 86 FR 35660, 35662.

1. CACs, HPs, and SDHVs

In response to DOE's questions about the scope of products covered by appendix AA, AHRI recommended that the exclusion of fans in CACs, heat pumps (''HPs''), small-duct high-velocity (''SDHV'') modular blowers, SDHV electric furnaces, and ductless products from the test procedure at appendix AA be maintained. AHRI commented that the fan efficiency for CAC and HP products is adequately addressed through DOE's test procedure at appendix M1.[7] (AHRI, No. 5 at p. 2)

NEEA suggested that the language of 42 U.S.C. 6295(f)(4)(D),[8] as discussed by DOE in the January 2014 Final Rule, could support the inclusion of furnace fans distributing air through ductwork for CACs, air source HPs, and hydronic systems, and encouraged DOE to specify that these are within the scope of the test procedures in appendix AA. NEEA commented that the explicit inclusion of CAC and air source HP units within the test procedure could result in significant energy savings. (NEEA, No. 3 at p. 4)

[7] Use of appendix M1 is required on or after January 1, 2023, for any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of CACs and CAC heat pumps.

[8] 42 U.S.C. 6295(f)(4)(D) specifies the following: Notwithstanding any other provision of this chapter, if the requirements of subsection (o) are met, not later than December 31, 2013, the Secretary shall consider and prescribe energy conservation standards or energy use standards for electricity used for purposes of circulating air through duct work.

Carrier commented that the FER requirement for single packaged air conditioners with gas heat is no longer needed because the fan efficiency will be adequately measured when these products transition to the appendix M1 test procedure on January 1, 2023. Carrier commented that should DOE choose not to remove single packaged air conditioners from the scope, the test procedure should be updated to account for units with two stages of cooling operation and to credit these units for the lower fan power during low-stage cooling operation. (Carrier, No. 2 at pp. 1–2)

AHRI commented that modular blowers without supplementary heating sources are currently included in the scope of the furnace fan test procedure, but suggested that DOE should exempt these products from the scope of the test procedure. AHRI stated that fans that are connected to duct work but that are unable to be tested as shipped (*e.g.,* without an electric heat resistance kit) should be excluded from the regulation and not be considered furnace fans. (AHRI, No. 5 at p. 3)

DOE is directed by EPCA to ''consider and prescribe energy conservation standards or energy use standards for electricity used for purposes of circulating air through ductwork.'' (42 U.S.C. 6295(f)(4)(D)) As DOE described in the January 2014 Final Rule, such language could be interpreted as encompassing electrically-powered devices used in any residential heating, ventilation, and air-conditioning (''HVAC'') product to circulate air through duct work, not just furnaces. 79 FR 499, 504. However, DOE established test procedures only for those fans that are used in residential furnaces and modular blowers. DOE did not address fans in other types of HVAC products (such as CACs, HPs, and SDHV modular blowers) in that rule. *Id.*

Regarding the suggestion by AHRI to exclude modular blowers from the scope of the test procedure, DOE notes that modular blower fans are included within the scope of appendix AA and are subject to standards prescribed at 10 CFR 430.32(y). DOE must maintain the test method for modular blowers to assure that such products meet the required minimum level of energy efficiency specified in the standard. (42 U.S.C. 6295(r)) DOE has not received any waiver requests regarding modular blowers and is not aware of any modular blowers that are not designed to be paired with supplementary heating sources. However, to the extent that a specific basic model of modular blower is unable to be tested according to the prescribed test procedure in appendix AA, DOE provides the test procedure waiver process at 10 CFR 430.27.

In response to Carrier's suggestion to remove single packaged air conditioners from the scope of appendix AA, DOE notes the ''anti-backsliding'' provision of EPCA prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) DOE would be unable to separate the furnace fan's energy consumption from that of other system components that affect SEER2 and HSPF2 ratings, and thus could not ensure that the energy consumption of covered furnace fans in such a product could not decrease under this metric. Therefore, DOE is not proposing to remove single packaged air conditioners from the scope of appendix AA.

In response to Carrier's suggestion to credit units with two stages of cooling operation to account for the lower fan power during low-stage cooling operation, DOE lacks adequate data to evaluate this proposal at this time.

Issue 1: DOE requests information and data regarding the electrical energy consumption of multi-stage furnace fans during low-stage cooling operation, specifically in relation to single-stage furnace fans in cooling mode.

Furthermore, DOE is not proposing to include fans used in other types of HVAC products, such as CACs, HPs, and SDHV modular blowers within the scope of appendix AA at this time. Similar to single packaged air conditioners, DOE tentatively agrees with commenters that the electrical energy consumption of furnace fans used in the aforementioned types of HVAC products will be accounted for by the seasonal energy efficiency ratio 2 (''SEER2'') and heating seasonal performance factor 2 (''HSPF2'') metrics measured by appendix M1. Although the applicable statutory provision (specifically, 42 U.S.C. 6295(f)(4)(D) directs DOE to ''consider and prescribe energy conservation standards or energy use standards for electricity used for purposes of circulating air through duct work''), could be interpreted as encompassing electrically-powered devices used in any residential HVAC product to circulate air through duct work, DOE has tentatively concluded that it is not necessary to expand the scope of coverage of appendix AA at this time.

2. Dual-Fuel Heating Products

Some consumer heating products include an electric heat pump and gas burner and are often referred to as dual-fuel or hybrid heating units. These products are designed to provide space heating with the heat pump and/or gas burner, depending on the operating conditions (*e.g.,* outdoor air temperature and heating demand). The annual operating characteristics of a dual-fuel product may differ significantly from a typical furnace, because the inclusion of a heat pump may change the operating time necessary to meet the heating load demand when compared with a gas burner alone, resulting in changes to the operating hours of the furnace fan. Therefore, the estimated national annual operating values provided in Table IV.2 of appendix AA may not be representative of an average use cycle for furnaces installed in dual-fuel applications. In addition, the current DOE test procedure does not specify provisions to set up or operate furnace fans for dual-fuel heating units.

In the July 2021 RFI, DOE requested comment on the typical operating characteristics of dual-fuel systems and whether and how the user has control over which heating source is used in a dual-fuel system. 86 FR 35660, 35666.

In response, AHRI commented that a dual-fuel-enabled thermostat determines if the heat pump or gas burner provides heat, and that the two cannot work at the same time. (AHRI, No. 5 at p. 10) AHRI stated that lower ambient temperatures will make the thermostat switch from the heat pump to the gas burner, but some controls can allow the consumer to lock out one or the other method of heating at a specified outdoor ambient temperature. (*Id.* at pp. 10–11) AHRI also described more complicated settings that the installer or consumer may implement, such as setting the thermostat to identify when a set point cannot be maintained and triggering the furnace (specifically, DOE understands the reference to ''furnace'' in this instance refers only to the burner portion of the dual-fuel furnace), choosing an outdoor temperature above which the furnace should not operate, and choosing an outdoor air temperature at which only the furnace will operate. (*Id.* at p. 11)

NEEA commented that dual-fuel HVAC system operating conditions should be included in testing procedures because of the expected increase in their prevalence in the market due to trends in electrification of space heating. (NEEA, No. 3 at pp. 4–6) NEEA encouraged DOE to investigate common balance points and other factors that might influence the temperature at which the heat source is changed in dual-fuel HVAC systems and encouraged DOE to contact researchers from Bonneville Power Administration

for information on their recently completed study pertaining to air source HPs. (*Id.* at p. 5)

Carrier urged for the removal of FER requirements for packaged dual-fuel units. Carrier stated that the electrical efficiency of the indoor blower in these units is accounted for in the DOE test procedure for heat pumps at appendix M, which Carrier asserted measures the primary mode of operation of such units. Carrier stated that requiring the indoor blower to meet the FER requirements is an additional regulatory requirement that adds rulemaking, certification, and enforcement effort to DOE and the regulated community with no additional benefit to consumers. (Carrier, No. 2 at p. 1)

Dual-fuel units are subject to the separate applicable standards for both heat pumps (*i.e.,* in terms of seasonal energy efficiency ratio (''SEER'') and heating seasonal performance factor (''HSPF'') or SEER2 and HSPF2) and furnaces (*i.e.,* in terms of AFUE). As discussed in this section, DOE tentatively concludes that the fan energy use of these products is already accounted for by the SEER and HSPF metrics measured by appendix M (*i.e.,* the currently applicable test procedure for these products) and will continue to be captured in the SEER2 and HSPF2 metrics when use of appendix M1 is required. The SEER2 and HSPF2 metrics measure the fan energy in its cooling and heating modes, respectively, covering the two major functions of furnace fans. Dual-fuel models were not subject to appendix AA prior to this notice and, therefore, were not part of the previous standards analysis. Consequently, DOE proposes to define dual-fuel units as a consumer product that includes both a heat pump and a burner in a single cabinet and to explicitly exclude them from the scope of appendix AA.

Issue 2: DOE requests comment on its proposed definition for dual-fuel units. DOE further requests comment on its proposal to explicitly exclude these units from the scope of appendix AA.

B. Updates to Industry Standards

As discussed previously, the current DOE test procedure for furnace fans incorporates by reference ASHRAE 103–2007. ASHRAE 103–2007 provides test procedures for determining the annual fuel utilization efficiency (''AFUE'') of residential furnaces and boilers. DOE's test procedure for furnace fans in appendix AA adopts certain sections of ASHRAE 103–2007 applicable to testing furnace fans, including requirements for instrumentation and test apparatus setup and test methodology.

In July 2017, ASHRAE published an update to ASHRAE 103, *i.e.,* ASHRAE 103–2017. The 2017 version made several editorial changes to the 2007 version, including use of mandatory language and use of the International System of units, in addition to other revisions such as an extension of the minimum length of the inlet duct from 12 inches to 18 inches. In the July 2021 RFI, DOE requested comment on whether to update the referenced version of ASHRAE 103 to the 2017 version. 86 FR 35660, 35665.

In response, AHRI commented that it agrees with DOE's description of updates in the 2017 version and suggested that the changes would only minimally impact FER. (AHRI, No. 5 at pp. 8, 9) Specifically, AHRI stated that increasing the minimum inlet duct length from 12 inches to 18 inches will not significantly impact the performance rating. (*Id.* at p. 9.) Further, AHRI commented that it does not object to the use of the 2017 version in the DOE test procedure. (*Id.* at pp. 8, 9)

DOE has tentatively determined that updating the DOE test procedure to reference the 2017 version of ASHRAE 103–2017 would not significantly impact the FER ratings as compared to the current test procedure. As noted, one substantive change between the versions of ASHRAE 103 is the length of the inlet duct. DOE does not expect the increase in length from 12 to 18 inches to impact the measured FER because the external static pressure and airflow will not change with this alteration, which is consistent with the comments from AHRI. Given that ASHRAE 103–2017 is the most recent version of the industry standard, and given DOE's tentative determination that its use as a reference standard would not significantly impact FER ratings or require retesting, DOE proposes to incorporate by reference ASHRAE 103–2017 in its test procedure for furnace fans. This proposed change, if adopted, would ensure that the test procedure references the most up-to-date language and stays consistent with the latest industry testing practices.

The current DOE test procedure for furnace fans also incorporates by reference ASHRAE 37–2009. ASHRAE 37–2009 provides methods of testing for unitary air conditioning and heat pump equipment. DOE's test procedure for furnace fans at appendix AA adopts certain Sections of ASHRAE 37–2009 regarding specifications for the required temperature measuring instruments and the ESP apparatus. Since the publication of the January 2014 Final Rule, two addenda for ASHRAE 37–2009 were published on October 3, 2016 and April 25, 2019 (''ASHRAE 37–2009 (RA 2019)''). These addenda include errata that corrected the total heating capacity equations for the outdoor liquid coil method in section 7.6.5.1 of the test standard and corrected the coefficient used to calculate the specific heat of air in sections 7.3.3.1, 7.3.3.2, and 7.7.4.1 of the test standard. In reviewing these changes, DOE has tentatively concluded that they would not significantly impact FER ratings or require retesting, as these changes were made to sections not used in appendix AA. Thus, DOE proposes to incorporate by reference ASHRAE 37–2009 (RA 2019) and update all references of ASHRAE 37–2009 to ASHRAE 37–2009 (RA 2019).

Finally, DOE currently incorporates by reference ASHRAE 41.1–1986 (RA 2006). ASHRAE 41.1–1986 (RA 2006) is referenced in Section 5.1 of ASHRAE 37–2009. ASHRAE 41.1–1986 (RA 2006) provides practices for temperature measurements for heating, refrigerating, and air-conditioning equipment. Despite the most recent version of ASHRAE 41.1 being ASHRAE 41.1–2020, the proposed version of ASHRAE 37 to be incorporated by reference (ASHRAE 37–2009 (RA 2019)) references ASHRAE 41.1–1986 (RA 2006). Thus, DOE proposes to maintain by reference ASHRAE 41.1–1986 (RA 2006).

Issue 3: DOE requests comment on its proposal to incorporate by reference ASHRAE 103–2017, ASHRAE 37–2009 (RA 2019), and maintain by reference ASHRAE 41.1–1986 (RA 2006).

C. Furnace Fans That Operate at Low External Static Pressures

On February 20, 2019, DOE received a petition for waiver and an application for interim waiver from ECR International, Inc. (''ECR'') for certain basic models of furnace fans that ECR described as belt-driven, single-speed furnace fans designed for heating-only applications in oil-fired warm air furnaces.[9] ECR asserted that the furnace fan basic models specified in the petition have design characteristics that prevent testing of the basic model according to the test procedure prescribed in appendix AA. Specifically, ECR claimed that the specified products are not designed to operate within the range of ESP required in appendix AA and that testing such furnace fans at the required ESP reduces airflow and increases temperature rise to the point where the units shut off during testing due to high temperature limits, making it impossible to reach

[9] *See: www.regulations.gov/document?D=EERE-2019-BT-WAV-0004-0001.*

steady state for testing at the required conditions. On March 9, 2021, DOE published a Decision and Order (''2021 Decision and Order'') granting ECR a test procedure waiver specifying an alternate test procedure that must be used to test and rate the specified basic models.[10] 86 FR 13530, 13534–13535. Specifically, the 2021 Decision and Order specified adjustments to the ESP test conditions specified in section 8.6.1.2 of appendix AA. Basic models subject to the 2021 Decision and Order must be tested at the specified ESP. *Id.* The alternate test procedure in the 2021 Decision and Order further specifies that if the unit under test shuts down prior to completion of the test, the ESP range is incrementally reduced by 0.05 inches of water column (''″ w.c.''), and the test is to be re-run. *Id.* This process is repeated until a range is reached at which the test can be conducted to its conclusion, with a minimum allowable ESP range of 0.30–0.35″ w.c., which corresponds to the first range at which shut-off could be avoided in the ECR data. *Id.* at 86 FR 13532 and 13534–13535.

In the July 2021 RFI, DOE requested feedback on whether the approach in the test procedure waiver would be appropriate for testing all basic models of furnace fans designed for heating-only applications. 86 FR 35660, 35667.

In response, AHRI commented that it is not opposed to the test procedure waiver approach being applied to all basic models of furnace fans designed for heating-only applications. (AHRI, No. 5 at p. 12) In contrast, the CA IOUs asserted that the alternate test procedure specified in the Decision and Order—by requiring testing at the highest ESP (and accordingly the highest discharge temperature) that does not trip the furnace's thermal safety limits—is likely to produce temperature rises that would exceed the manufacturer recommended maximum temperature rise specified in installation instructions. (CA IOUs, No. 4 at pp. 1–2) The CA IOUs additionally presented an analysis of the relationship between ESP and fan power consumption, from which the CA IOUs asserted that for a forward-curved fan operating at a given speed, FER improves (decreases) as ESP increases. (*Id.* at pp. 2–3) The CA IOUs asserted based on this analysis that testing at the highest ESP that the unit can accommodate before thermal cutoff may result in an artificially low (*i.e.,* more favorable) FER rating, and therefore the methodology provided in the 2021 Decision and Order may not accomplish the goal of increasing the representativeness of heating-only furnace fan ratings. (*Id.*) The CA IOUs recommended using a lower ESP to test heating-only furnaces and additionally providing a method to correct for how the fan would perform at the current ESP. The CA IOUs stated that this would ensure that heating-only units are not unfairly advantaged and would avoid DOE having to conduct a separate analysis of heating-only units in energy conservation standards rulemakings. (*Id.* at p. 3) The CA IOUs also commented that, should a separate test procedure be established for heating-only products, then the procedure should be designed such that it is analogous to that in appendix AA to produce an FER rating appropriately representative of heating-only furnace fan energy use in the field and should include an ESP value that reasonably represents values that heating-only equipment encounter in the field. (*Id.* at pp. 1, 4) Further, the CA IOUs recommended required labeling for ''heating-only'' units to explicitly indicate that they are not to be installed with air-conditioning cooling coils or air conditioners. (*Id.* at p. 4)

NEEA stated that the approach in the waiver granted to ECR is inappropriate for representative furnace fan testing and recommended that DOE use a consistent test procedure for all products, including heating-only applications. (NEEA, No. 3 at pp. 1–3) NEEA asserted that the basic models subject to the waiver are intended for use with cooling, and that the waiver allows separate testing procedures for less efficient furnace fans that may overstate real-world efficiency. (*Id.* at p. 2) NEEA referenced concerns that the CA IOUs had previously expressed to DOE regarding the end use applications for the basic models subject to the waiver. (*Id.*) NEEA cited DOE's decision in the January 2014 Final Rule not to create separate testing procedures for heating-only installation types and asserted that DOE's justification was that doing so would create multiple conditions for testing the same equipment and lead to non-representative energy use information. (*Id.*) NEEA further raised concerns that since energy consumption is a function of ESP, the waiver approach may produce lower (*i.e.,* more favorable) FER values that are not comparable to other furnace fans also used for cooling applications, and that this approach could create an unfair advantage for heating-only products. (*Id.*) NEEA asserted that the test conditions specified under the waiver are not representative of field conditions for these units if the oil furnace is eventually paired with an air conditioner. (*Id.*) To support its position, NEEA presented an analysis of FER ratings from DOE's Compliance Certification Database, which indicated that the majority of oil furnace fans have an FER greater than 450 W/1000 cfm; whereas, among the basic models subject to the waiver, the highest FER is 443 and the average value is 409. NEEA noted that while these lower FER values are achievable by other furnace fans not subject to the waiver, the FER ratings of the basic models subject to the waiver are not comparable since they are tested at different ESP conditions. (*Id.* at p. 3) In summary, NEEA recommended that DOE not establish separate testing provisions for heating-only furnace fans. (*Id.* at p. 1–3)

As discussed in section I.A of this document, DOE is required by EPCA to ensure that its test procedures are 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)) In the notices leading up to the January 2014 Final Rule, DOE considered creating a ''heating-only'' product designation for products that would have different reference system ESP installation considerations than other products. However, as discussed in an SNOPR published on April 2, 2013 (''April 2013 SNOPR''), DOE did not create a heating-only product designation because it was not aware of any heating-only products at the time other than hydronic air handlers, but those were outside the scope of applicability of the test procedure. 78 FR 19606, 19619.

As indicated by the waiver request submitted by ECR, certain furnace fans may not be able to operate at the ESP conditions specified by the current DOE test procedure (*i.e.,* cannot be tested at the currently required conditions). For such furnace fans, the current test procedure is unable to produce test results which measure energy efficiency during a representative average use cycle or period of use. Therefore, DOE is proposing to amend the test procedure in order to ensure that such furnace fans will be able to complete a valid test under conditions corresponding to representative average use. Specifically, DOE is proposing to add provisions to require that all furnace fans be initially tested at the applicable ESP range specified in Table 1 of appendix AA. If the unit under test is unable to complete the testing (*i.e.,*

[10] *See: www.regulations.gov/document/EERE-2019-BT-WAV-0004-0015.*

the unit shuts down), the ESP range would be incrementally reduced by 0.05″ w.c. (*e.g.,* for units designed to be paired with an evaporator coil but without one installed, first from 0.65″–0.70″ to 0.60″–0.65″ w.c.). This process would be repeated until an ESP range is reached at which the test can be conducted to its conclusion.

DOE found in the January 2014 Final Rule that generally the ESP values in appendix AA are representative of national average ductwork system characteristics. 79 FR 499, 502. DOE now recognizes that certain furnace fans are designed for operation at ESP conditions lower than those specified in the test procedure and that such units are incapable of operating at the specified ESP conditions. DOE has tentatively determined that requiring all furnace fans to begin tests at the ESP levels specified in Table 1 and allowing furnace fans that are unable to complete tests at those ESPs to test at their maximum possible ESP, would provide results representative of the average use of that unit under test. A method of testing in which products are subject to ESP values at which they are incapable of operating would yield results that are unrepresentative of their typical performance when installed. The proposed modifications will address products designed for all operating ESPs to be tested according to the same proposed test procedure.

Furnaces that cannot operate at the ESP conditions outlined in Table 1 of appendix AA will be tested according to the highest achievable ESP for the unit. DOE notes that, as suggested by the CA IOUs, testing these furnace fans at the highest achievable ESP could result in lower-than-usual airflows, which in turn could lead to higher temperature rises than expected for that unit. However, the proposed test method ensures that all units would be tested at or as close as possible to the ESP levels that represent the national average ductwork system, and therefore the operation mode closest to this representative scenario.

Additionally, as noted in the 2021 Decision and Order, DOE is not aware of any conversion equation that has been validated to accurately predict the change in FER as ESP varies at a given fan setting. Validating an equation for extrapolating to FER at an ESP that is higher than that at which the unit can operate may be difficult or even not possible (as the unit cannot operate at that point). 86 FR 13530, 13533. As a result of these considerations regarding the accuracy and representativeness of an adjustment factor, DOE is not proposing an adjustment factor to the test procedure for furnace fans that are unable to complete testing at the ESPs specified in Table 1 of this document.

DOE has also tentatively concluded the proposed test procedure amendment, if adopted, would not create an advantage for furnace fans incapable of operating at the applicable ESP values specified in Table 1 of appendix AA. Because a ''low-ESP'' furnace fan would be unable to operate at the ESP values specified by Table 1, such a unit would not be manufactured for the same application as furnace fans that are able to operate at the ESP values specified by Table 1 of this document.

Furthermore, because DOE has not received any applications for waiver besides the waiver submitted by ECR in 2020, and these provisions would result in the same test conditions for the furnace fans that were subject to ECR's waiver, DOE believes these proposed provisions would not affect the ratings or require the retesting of any fans currently on the market. Therefore, DOE tentatively determines that this change would allow all products, including those subject to ECR's waiver, to be able to use appendix AA as written, while having no impact on test burden.

DOE is not proposing labeling requirements for furnace fans that test at ESPs other than those in Table 1. Manufacturers of those fans would already be incentivized to specify in their product literature that such models are not suitable for use in systems with higher ESPs. Otherwise, it would be expected that there would be issues with consumer satisfaction if a furnace fan were installed in an environment in which it was incapable of operating. As previously noted, DOE is currently only aware of one manufacturer (ECR) that produces furnace fans that are incapable of operating at the ESPs currently in Table 1 of appendix A because DOE has not received any applications for waiver from any other manufacturers, which indicates that all other furnace fans currently available on the market are able to complete a valid test according to the test procedure currently prescribed in appendix AA. The current product literature from ECR specifies the intended applications and operating conditions of the furnace fans which are not intended for operation at higher ESPs.

This proposed amendment is consistent with the test procedure waiver provision at 10 CFR 430.27(l) that provides that, as soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a NOPR to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.* With regard to whether separate product classes may be warranted for ''low-ESP'' furnace fans, DOE would undertake such consideration in a separate furnace fans standards rulemaking. *See* 86 FR 66465, 66467–66468.

Issue 4: DOE requests comment on the proposed test instructions for furnace fans unable to complete testing at the ESP values currently specified in appendix AA.

D. Test Procedure Repeatability and Reproducibility

In the July 2021 RFI, DOE requested comment on whether stakeholders have encountered difficulty obtaining repeatable and reproducible FER results using appendix AA, and sought information on whether fluctuations in ESP and ambient conditions (within the boundaries allowed by appendix AA) impact FER ratings. 86 FR 35660, 35666. Additionally, to further understand the repeatability and reproducibility of the FER test procedure, DOE had confidential interviews conducted with several furnace fan manufacturers. The manufacturers similarly responded that there is generally a high level of uncertainty in FER results. Based on the collected feedback, DOE understands that there are several key areas of possible improvement to the current furnace fan test procedure that could improve repeatability and reproducibility including limiting the allowable range of ambient conditions, updating the method of airflow determination, and making clarifications to the current test procedure language.

In response to DOE's questions in the July 2021 RFI, AHRI stated that it had conducted an assessment to identify causes of variability in FER. (AHRI, No. 5 at p. 12) AHRI found that FER results are affected by natural gas input rate and relative humidity, which it said is problematic because testing is not conducted in a controlled environment. (*Id.*) AHRI stated that its assessment indicates that there is an 11-percent error in FER due solely to the tolerances of the inputs to the FER equation. (*Id.*)

DOE agrees with AHRI's comment that the natural gas input rate could impact FER, but notes that DOE previously considered tightening the tolerance on firing rate (from ±2 percent) in its test procedure for the residential furnaces and boilers. In a NOPR published on March 11, 2015, DOE determined that it could not change the tolerance on firing rate without increasing manufacturer burden because

of variations in gas valve performance. 80 FR 12875, 12886–12887. ASHRAE 103–2017, which is referenced in the current furnace fan test procedure, also includes a requirement that the burner input rate be within ±2 percent of the hourly British thermal unit (''Btu'') nameplate input rating. Because DOE is not aware of any data suggesting it would now be possible to tighten this tolerance, DOE is not proposing to change the tolerance on fuel input rating at this time.

Issue 5: DOE requests comment on its tentative decision not to tighten the tolerance on fuel input ratings beyond what is required in ASHRAE 103–2017.

1. Ambient Conditions

DOE also acknowledges that FER results can be affected by several other inputs, including the measurement accuracy of measured variables feeding into the FER calculation as well as allowable variation in these variables. Specifically, through communications with manufacturers and comments received in response to the July 2021 RFI, DOE understands that the FER results are also affected by ambient air temperature and humidity. As discussed in more detail in the following subsections, DOE is proposing additional restrictions on these test conditions.

a. Temperature

To help improve the repeatability and reproducibility of test results, DOE proposes to tighten the range of allowable ambient conditions during testing. The current range of ambient temperature is prescribed in section 7 of appendix AA, which references Section 8.5.2 of ASHRAE 103–2007. Section 8.5.2 of ASHRAE 103–2007 specifies that the ambient temperature must be maintained between 65 °F and 100 °F for non-condensing furnaces or between 65 °F and 85 °F for condensing furnaces. DOE proposes to modify the ambient temperature range such that for all tests and all furnaces (*i.e.,* both condensing and non-condensing), ambient air temperature must be maintained between 65 °F and 85 °F. Based on an analysis of the impact of ambient temperature on the test result and feedback received during communications with manufacturers, DOE tentatively concludes that the tightening of ambient temperature ranges will reduce FER variability. DOE reasons that furnace fan manufacturers produce both non-condensing and condensing furnace products and, therefore, manufacturers and third-party testing laboratories already have the capability to maintain the test room at a temperature between 65 °F and 85 °F to be able to test condensing furnaces. Further, DOE expects that most testing is conducted in at least semi-conditioned spaces and are unlikely to experience temperatures above 85 °F even if the outdoor conditions occasionally exceed that threshold. Because manufacturers and third-party test laboratories likely already have the capability to test furnaces while maintaining ambient air temperatures between 65 °F and 85 °F, DOE tentatively determines that this change would improve reproducibility by limiting extreme temperatures during testing, while having no impact on test burden. Additionally, this change would maintain the representativeness of the test procedure because it would ensure that air temperature in the test room is in line with the temperatures that furnace fans are likely to experience in residential applications.

Issue 6: DOE requests comment on its proposal to modify the allowable ambient temperature range in appendix AA such that for all tests and all furnaces (*i.e.,* both condensing and non-condensing), ambient air temperature must be maintained between 65 °F and 85 °F. DOE also requests comment regarding any potential burden associated with the change in allowable ambient temperature. Additionally, DOE requests data of the typical ambient temperatures of testing facilities throughout the year as well as any data on the relationship between ambient temperature and FER.

b. Humidity

As noted previously, AHRI commented that relative humidity (''RH'') can impact FER ratings. (AHRI, No. 5 at p. 12) Currently, there is no humidity requirement currently applicable to DOE's test procedure for furnace fans. However, there is a humidity tolerance in the test procedure applicable to consumer furnaces and boilers. Specifically, ASHRAE Standard 103–1993, which is referenced in the DOE test procedure for consumer furnaces and boilers, specifies that the relative humidity of the air in the test room at no time exceed 80 percent when measuring the condensate of condensing furnaces and boilers (*see* Sections 9.2 and 9.8.1 of ASHRAE 103–1993).

DOE proposes to specify the RH conditions for all tests of FER and all furnaces (*i.e.,* both condensing and non-condensing) to require that ambient air RH must be maintained at or below 80 percent. DOE reasons that most furnace fan manufacturers produce both non-condensing and condensing furnace products and, therefore, DOE expects that most manufacturers and third-party testing laboratories already have the capability to maintain the test room at an RH below 80 percent to be able to measure condensate for condensing furnaces. Because manufacturers and third-party test laboratories likely already have the capability to maintain the test room RH below 80 percent, DOE tentatively determines that this change would improve reproducibility by limiting extreme humidity conditions during testing, while having no impact on test burden.

DOE is also proposing to specify a limit on the lower range of allowable RH values during testing, specifically to require that for all tests and all furnaces, ambient air RH must be maintained at or above 20 percent. Similar to its proposal to add a maximum RH, DOE expects that imposing a minimum limit on the allowable RH values during testing would improve reproducibility but have no impact on test burdens because it is very unlikely that any test laboratories would be unable to meet a requirement excluding only the driest conditions.

The optimal RH values in conditioned living space are typically considered to range from 30 percent to 50 percent.[11] Therefore, imposing a requirement on RH during testing to maintain the RH of the room air between 20 percent and 80 percent will improve the representativeness of the FER test method compared to allowing RH to range from 0 percent to 100 percent, as the proposed range is closer to the optimal RH range for residences. However, the proposed range is not so tight that it would be expected to add burden for manufacturers.

Issue 7: DOE requests comment on its proposal to require maintaining the room air RH between 20 percent and 80 percent during FER testing, and on its tentative determination that this proposal would decrease variability between tests. DOE also requests comment on its tentative determination that the requirement of room air RH to be maintained between 20 percent and 80 percent would not add burden for manufacturers or test laboratories. DOE

[11] See, for example:

(1) U.S. Consumer Product Safety Commission. The Inside Story: A Guide to Indoor Air Quality. Available at: *www.cpsc.gov/safety-education/safety-guides/home/inside-story-guide-indoor-air-quality.* Last accessed February 1, 2022; or

(2) U.S. Environmental Production Agency. Dehumidifier Basics. *www.energystar.gov/products/appliances/dehumidifiers/dehumidifier_basics#:~:text=Relative%20Humidity%20(RH)%20and%20Humidistats&text=The%20optimum%20RH%20level%20for,RH%20to%20prevent%20window%20condensation.* Last accessed February 2, 2022.

requests comment on whether a tighter range for RH during testing (for example, 30 percent to 50 percent RH, which could further improve representativeness and further increase repeatability beyond the proposed range) would be possible to maintain without being unduly burdensome. DOE seeks data on ambient RH values at test facilities throughout the year and any data on the relationship between RH and FER variability.

2. Airflow Determination

In the January 2014 Final Rule, DOE adopted in appendix AA a method of calculating airflow based on temperature rise. Specifically, the equation for airflow in airflow control setting ''*i*'' (''Q_i'') compares the input heat energy to the heat picked up by the air based on temperature rise and the specific conditions of the inlet air (*see* section 10.1 of appendix AA). 79 FR 499, 508–510.

In response to the April 2013 SNOPR, Goodman recommended that DOE consider allowing an alternate method of directly measuring airflow using a code tester [12] and ASHRAE 37 ductwork.[13] 79 FR 499, 509. In response to this comment, DOE stated in the January 2014 Final Rule that a test setup that includes a code tester is not typical when testing a furnace, and that DOE tried to harmonize, where possible, the test set up for furnaces and furnace fans. Additionally, DOE stated that an alternative test method using a code tester and ASHRAE 37 ductwork could provide similar results as the test procedure established in the January 2014 Final Rule, but that the test procedure would differ significantly. Thus, DOE concluded at the time that adding a code tester to the furnace fan test procedure would add substantial burden. *Id.*

As previously noted, in response to the July 2021 RFI, AHRI commented that it had conducted an uncertainty analysis and found that there is an 11-percent error in FER due solely to the tolerances of the inputs to the FER equation. (AHRI, No. 5 at p. 12) Additionally, AHRI commented that it had commissioned an assessment of the FER metric, including the variability therein. (*Id.*) AHRI stated that this report showed that the natural gas input rate and relative humidity affect FER ratings and stated that this finding was also supported by reports from AHRI members. AHRI asserted that these sources of variability are problematic because testing is not conducted in a controlled environment. (*Id.*)

After considering these comments and given DOE's understanding based on discussions with manufacturers that some of the challenges associated with repeatability may stem from the current method of calculating airflow indirectly based on measurements of other parameters, DOE has reconsidered the previous suggestion to allow airflow to be measured directly.

Each parameter involved in the calculation of the airflow at the maximum airflow-control setting (''Q_{max}'') and FER has its own inherent variability. Measuring airflow directly would avoid the dependence on measured temperature rise (which is the difference between the measured outlet and inlet air temperatures), fuel input rate, and fan power consumption (and avoid the uncertainty associated with each of these measurements), which could therefore reduce the overall variation inherent to the final FER value. Using the allowable accuracies specified in Sections 5.3 and 6.1.2 of ASHRAE 37–2009 (RA 2019), DOE understands that an airflow-measuring device would have an accuracy of about 2–3 percent. This 2–3-percent range is significantly smaller than the percentage variation in airflow as calculated based on measurements of other test conditions that each have a degree of variability.

DOE acknowledges that requiring the use of an airflow-measuring device for furnace fans could introduce a one-time cost for manufacturers that either do not utilize such devices for their current testing programs (presumably of other products) or do not have enough of such devices available to test furnace fans in addition to other HVAC products that use airflow-measuring devices. The estimated cost of an airflow-measuring device is up to $50,000. DOE discusses test procedure costs and impacts further in section III.I.1 of this document.

Having considered the potential benefits and burdens associated with measuring airflow directly using an airflow-measuring device, DOE has tentatively determined that the benefits would outweigh the burdens, and that requiring directly measuring airflow would not be unduly burdensome. DOE therefore proposes to require that airflow be measured directly during each test. Specifically, DOE is proposing that this measurement be done using the procedures and methods for measuring airflow specified in ASHRAE 37–2009 (RA 2019), similar to how it is done for central air conditioners and heat pumps. As part of this proposal, DOE proposes to incorporate by reference Figure 12 of ANSI/Air Movement and Control Association International, Inc. (''AMCA'') 210–07, ANSI/ASHRAE 51–07 (''AMCA 210–2007''), *Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating* and Figure 14 of ANSI/ASHRAE Standard 41.2–1987 (RA 92), (''ASHRAE 41.2–1987 (RA 1992)''), *Standard Methods for Laboratory Airflow Measurement.* However, DOE is also aware of several other ~~additional~~ methods of directly measuring the airflow, such as methods outlined in AMCA 210 (*e.g.,* the pitot traverse method),[14] duct-mounted airflow measurement devices, and anemometers. DOE has tentatively determined that the proposed approach to measure airflow as specified by ASHRAE 37–2009 offers the most accurate and repeatable option for direct measurement of airflow and is not unduly burdensome but seeks comment on the proposed approach as well as any potential alternative approaches. Specifically, DOE requests comment on alternative methods of direct airflow measurement, including on the level of measurement accuracy associated with each approach and any associated test burden.

Issue 8: DOE requests comment on its tentative conclusion that measuring airflow directly would be more accurate and result in less variability than the current method of calculating airflow based on temperature rise. Additionally, DOE requests comment on its estimated cost for an apparatus to measure airflow directly using the procedures and methods for measuring airflow specified in ASHRAE 37–2009 (RA 2019) (up to $50,000). DOE also requests comment on whether test laboratories would need to purchase additional equipment for testing, if DOE adopts this proposal to measure airflow directly, or if test laboratories generally already have this equipment available.

Issue 9: DOE requests comment on whether it is necessary to reference AMCA 210–2007 and ASHRAE 41.2–1987 (RA 1992) in the test procedure instructions for constructing an airflow measuring apparatus.

Issue 10: DOE requests comment on alternative methods of direct airflow measurement, other than using the procedures and methods for measuring airflow specified in ASHRAE 37–2009 (RA 2019). For these alternatives, DOE requests comment on the expected

[12] A ''code tester'' is an instrument used to measure airflow. Such instruments determine airflow by measuring the pressure drop across one or more nozzles as air passes between two chambers.

[13] See: *www.regulations.gov/comment/EERE-2010-BT-TP-0010-0037.*

[14] *See: https://www.amca.org/assets/resources/public/pdf/Education%20Modules/AMCA%20210-16.pdf.* (Last accessed April 7, 2022.)

measurement accuracy, the cost of associated instrumentation, and appropriate associated setup and operation procedures.

3. Location of External Static Pressure Measurements

Currently, section 6.4 of appendix AA specifies that for all test configurations, external static pressure taps shall be placed 18 inches from the outlet. Additionally, although section 6.4 of appendix AA references Section 6.4 of ASHRAE 37–2009 for a description of the apparatus for measuring external static pressure, section 6.4 of appendix AA includes explicit instructions to not follow the specifications in Section 6.4 of ASHRAE 37–2009 regarding the minimum length of the ducting and minimum distance between the external static pressure taps and product inlet and outlet. The external static pressure measurement location in Section 6.4 of ASHRAE 37–2009 varies depending on the dimensions of the duct outlet. DOE adopted the requirement to measure external static pressure at 18 inches from the outlet in the January 2014 Final Rule in response to comments from manufacturers concerning practical constraints of the test setup. 79 FR 500, 511. Specifically, DOE previously determined that a fixed dimension requirement of measuring external static pressure 18 inches from the outlet (as opposed to the requirements in ASHRAE 37–2009, which depend on the dimensions of the outlet duct) would allow larger products to be tested in existing furnace testing facilities and would improve consistency with the test setup for consumer furnace testing. *Id.* However, in light of the concerns about the repeatability of the current furnace fan test procedure, DOE is reconsidering the appropriate location for measuring external static pressure. ASHRAE 37–2009 was developed through a consensus process and would generally be expected to represent the current best practices for measuring external static pressure. DOE is concerned that measuring at a fixed location of 18 inches from the outlet could lead to a less accurate and less repeatable measurement than the approach provided in ASHRAE 37–2009 because the airflow profile may not be fully developed. Therefore, although DOE is not proposing a change to the measurement location in this NOPR, DOE is seeking more information to determine whether a change would improve the repeatability of the FER test. If DOE determines that changing the location of the pressure taps could improve repeatability, DOE may do so in a future final rule.

Issue 11: DOE requests comment on whether requiring that the external static pressure be measured at the location specified in Section 6.4 of ASHRAE 37–2009, as opposed to specifying that external static pressure taps always be placed 18 inches from the outlet, could improve test repeatability. DOE also requests comment on whether manufacturer facilities and other test laboratories would be able to accommodate the added duct length during testing. Further, if test facilities would not be able to accommodate the added duct length during testing, DOE requests comment on whether a different length requirement could improve test repeatability while not preventing any existing test facilities from completing a valid test for furnace fans.

4. Language Updates

In the July 2021 RFI, DOE sought comment on whether any definitions in the test procedure require revision and if so, how the definitions should be revised. 86 FR 35660, 35662. DOE received a number of comments in response suggesting revisions to the language in appendix AA that could reduce confusion about the test procedure.

a. Definitions

For furnace fans used in furnaces or modular blowers with single-stage heating, the three airflow-control settings required to be tested are: The maximum setting, the default constant-circulation setting, and the default setting when operated using the maximum heat input rate.[15] For furnace fans used in furnaces or modular blowers with multi-stage heating or modulating heating, the airflow-control settings to be tested are: The maximum setting; the default constant-circulation setting; and the default setting when operated using the reduced heat input rate. *See* sections 8.6.1, 8.6.2 and 8.6.3 of appendix AA. For both single-stage and two-stage or modulating units, if a default constant-circulation setting is not specified, the lowest airflow-control setting is used to represent constant circulation for testing. *See* section 8.6.2, appendix AA.

In addition, if the manufacturer specifies multiple heating airflow-control settings, the highest heating airflow-control setting specified for the given function (*i.e.,* at the maximum or reduced input, as applicable) is used. *See* section 8.6.3, appendix AA.

Inquiries sent to DOE since the publication of the January 2014 Final Rule indicate that there are differing interpretations regarding the appropriate airflow-control settings for testing, with some manufacturers interpreting the DOE test procedure as requiring testing only the ''as-shipped'' airflow-control settings. However, the definition for ''default airflow-control setting'' specifically states that ''[i]n instances where a manufacturer specifies multiple airflow-control settings for a given function to account for varying installation scenarios, the highest airflow-control setting specified for the given function shall be used for the procedures specified in this appendix.'' Section 2.6, appendix AA. Further, the default airflow-control settings are defined as airflow-control settings specified for installed-use by the manufacturer. That section in turn clarifies that the ''manufacturer specifications for installed use'' are those specifications provided for typical consumer installations in the product literature shipped with the product in which the furnace fan is installed.

The ''default airflow-control setting'' should not be conflated with the as-shipped airflow-control settings. For example, a furnace may be shipped with the low-speed airflow-control setting configured for the heating function (*i.e.,* the as-shipped airflow-control setting), but the installation manual shipped with the furnace fan specifies the medium speed airflow-control setting for the heating function for certain installations, which is the highest airflow-control setting specified for the heating function. In this scenario, the DOE definition for ''default airflow-control setting'' requires the medium airflow-control setting to be used during the heating-mode test, rather than the as-shipped setting (*i.e.,* the low setting) because there are multiple airflow-control settings for the heating function, and the medium setting is the highest setting specified.

Additionally, inquiries sent to DOE indicate that some manufacturers may be interpreting the test procedure to require testing according to installation instructions printed on the control board. However, DOE notes that the same control board may be used across multiple products to reduce manufacturing complexity and costs, and as a result, instructions provided on a control board may not be applicable to every unit in which a control board is

[15] For furnace fans where the maximum airflow control setting is a heating setting, the maximum airflow control setting test and the default heating airflow control setting test would be identical, such that only two tests are required: Maximum airflow (which is the same as the default heating setting) and constant circulation.

used and could contradict the specifications in product literature. For this reason, DOE specifies in the definition of default airflow-control setting that the manufacturer specifications for installed-use are those specifications provided for typical consumer installations in the product literature shipped with the product in which the furnace fan is installed. Section 2.6, appendix AA.

In the July 2021 RFI, DOE requested comment on whether further instruction was necessary for determining the appropriate airflow controls used for testing. 86 FR 35660, 35663.

AHRI recommended that DOE change the term ''default airflow-control settings,'' which AHRI stated implies as-shipped settings or factory settings, to ''specified airflow-control settings'' or ''multiple airflow-control settings'' to ensure the correct settings are used for testing. (AHRI, No. 5 at pp. 3–4) AHRI also commented that there is a conflict between the directions in section 8.6.2 and section 2.6 of appendix AA, with section 8.6.2 directing the testing laboratory to use the lowest available airflow-control setting if none is provided, and section 2.6 specifying to use the highest. (*Id.* at pp. 4–5) AHRI recommended providing a flow chart to outline the hierarchy of instructions to guide the selection of airflow-control settings for each mode. (*Id.* at p. 4)

To provide further clarity regarding the correct airflow control setting to be used for each test, DOE proposes to change the defined term at section 2.6 in appendix AA from ''default airflow-control settings'' to ''specified airflow-control settings.'' This revised definition would avoid potential misinterpretation of the term ''default,'' which is not intended to limit testing to the as-shipped airflow-control settings. Additionally, DOE agrees with AHRI's comment that the conflicting direction from sections 8.6.2 and 2.6 of appendix AA could cause confusion when selecting airflow-control settings for testing. The intended hierarchy of these sections is for the airflow control setting to be selected according to section 2.6, unless section 8.6.2 applies, in which case section 8.6.2 should be used to select airflow control settings. To clarify this hierarchy, in addition to changing the term ''default airflow-control settings'' to ''specified airflow-control settings,'' DOE proposes to add the phrase ''unless otherwise specified within the test procedure'' to the end the definition of ''specified airflow-control settings.''

These proposed changes would clarify the appropriate airflow control settings to use for testing. Because these changes are meant to improve clarity but not change the current test methodology, DOE does not expect that these proposals would cause any changes to current testing or ratings. Additionally, DOE expects that these proposals will alleviate confusion about the appropriate airflow control settings to use for testing, and therefore DOE does not also propose to add a flowchart into appendix AA to further clarify which airflow control settings are appropriate.

Issue 12: DOE seeks comment on its proposal to change the term ''default airflow-control settings'' to ''specified airflow-control settings'' and to add the phrase ''unless otherwise specified within the test procedure'' to the end of the revised term's definition.

Additionally, the CA IOUs recommended that DOE further investigate the effect of control features on fan performance to ensure that fan energy use in the test procedure is representative of use in the field for all available furnace capabilities, including for modulating furnaces with very low heating outputs. The commenter stated that modulating controls increase both the frequency of fan speed variation and the number of hours spent in heating mode at reduced speeds. (CA IOUs, No. 4 at p. 4)

In a NOPR published in the **Federal Register** on May 15, 2012 (''the May 2012 NOPR''), DOE tentatively concluded that a metric based on measurements in multiple airflow-control settings would be appropriate to account for furnace fan energy consumption across its entire operating range. 77 FR 28673, 28687. DOE recognized that furnace fans are used not just for circulating air through duct work during heating operation, but also for circulating air during cooling and constant-circulation operation. *Id.* DOE also stated that it understands that higher airflow-control settings are factory set for cooling operation, and that the electrical energy consumption of a furnace fan is generally higher while performing the cooling function. *Id.* Additionally, DOE compared ratings that use measurements in two, three, and five airflow-control settings and found that a metric that uses measurements in three of the available airflow-control settings appropriately captures the efficiency advantages of using more-efficient technologies while minimizing burden on manufacturers. *Id.* In the absence of data or examples indicating otherwise for modulating units, DOE tentatively concludes that including maximum airflow, cooling, and constant circulation tests fully encompass the fan control features and are therefore representative of field use. Accordingly, DOE is not proposing any changes to how modulating units are tested under appendix AA.

Additionally, in the July 2021 RFI, DOE requested comment on the appropriate hierarchy to follow in the event of conflicting airflow-control settings in the manufacturer's product literature. 86 FR 35660, 35663. In response, AHRI recommended DOE clarify that the order of priority should be the AHRI Database followed by the manufacturer's installation guide. Additionally, AHRI stated that operating furnaces intended for high-static pressure applications at the highest airflow-control setting may lead to excessive airflow that will result in the furnace operating outside the nameplate-specified temperature rise range. AHRI stated that furnace safety certification requires furnace airflow settings in heating mode to be limited by the labeled rise range and recommended that heating mode airflow control settings should be limited by the requirements of the labeled rise range. (AHRI, No. 5 at p. 5)

As discussed previously, DOE tentatively concludes that with the proposed changes to the airflow-control settings definitions, the instructions for selecting the appropriate airflow-control setting for testing are sufficiently clear. Regarding AHRI's concern that certain furnaces may operate with excessive airflow that would cause the furnace to operate outside the nameplate-specified rise range, DOE notes that the test method requires testing of the maximum heating airflow mode as specified by the manufacturer. DOE expects that if a fan setting is identified for heating mode operation that the fan would be capable operating in that mode at the ESP specified in appendix AA (which is representative of a typical ESP that would be encountered in the field) and at the specified temperature rise range.

Issue 13: DOE requests further comment on this issue of whether it is necessary to specify that the maximum heating airflow-control setting used during testing be one that also allows for operation within the manufacturer-specified temperature rise range during testing. DOE is also interested in information regarding how often furnace fans operate outside of the manufacturer-specified temperature rise range during FER testing under the current requirements.

In response to DOE's question about whether any definitions in the furnace fan test procedure require revision, AHRI commented that the phrase ''manufacturer specifications . . . in product literature . . . shipped with products'' should be clarified to include

values used in testing that may be located on the label, printed literature, or online. AHRI stated that manufacturers understand the FER test procedure is intended to limit furnace fan operation to within the manufacturer's intended range of use, which it interprets as the manufacturer-specified temperature rise range, static pressure range for the given operation mode, and airflow range for the function being evaluated. AHRI further commented that it understands these limits may be provided on the label, in printed literature, or through a web address provided with the product. (AHRI, No. 5 at pp. 3–4)

Currently, DOE refers to ''manufacturer specifications for installed-use'' in sections 2.2 and 2.6 of appendix AA. DOE agrees with AHRI that the current instructions could benefit from additional clarity. As discussed in section III.E.3.a of this document, DOE is proposing to replace the definition of ''default airflow settings'' with ''manufacturer-specified airflow settings.'' DOE is also creating a new definition of dual fuel units, as discuss in section III.A.2 of this document.

b. External Static Pressure

Sections 8.6.2 and 8.6.3 of appendix AA provide the test requirements for taking measurements in airflow-control settings other than the maximum airflow-control setting. Both sections state that their respective required operating settings be maintained until steady-state conditions are attained as specified in sections 8.3, 8.4, and 8.5 of appendix AA. Regarding ESP, sections 8.3, 8.4, and 8.5 state that stabilization is ''indicated by an external static pressure within the range shown in Table 1.'' The ESP values in Table 1, as indicated by the table's title, apply only to the maximum airflow-control setting (section 8.6.1), and therefore are not applicable to sections 8.6.2 and 8.6.3 of appendix AA. In an accompanying statement immediately below Table 1, appendix AA directs that ''once the specified ESP has been achieved, the same outlet duct restrictions shall be used for the remainder of the furnace fan test.'' As such, the test procedure specifies the ESP conditions in terms of the ductwork geometry when testing at airflow-control settings other than the maximum airflow-control setting.

In the July 2021 RFI, DOE requested comment on how manufacturers are currently implementing sections 8.6.2 and 8.6.3 of appendix AA with respect to ESP. DOE requested further comment regarding whether additional direction is needed as to the ESP requirement provided in the statement accompanying Table 1, including whether additional criteria are necessary to limit variability in ESP readings for steady-state operation during the tests for airflow-control settings other than the maximum airflow setting, and if so, what that direction should be. 86 FR 35660, 35664.

AHRI asserted that to implement sections 8.6.2 and 8.6.3 of appendix AA with respect to ESP, manufacturers first set the supply duct restrictions, then adjust the ESP according to section 8.6.1.1 or section 8.6.1.2, then record the electrical power. AHRI stated that the airflow control setting is next adjusted according to section 8.6.2, without adjusting the ESP, and then electrical power is recorded again. AHRI stated the airflow control setting is then adjusted according to section 8.6.3, again without adjusting the ESP unless the temperature rise is not within the rise range, in which case the ESP is adjusted until the temperature rise is within the rise range. (AHRI, No. 5 at p. 7)

AHRI also commented that the asterisk located in the ESP table column heading for Table 1 was intended to precede a clarifying comment, but this asterisk was left out and should be reintroduced and linked to the statement reading ''once the specified ESP has been achieved, the same outlet duct restrictions shall be used for the remainder of the furnace fan test'' that follows Table 1 of appendix AA. (AHRI, No. 5 at p. 7)

Based on AHRI's description of how testing is typically performed, DOE tentatively concludes that the current test procedure generally provides sufficient instruction (*i.e.,* the test is being performed as intended). DOE agrees that the asterisk was omitted in appendix AA, and proposes to add an asterisk prior to the statement ''once the specified ESP has been achieved, the same outlet duct restrictions shall be used for the remainder of the furnace fan test'' in section 8.6.1.2 of appendix AA to link this statement to the ESP column of Table 1. This proposed change would clarify the appropriate duct restrictions for testing and not make any substantive changes.

c. Power Measurements

Sections 8.6.1.1, 8.6.1.2, 8.6.2, and 8.6.3 of appendix AA require the following parameters to be measured once steady-state operation is achieved: The furnace fan electrical input power, fuel or electric resistance heat kit input energy, external static pressure, steady-state efficiency, outlet air temperature, and/or temperature rise. DOE believes that some test facilities take a single reading for each of these parameters after achieving the steady state criteria. In DOE testing where these parameters were measured in one second intervals throughout the steady-state period, data showed that the values fluctuate sometimes significantly between readings, even while steady-state conditions are maintained. These fluctuations could contribute to repeatability issues in FER testing if a value from a single point in time is used for each test due to the potential for significant differences from one reading to the next. In particular, DOE has seen that the standard deviation of furnace fan power measurements over a 30 minute period (at steady state operation) can be up to 16 percent of the average, although for most units the standard deviation is less than 1 percent of the average power consumption. Therefore, DOE is considering whether further clarifications are necessary for appendix AA to clarify how manufacturers should take power measurements. Specifically, DOE believes that increasing the number of discrete measurements taken (*i.e.,* increasing the sample size) and averaging them to determine each furnace fan power consumption measurement may yield a result that is more representative and repeatable than using single point measurements of the furnace fan power. For example, DOE could require that power measurements should be based on the average value over a one-minute interval beginning immediately after steady-state operation has been achieved, during which the power is measured at least once per second. Alternatively, DOE could require furnace fan power measurements to be based on the average of measurements taken over the entire steady-state period at certain specified intervals (*e.g.,* every minute or every 5 minutes). If DOE determines that adding instructions to appendix AA to clarify how to measure furnace fan power consumption could improve the repeatability of FER tests, DOE may do so in the final rule.

Issue 14: DOE requests data and information on the methods and granularity with which test facilities currently measure the aforementioned variables, particularly furnace fan power (EMax, ECirc, and EHeat). DOE also requests comment on the intervals at which test facilities are currently capable of recording these measurements with their current instrumentation. Finally, DOE also requests information on whether there are variables besides the fan power

consumption variables for which there are significant fluctuations in measurements that DOE should also consider requiring be determined as an average of multiple measurements.

Issue 15: DOE requests comment on the number of samples that should be taken and the length of time over which data should be collected in order for a representative average to be achieved. DOE also requests comment on the associated costs, if any, to upgrade measurement instruments or software to be able to collect furnace fan power consumption measurements at frequencies of once per second, once per minute, once per 5 minutes, and/or other recommended sampling frequencies.

d. Other Language Clarifications

The title of section 8.3 of appendix AA is *Steady-State Conditions for Gas and Oil Furnaces,* the title of section 8.4 is *Steady-State Conditions for Electric Furnaces and Modular Blowers,* and the title of section 8.5 of appendix AA is *Steady-State Conditions for Cold Flow Tests.* The former two sections (8.3 and 8.4) describe the steady-state conditions for ''hot flow'' tests where the burner or heating element is on, while the latter section (8.5) describes the steady-state conditions for ''cold flow'' tests when the burner or heating element is off. To provide better consistency between the section titles and to provide clarity for the intended use of sections 8.3 and 8.4 of appendix AA, DOE proposes to amend the section titles to include the terminology ''for Hot Flow Tests'' in the titles.

Section 10.1 of appendix AA specifies that in calculating FER, the furnace fan electrical consumption in the maximum airflow-control setting (E_{max}) is multiplied by the cooling hours (CH). However, if the maximum airflow-control setting is a not a cooling setting (*e.g.,* if it is only a heating setting), E_{max} would not necessarily be measured during operation in a cooling airflow-control setting. Therefore, DOE proposes to change the description of the operating mode hours to be ''maximum airflow hours'' and to designate it with the variable ''MH'' in the nomenclature and associated equations. DOE tentatively concludes that this proposed change would provide consistency with the description of the operational mode and E_{max} measurement and avoid the implication that the maximum airflow-control setting will always be a cooling mode.

E. Nomenclature and Equations

In response to the July 2021 RFI, AHRI submitted several comments regarding the nomenclature and equations in appendix AA. In the current test procedure for furnace fans, the equation for FER includes a dependence on the term Q_{max}, which represents the airflow at the maximum airflow-control setting. For products for which the maximum airflow-control setting is the specified heat setting, Q_{max} will equal the airflow measured at the heating mode control setting (''Q_{heat}''). Otherwise, a separate equation in section 10.1 of appendix AA is used to adjust Q_{heat} to determine the expected Q_{max}. Q_{heat} is first determined using the equation for Q_i (the airflow in airflow-control setting *i*), when *i* indicates heating mode.

AHRI stated that the use of subscript ''i'' is confusing. Specifically, AHRI stated that the subscript ''i'' has two different meanings within the equation for Q_{max}: The airflow control setting, and the heat input setting. AHRI recommended that the subscript ''k'' be used to indicate the heat setting, thereby creating measured input at heat setting *k* ($Q_{IN,k}$), steady-state efficiency at heat input setting *k* ($Effy_{SS,k}$), and furnace fan electrical consumption at heat setting *k* (E_k). Further, AHRI recommended replacing Q_i with $Q_{heat.k}$ as opposed to implying that Q_{heat} is equal to Q_i. (AHRI, No. 5 at p. 4)

DOE agrees that the current use of subscripts could lead to confusion. However, as discussed in section III.D.2 of this document, DOE is proposing to measure airflow directly. As a result, the equations to calculate airflow would no longer be needed if this proposal were adopted. However, if DOE does not ultimately adopt its proposal to measure airflow directly, it would consider using the subscripts ''i'' and ''k'' to distinguish between airflow control settings and heat input settings.

Additionally, AHRI submitted a revised equation for Q_{max}. Specifically, AHRI submitted a derivation of the Q_{max} equation based on the fan laws from the 2016 ASHRAE Handbook suggesting that the average outlet air temperatures in the heating and maximum airflow modes ($T_{Heat,\ Out}$ and $T_{Max,Out}$, respectively) of the adjustment factor for Q_{heat} should be inverted. (AHRI, No. 5 at pp. 4, 24–26) In response to AHRI's suggestion that the Q_{max} calculation should be corrected, DOE notes that the derivation of the Q_{max} equation was discussed in the April 2013 SNOPR. 78 FR 19606, 19614–19616. Further, DOE notes that the fan laws are not an appropriate starting point for AHRI's derivation of the Q_{max} equation. Residential furnaces are almost exclusively designed such that air is not heated until after it has passed through the furnace fan (*i.e.,* the furnace fan pushes rather than pulls air through the heat exchanger) so the inlet air, which is what is experienced by the fan, will remain at approximately the same (ambient) conditions throughout the course of the test, independent of the furnace fan's operating mode. As a result, the air temperature and density experienced by the fan will not change when testing a furnace fan in different operating modes. In contrast, DOE's derivation was based on differences in the temperatures of the air passing through the outlet ductwork but is not derived from the fan laws.

In addition, AHRI recommended several clarifications for the calculation of the airflow equation to determine Q_i. AHRI's suggestions included defining the previously undefined variables in the Q_i equation. Specifically, it suggested a definition for jacket loss (''L_J''), using the definition and default value of 1 percent based on the January 2014 Final Rule. (AHRI, No. 5 at p. 17) Next, AHRI suggested a definition for the steady-state efficiency in airflow setting *i* (''$Effy_{ss}$,'') to incorporate comments from the January 2014 Final Rule. (*Id.*) AHRI also suggested adding a specific definition for the electrical energy to the furnace fan motor in the airflow control setting *i* (''E_i'') for clarity. (*Id.* at p. 18) Further, AHRI commented that several constants in the Q_i equation should be explicitly defined and/or corrected. It recommended defining 60 as the conversion factor from hours to minutes (''min/h''), 0.24 as the approximate specific heat capacity of dry air, and 0.444 as the approximate specific heat capacity of saturated water vapor. AHRI stated that each of these definitions would provide additional clarity when calculating Q_i. (*Id.*) AHRI also recommended revising the included factor for converting watts to Btu per hour (''(Btu/h)/W'') from 3,413 to 3.413 to correct the misplaced the decimal point. (*Id.*) AHRI noted that DOE currently uses the variable ''W'' to represent both relative humidity in section 8.6.1 of appendix AA and humidity ratio in section 9 of appendix AA. AHRI recommends clarifying that humidity ratio is denoted using the variable ''W,'' while the relative humidity is represented by the variable ''φ'' to align with the ASHRAE handbook. (*Id.*) Finally, AHRI suggested changing the definition of the specific volume of air ($v_{air,i}$), which is currently defined in the test procedure as the ''specific volume of dry air'' in units of lb/ft^3, to the ''specific volume of moist air mixture in the airflow-control setting i'' in units of ft^3/lb_{da}. (*Id.* at p. 19) *Id.*

Were DOE to adopt in a final rule its proposal to measure airflow directly rather than to calculate airflow (as discussed in section III.D.2 of this document), the terms reference system descriptor (''kref''), air throughput temperature rise in setting i (''ΔT_i''), inlet air temperature at time of the electrical power measurement in airflow-control setting i (''$T_{i,In}$''), $Effy_{ss}$, L_J, the airflow variable (''Q_i''), and a specific volume of dry air (''v_{air}'') would no longer be used and as a result, their definitions would be removed from the test procedure in appendix AA. The humidity ratio, W, and average outlet air temperature at time of the electrical power measurements in airflow-control setting i (''$T_{i,out}$'') would remain in appendix AA even though they would not be used directly in any calculations because they would be necessary for measurement of airflow. Should, however, DOE determine to maintain the indirect calculation of airflow based on measurement of temperature rise, as required by the current test procedure, DOE would consider adopting several of the nomenclature revisions recommended by AHRI, including those for variables $Effy_{SS}$, v_{air}, L_J, Q_i, 60, 0.24, and 0.44. In addition, the variables for ΔT_i, $T_{i,In}$, $T_{i,Out}$ were not mentioned by AHRI but would be updated for consistency with the clarifications of the indices. The nomenclature definition for variable $Q_{IN,i}$ is relevant regardless of whether DOE ultimately adopts its proposal to directly measure airflow; therefore, DOE proposes to revise it within the test procedure for furnace fans at appendix AA as discussed in the paragraphs below.

In reviewing the suggested changes, DOE agrees with AHRI's recommended definitions for steady-state efficiency in airflow-control setting *i* ($Effy_{ss,i}$), jacket loss (L_J), clarification of the meaning of the indices for airflow(Q_i), humidity ratio (W), conversion from hours to minutes, the approximate specific heat capacity of dry air in Btu per pound per °F (''Btu/lb-°F''), the approximate specific heat capacity of saturated water vapor in Btu/lb-°F, and the correction of the units for the specific volume of air (v_{air}) in the nomenclature from lb/ft^3 to ft^3/lb. All other variables that would include the modified indices would also be updated in the nomenclature section of appendix AA including $\Delta T_{i,k}$, $T_{i,k,\ In}$, $T_{i,k,\ Out}$, and $Q_{IN,k}$. Should DOE not adopt the proposal to measure airflow directly, DOE tentatively concludes that providing a specific definition for each of these variables and constants would allow for increased clarity when calculating airflow. Therefore, should DOE not adopt the proposal to measure airflow directly, DOE would propose to include the following new definitions in section 9 of appendix AA:

- 60 = conversion factor from hours to minutes, (min/h)
- 0.24 = approximate specific heat capacity of dry, (Btu/lb-°F)
- 0.44 = approximate specific heat capacity of saturated water vapor, (Btu/lb-°F)
- $Effy_{ss,i}$ = Steady-State Efficiency in airflow-control setting i. For gas and oil furnaces, $Effy_{ss,i}$ as specified in Sections 11.2.7 (Non-Condensing and Non modulating), 11.3.7.3 (Condensing and Non modulating), 11.4.8.8 (Non-Condensing and Modulating), or 11.5 (Condensing and Modulating) of ASHRAE 103–2017, in %. For electric furnaces or modular blowers, $Eff_{yss,i}$ equals 100, in %.
- L_J = jacket loss as determined as specified in Section 8.6 of ASHRAE 103–2017 or a default value of 1% if the jacket loss test is not performed, in %
- $T_{i,k,\ In}$ = inlet air temperature at time of the electrical power measurement, in °F, in airflow-control setting *i* and heat setting *k,* where *i* can be ''Circ'' to represent constant-circulation (or minimum airflow) mode, ''Heat'' to represent heating mode, or ''Max'' to represent maximum airflow (typically designated for cooling) mode. If *i* = Heat, *k* can be ''H'' to represent the high heat setting or ''R'' to represent the reduced heat setting. If *i* = Max or Circ, *k* is not needed.
- $T_{i,k,\ Out}$ = average outlet air temperature as measured by the outlet thermocouple grid at time of the electrical power measurement, in °F, in airflow-control setting *i* and heat setting *k,* where *i* can be ''Circ'' to represent constant-circulation (or minimum airflow) mode, ''Heat'' to represent heating mode, or ''Max'' to represent maximum airflow (typically designated for cooling) mode. If *i* = Heat, *k* can be ''H'' to represent the high heat setting or ''R'' to represent the reduced heat setting. If *i* = Max or Circ, *k* is not needed.
- $\Delta T_{i,k}$ = $T_{i,k,\ Out}$ minus $T_{i,k,\ In}$, which is the air throughput temperature rise in setting *i* and heat setting *k,* in °F
- $Q_{i,k}$ = airflow in airflow-control setting *i* and heat setting *k,* in cubic feet per minute (CFM)
- $Q_{IN,k}$ = measured fuel energy input rate, in Btu/h, at specified operating conditions *k* based on the fuel's high heating value (HHV) determined as required in Section 8.2.1.3 or 8.2.2.3 of ASHRAE 103–2017, where *k* can be ''H'' for the maximum heat setting or ''R'' for the reduced heat setting.
- v_{air} = specific volume of dry air at specified operating conditions per the equations in the psychrometric chapter in 2001 ASHRAE Handbook—Fundamentals in ft^3/lb

DOE also agrees with AHRI's comment regarding the conversion factor from watts to Btu/h. Currently, the conversion factor multiplies watts by 3,413, and therefore converts the value to thousand Btu per hour per watt (''(kBtu/h)/W''). However, the measured fuel energy input rate, $Q_{IN,k}$, is expressed in Btu/h. Therefore, to stay consistent throughout the equation, the appropriate conversion factor is 3.413, which would convert watts to Btu/h. Although DOE is proposing to directly measure the maximum airflow for determining Q_{max} which obviates the need for the Q_i equation used to calculate Q_{max}, if DOE were to ultimately not adopt that proposal, DOE would propose the following equation for airflow in airflow-control setting *i* and heat setting *k* in section 10.1 of appendix AA:

$$Q_{i,k} = \frac{\left(Effy_{ss,k} - L_J\right) \times Q_{IN,k} + (3.413 \times E_k)}{60 \times (0.24 + 0.44 \times W) \times \left(\frac{1}{v_{air,k}}\right) \times \Delta T_{i,k}}$$

Finally, DOE agrees that there should be different variables assigned to represent relative humidity and the humidity ratio. To provide clarity regarding these variables, DOE proposes to redesignate the variable for relative humidity from ''W'' to ''φ.''

Issue 16: DOE requests comment on its proposals to add definitions to certain variables and constants in the airflow equation and change the conversion factor from (kBtu/h)/W to (Btu/h)/W in the event that DOE were to

decide not to adopt the proposal to directly measure airflow in the final rule. DOE seeks further comment regarding its proposal to redesignate the variable for relative humidity from ''W'' to ''φ.''

AHRI further commented that the hours used in the equation to calculate FER are assigned arbitrarily that do not represent the performance in either the north or the south. (AHRI, No. 5 at p. 12) DOE notes that these hours were estimated to be the national average for each function, and therefore represent the mean usage across the country, as opposed to the performance in any particular part of the country. DOE originally proposed these hours in the May 2012 NOPR. 77 FR 28673, 28683. AHRI responded in a comment to the May 2012 NOPR that DOE should calculate FER using the annual operating hours that DOE proposed.[16] 78 FR 19606, 19613. Therefore, DOE does not propose any deviation from the operating hours as outlined in Table IV.2 of appendix AA.

F. Thermocouple Accuracy

Section 5.1 of appendix AA, which references Section 5.1 of ASHRAE 37–2009, requires that temperature measuring instruments must be accurate to within 0.75 °F. Section 6 of appendix AA references Section 7 of ASHRAE 103–2007 for the test apparatus setup. Section 7.6 of ASHRAE 103–2007 includes instructions to take temperature measurements with thermocouple grids constructed of either 5, 9, or 17 thermocouples, depending on the stack diameter. The measurement accuracy of a thermocouple grid depends on the type and number of thermocouples used, as well as the magnitude of the air temperature being measured.

In the July 2021 RFI, DOE requested information regarding the number and types of thermocouples, or other temperature measurement devices, that laboratories use to measure the stack temperatures of oil-fired furnaces. DOE also sought feedback on whether the stack temperatures of gas-fired furnaces are likely to exceed 450 °F, and the accuracy of instruments used to test furnaces (gas- or oil-fired) with stack temperatures exceeding 450 °F. 86 FR 35660, 35665.

AHRI commented that stack temperatures of gas furnaces probably would not exceed 450 °F and recommended using five thermocouples in the stack to measure temperature. (AHRI, No. 5 at p. 10) AHRI commented that required thermocouple accuracy should be adjusted because thermocouples are only accurate to 1–2 degrees Celsius (''°C'') depending on the class of the product, while ASHRAE 37 (and by extension the DOE test method at appendix AA) require measurement devices to be accurate within ±0.75 °F. (*Id.*) AHRI recommended reviewing and updating the measurement tolerances to address this issue. (*Id.*) DOE did not receive any further comments on these topics.

As discussed in the July 2021 RFI, using the types of thermocouples commonly used in test facilities (including ''T-type'' and ''K-type''), DOE determined that the measurement accuracy required in appendix AA (0.75 °F) is achievable with a minimum of five thermocouples at temperatures up to approximately 450 °F. 89 FR 35660, 35665. This measurement accuracy requirement was calculated using the thermocouple characteristics found in Table 1 of ANSI/ASTM E230/E230M–17 [17] and assuming that the overall measurement accuracy is equal to the measurement tolerance of individual thermocouples of that type divided by the square root of the number of thermocouples. Assuming that the stack temperatures of gas furnaces would not likely exceed 450 °F as indicated by AHRI, DOE tentatively concludes that current instrumentation is adequate to measure the stack temperature of furnaces on the market and does not propose any changes to accuracy of temperature measuring instruments in appendix AA.

G. Burner Selection

In the July 2021 RFI, DOE requested comment on the potential impact (if any) of burner selection on furnace fan performance. DOE also requested comment on the potential approaches for specifying burner(s) for testing. 86 FR 35660, 35666. In response, AHRI asked for clarification regarding DOE's question, and indicated that it was unable to provide meaningful comment. (AHRI, No. 5 at p. 11)

DOE notes that there are oil-fired furnaces that are shipped without a burner, but for which the manufacturer instead provides several burner options in the accompanying product literature. These burners may have different steady-state heating efficiencies and/or different airflow resistance characteristics, that could result in differences in furnace fan operation and efficiency. Therefore, if different burner options are used in tests for a given oil furnace and if burner selection impacts FER, test repeatability issues could arise.

Because DOE did not receive any additional information about burner selection, DOE is not proposing to add any requirements related to burner selection into appendix AA at this time.

H. Reporting Requirements

NEEA and the CA IOUs encouraged DOE to require mandatory reporting of fan performance results for maximum/cooling, heating, and air circulation individually. (NEEA, No. 3 at p. 6; CA IOUs, No. 4 at p. 4) The CA IOUs suggested that this method of reporting would allow consumers and utility incentive program designers to better understand fan performance in each mode, which they assert is particularly important in regions where operation time in each mode differs from the FER weighting factors. (CA IOUs, No. 4 at p. 4) Similarly, NEEA commented that reporting the specific energy consumption values in each mode would provide information for planners for the adoption of efficient fan equipment suitable for their region. (NEEA, No. 3, at pp. 6–7) NEEA asserted that this additional reporting is reasonable, considering manufacturers already test for each consumption value separately. (*Id.* at p. 7)

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For consumer furnace fans, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.58. DOE is not proposing to amend the product-specific certification requirements for these products. Were DOE to finalize the proposals as amended, DOE would consider as part of a separate rulemaking whether amendments to the certification requirements and reporting for furnace fans would be warranted.

I. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

In this NOPR, DOE proposes to amend the existing test procedure for consumer furnace fans by specifying a test method for furnace fans that operate at low ESPs, incorporating by reference the most recent industry test procedures, clarifying the scope of the definition of ''furnace fans,'' directly measuring airflow, tightening ambient conditions, and clarifying language for airflow-

[16] For AHRI's comment see: *www.regulations.gov/comment/EERE-2010-BT-TP-0010-0016.*

[17] ANSI/ASTM E230/E230M–17, *Standard Specification For Temperature-Electromotive Force (Emf) Tables For Standardized Thermocouples.* Available at: *webstore.ansi.org/standards/astm/astme230e230m17.*

control settings. DOE has tentatively determined that only the proposed amendment requiring directly measuring air flow would impact testing costs as discussed in the following paragraphs.

a. Airflow Determination

DOE proposes to require that airflow be measured directly in appendix AA in accordance with procedures specified in ASHRAE 37–2009 (RA 2019). This would impose additional cost if a manufacturer or test laboratory does not already have an airflow-measuring device for testing other HVAC equipment, or if they would need to purchase one to specifically dedicate to testing furnace fans. DOE estimates a purchase price of approximately $50,000 for an airflow-measuring device that meets the requirements of ASHRAE 37–2009 (RA 2019). DOE recognizes that laboratories may have multiple test rigs, and that each test rig could require its own additional equipment. As an example, for a laboratory with two furnace fan test rigs, the cost associated with new test equipment resulting from this proposed requirement would be $100,000. However, DOE expects that not all manufacturers and test laboratories would need to purchase new equipment, since direct airflow measurement is performed for testing of other HVAC equipment and the necessary equipment could also be used for furnace fan testing, depending on the testing capacity at that site. As such, DOE is unable to estimate the total expected cost to industry that would be incurred as a result of this proposal. Further, this proposed change is intended to increase the accuracy of FER ratings and consistency of test results but would not be expected to change the actual performance of any units. Additionally, DOE is not proposing to require units that are currently certified to retest according to the updated test procedure.

Issue 17: DOE requests comment, specifically from manufacturers and third-party test laboratories, on whether costs would be incurred as a result of the proposals in this NOPR to require measuring airflow directly; and if so, the total incurred cost expected for each test facility.

DOE has initially determined that the proposed amendments would not impact the representations of consumer furnace fan energy efficiency. Based on the initial determination, manufacturers would be able to rely on data generated under the current test procedure should the proposed amendments be finalized. As such, retesting of consumer furnace fans would not be required solely as a result of DOE's adoption of the proposed amendments to the test procedure.

Issue 18: DOE requests comment on the impact and associated costs of the proposed amendments.

b. Additional Amendments

DOE does not anticipate that the remainder of the amendments proposed in this NOPR would impact test costs.

In response to petition for waiver and an application for interim waiver for heating-only furnace fans, DOE granted a waiver requiring use of an alternate test procedure that specifies alternate ESP test conditions for furnace fans that operate at low ESPs. Any such furnace fan models currently on the market have already been granted a test procedure waiver from DOE, which specifies use of the alternate test procedure. As such, DOE's proposal to incorporate a similar methodology as the waiver methodology into the test procedure for furnace fans that operate at low ESPs will not result in any additional costs for manufacturers.

DOE's proposal to incorporate by reference the most recent versions of ASHRAE 103, ASHRAE 37, and maintain by reference ASHRAE 41.1–1986 (RA 2006), would update references to the most recent versions of ASHRAE 103 and ASHRAE 37. As discussed previously, DOE's review of these standards indicates that reference to the latest versions of them would not impact FER ratings and would not require that manufacturers recertify their units. Therefore, manufacturers would not incur any additional costs.

DOE's proposal to define and explicitly exclude dual-fuel furnace fans from the scope of appendix AA would make clear that such products are not subject to testing under appendix AA, and would not impose any additional burden.

DOE's proposal to tighten ambient conditions would limit the permissible ambient temperature range to between 65 °F and 85 °F and the ambient humidity range to between 20 percent and 80 percent for both condensing and non-condensing furnaces. As discussed, appendix AA currently already limits ambient temperatures to between 65 °F and 85 °F, as well as humidity to below 80 percent for condensing furnaces, and DOE understands that testing laboratories are generally able to meet these criteria in their testing laboratories without the use of a specialized test chamber. Additionally, DOE tentatively concludes that it is unlikely that test laboratories would be unable to meet a minimum requirement of 20 percent, because that limit would exclude only the driest conditions. Therefore, DOE expects that test laboratories would not incur additional cost in applying these same temperature tolerances to testing of non-condensing furnaces as well. Similar to the proposal to directly measure the airflow in section III.J.1.a of this document, the ambient condition requirements proposed in this NOPR are intended to increase the accuracy of FER ratings and the consistency of test results but should not change the actual performance of any units. Additionally, DOE is not proposing to require units that are currently certified to retest according to the updated test procedure.

DOE's remaining proposals to clarify nomenclature and fix typographic errors would not result in any changes to the test conduct and therefore would not affect the cost of testing.

DOE has tentatively determined that manufacturers would be able to rely on data generated under the current test procedure, should any of these additional proposed amendments be finalized.

2. Harmonization With Industry Standards

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.

The test procedure for consumer furnace fans at appendix AA incorporates by reference ASHRAE 103–2017, ASHRAE 37–2009, and ASHRAE 41.1–1986 (RA 2006), which provide test conditions, testing equipment, and methods for measuring the energy use of furnace fans.

In the July 2021 RFI, DOE sought comment on the availability of consensus-based test procedures for measuring the energy use of furnace fans that could be adopted without modification and 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 35660, 35665.

In response, AHRI commented that the industry test standard Canadian

Standards Organization (''CSA'') Standard C823:11 (R2021) ''Performance of air handlers in residential space conditioning systems'' specifies requirements for measuring both the air delivery and the electrical energy consumption of air handlers in residential space conditioning systems over a range of static pressures and speed control settings. (AHRI, No. 5 at p. 9) AHRI stated that while performance ratings can be developed for each of the air handler operating controls settings, manufacturers find this procedure to be unduly burdensome for regulatory purposes, where multiple test samples are required to establish ratings. (*Id.*) Upon review of the standard, DOE tentatively concludes that harmonizing DOE's test method with this test procedure could impose unnecessary burden on the testing facility and does not propose to reference or incorporate this procedure in its test procedure for consumer furnace fans.

AHRI also commented that it is beginning work on an industry rating procedure, AHRI 630 *Performance Rating of Annual Fuel Utilization Efficiency 2 (AFUE2) for Residential Furnaces,* the purpose of which is to establish for residential furnaces the following: Definitions; test requirements; rating requirements; minimum data requirements for published ratings; marking and nameplate data; and conformance conditions. (AHRI, No. 5 at p. 9) The scope is limited to products that are either a gas-fired or oil-fired central furnace, use single-phase electric current, and have a heat input rates of less than 225,000 Btu/h. (*Id.*) AHRI further stated that this standard will combine the three metrics used to rate residential furnaces—AFUE, as determined by DOE's test procedures for furnaces at appendix N; standby mode electrical consumption, as determined by appendix N; and the electric efficiency of furnace fans, as determined by appendix AA—into a single performance rating, ''AFUE2.'' AHRI asserted that AFUE2 will reduce consumer confusion and increase the opportunity for innovation through a streamlined performance rating. (*Id.*)

On October 12, 2018, DOE received a petition from AHRI (''AHRI Petition'') asking DOE to initiate notice-and-comment rulemaking to develop a new test procedure for residential furnaces and furnace fans which would replace the two currently required performance metrics for furnaces (*i.e.,* AFUE and $P_{W,SB}/P_{W,OFF}$) and the one performance metric for furnace fans (*i.e.,* FER) with a single new metric (*i.e.,* AFUE2). On November 14, 2018, DOE published a Notice of Petition for Rulemaking announcing the receipt of the AHRI Petition and inviting interested parties to submit comments. 83 FR 56746. After considering the AFUE2 metric and comments from interested parties, DOE published a final denial of petition for rulemaking on September 21, 2021. 86 FR 52422. In denying the petition, DOE determined that a combined test procedure and energy conservation standard for consumer furnaces and furnace fans would enable an increase in the maximum allowable energy use and/or minimum required efficiency of furnaces and furnace fans, which is impermissible under the ''anti-backsliding'' provision EPCA.[18] 86 FR 52422, 52423. DOE also determined that a unified metric for consumer furnaces and furnace fans (using the proposed combined metric AFUE2) would be contrary to DOE's prior determination that it is technologically infeasible to integrate active mode and standby or off mode energy use for furnaces. *Id.* DOE maintains its conclusions presented in the denial of the AHRI petition and for these reasons, did not further consider the AFUE2 test method.

The industry standards that DOE proposes to incorporate by reference via amendments described in this proposed rule are discussed in further detail in section IV.M of this document.

Issue 19: DOE requests comment on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for consumer furnace fans.

J. Compliance Date and Waivers

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.*)

Upon the compliance date of test procedure provisions of an amended test procedure, should DOE issue a such an amendment, any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. 10 CFR 430.27(h)(3). Recipients of any such waivers would be required to test the products subject to the waiver according to the amended test procedure as of the compliance date of the amended test procedure. The amendments proposed in this document pertain to issues addressed by waivers granted to ECR International, Inc. (Case number 2019–001). 86 FR 13530.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866 and 13563

Executive Order (''E.O.'')12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized

[18] The ''anti-backsliding'' provision prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1))

that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

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 (Aug. 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: *energy.gov/gc/office-general-counsel.*

1. Description of Reasons Why Action Is Being Considered

DOE is proposing to amend the existing DOE test procedures for consumer furnace fans. EPCA requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including consumer furnace fans, 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))

DOE is proposing amendments to the test procedures for consumer furnace fans in satisfaction of its statutory obligations under EPCA.

2. Objectives of, and Legal Basis for, Rule

DOE is required to review existing DOE test procedures for all covered products every 7 years to determine if an amended test procedure would more accurately or fully comply with the requirement that a test procedure be reasonably designed to measure energy efficiency during a representative average use cycle and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A))

3. Description and Estimate of Small Entities Regulated

For manufacturers of consumer furnace fans, the U.S. Small Business Administration (''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 North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing of consumer furnace fans is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990.

DOE conducted a market survey using available public information to identify manufacturers of the products covered by this rulemaking. DOE's research involved its Compliance Certification Database (''CCD''),[19] California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[20] individual company websites, and consumer furnace fan energy conservation standards rulemakings[21] to create a list of companies that manufacture or sell consumer furnace fans in the United States. DOE then consulted other publicly available data, such as manufacturer specifications and product literature, U.S. import and export data (*e.g.,* Panjiva[22]) and basic model numbers, to identify original equipment manufacturers (''OEMs'') of the products covered by this proposed rulemaking. DOE further relied on public sources and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports[23]) to determine company location, headcount, and annual revenue. DOE screened out companies that do not offer products covered by this proposed rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE initially identified 25 OEMs offering consumer furnace fans for the domestic market. Of the 25 OEMs identified, DOE estimates that eight companies qualify as small businesses and are not foreign-owned and operated.

4. Description and Estimate of Compliance Requirements

In this NOPR, DOE proposes to amend the existing test procedure for consumer furnace fans by (1) specifying testing instructions for furnace fans incapable of operating at the required external static pressure (''ESP''); (2) incorporating by reference the most recent versions of industry standards, ASHRAE 103–2017 and ASHRAE 37–2009 (RA 2019), in 10 CFR 430.3; (3) defining dual-fuel furnace fans and excluding them from the scope of appendix AA; (4) changing the term ''default airflow-control settings'' to ''specified airflow-control settings''; (5) adding provisions to directly measure airflow; (6) revising the ambient temperature condition allowed during testing; and (7) assigning an allowable range of relative humidity during testing.

DOE has tentatively determined that only the proposed amendment requiring directly measuring air flow would impact testing costs. This amendment would impose additional testing costs if a manufacturer or test laboratory does not already have an airflow-measuring device for testing other HVAC equipment, or if they would need to purchase one to specifically dedicate to testing furnace fans. DOE estimates a

[19] DOE's Compliance Certification Database, *www.regulations.doe.gov/certification-data/* (last accessed February 2, 2022).

[20] California Energy Commission's Modernized Appliance Efficiency Database System, *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed February 2, 2022).

[21] DOE relied on written comments submitted by AHRI in response to the consumer furnace fan energy conservation standards RFI published in the **Federal Register** on November 23, 2021. 86 FR 66465. (AHRI, No. 11, p. 7).

[22] Panjiva: S&P Global. Available at: *panjiva.com/import-export/United-States* (Last access February 25, 2022).

[23] The Dun & Bradstreet Hoovers subscription login is accessible online at *app.dnbhoovers.com/* (last accessed February 25, 2022).

purchase price of approximately $50,000 for an airflow-measuring device that meets the requirements of ASHRAE 37–2009 (RA 2019). DOE estimates that domestic small businesses would incur this one-time cost associated with the proposed change to measure airflow directly, if they do not already have the necessary apparatus to directly measure airflow. This cost is not re-occurring, and DOE does not expect that any of the proposed changes would increase the cost of performing testing on an ongoing basis. Furthermore, DOE is not proposing to require units that are currently certified to retest according to the updated test procedure.

DOE identified eight small, domestic OEMs that manufacture the products covered by this rulemaking. DOE does not have a method for determining which manufacturers have an existing airflow-measuring device that meets the requirements of ASHRAE 37–2009 (RA 2019). For the cost analysis, DOE assumed all small manufacturers identified would purchase the additional equipment. DOE estimates that the annual revenue of these small companies range from $4.8 million to $187.4 million, with an average annual revenue of $61.8 million.[24] Using the $50,000 one-time cost estimate, DOE expects that the additional costs associated with this NOPR would account for one percent or less of annual revenue for each small business.

Issue 20: DOE requests comment on the number of small consumer furnace fan manufacturers. DOE also seeks comment on DOE's estimates of potential costs these small manufacturers may incur.

5. Identification of Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered in this action.

6. A Description of Significant Alternatives to the Rule

DOE considered alternative test methods and modifications to the test procedure for consumer furnace fans, and the Department has initially determined that there are no better alternatives than the modifications and test procedures proposed in this Notice, in terms of both meeting the agency's objectives and reducing burden. Specifically, DOE is aware of and did consider several other methods of directly measuring the airflow, such as methods outlined in AMCA 210 (*e.g.,* the pitot traverse method),[25] duct-mounted airflow measurement devices, and anemometers. However, DOE has tentatively determined that the proposed approach to measure airflow as specified by ASHRAE 37–2009 offers the most accurate and repeatable option for direct measurement of airflow and is not unduly burdensome.

DOE is requesting comment on methods of direct airflow measurement that would be appropriate alternatives to the proposal in this document, including requesting comment on the expected measurement accuracy and the cost of associated instrumentation.

DOE also examined relevant industry test standards, and the Department incorporated these standards in the proposed test procedures whenever appropriate. Specifically, this NOPR incorporates by reference the most recent versions of industry standards, ASHRAE 103–2017 and ASHRAE 37–2009 (RA 2019), in 10 CFR 430.3.

Additionally, manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of furnace fans 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 consumer furnace fans. (*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.

DOE is not proposing to amend the certification or reporting requirements for furnace fans in this NOPR. Instead, DOE may consider proposals to amend the certification requirements and reporting for furnace fans under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

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 consumer furnace fans. DOE has determined that this proposed 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

[24] DOE relied on information from Dun & Bradstreet to estimate the annual revenues of the eight small businesses identified. The Dun & Bradstreet subscription login is accessible at: *app.dnbhoovers.com/* (Last accessed February 25, 2022).

[25] *See: https://www.amca.org/assets/resources/public/pdf/Education%20Modules/AMCA%20210-16.pdf.* (Last accessed 4/7/2022.)

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 *energy.gov/gc/office-general-counsel.*

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 consumer furnace fans 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 consumer furnace fans would incorporate testing methods contained in certain sections of the following commercial standards: ASHRAE 103–2017, ASHRAE 37–2009 (RA 2019), and ASHRAE 41.1–1986 (RA 2006). 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 following test standards:

(1) The test standard published by ANSI/ASHRAE, titled *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,* ASHRAE 103–2017. ASHRAE 103–2017 is an industry-accepted test procedure for measuring the performance of consumer furnaces and boilers. Copies of ASHRAE 103–2017 may be purchased from ANSI at 1899 L Street NW, 11th Floor, Washington, DC 20036, or by going to *webstore.ansi.org/standards/ashrae/ansiashrae1032017.*

(2) The test standard published by ASHRAE, titled *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* ANSI/ASHRAE Standard 37–2009 (RA 2019). ANSI/ASHRAE Standard 37–2009 (R 2109) is an industry-accepted test procedure that provides a method of test for many categories of air conditioning and heating equipment. ANSI/ASHRAE Standard 37–2009 (RA 2019) is available on ANSI's website at *webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FASHRAE+Standard+37-2009.*

(3) The test standard published by AMCA, titled *Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating,* ANSI/AMCA 210–07. ANSI/AMCA 210–07 is an industry-accepted standard that prescribes methods of testing fans and other air moving devices. ANSI/AMCA 210–07 is available on ANSI's website at *webstore.ansi.org/standards/amca/ansiamca21007.*

(4) The test standard published by ASHRAE, titled *Standard Methods for Laboratory Airflow Measurement,* ASHRAE 41.2–1987 (RA 1992). ASHRAE 41.2–1987 (RA 1992) is an industry-accepted standard that prescribes pressure measurement for the calculation of airflow under laboratory conditions. ASHRAE 41.2–1987 (RA 1992) is available on ANSI's website at *webstore.ansi.org/standards/ashrae/ansiashrae411987ra92.*

The Director of the Federal Register previously approved ASHRAE 41.1–1986 (RA 2006) for incorporation by reference in the locations in which it appears in this proposed rule's regulatory text for 10 CFR part 430.

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: *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines.* 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 proposed rule, 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.

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 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. 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 and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the proposed rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this proposed rulemaking, 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 proposed rulemaking. The official conducting the webinar 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.

A transcript of the webinar 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.[26] 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.

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:

Issue 1: DOE requests information and data regarding the electrical energy consumption of multi-stage furnace fans during low-stage cooling operation, specifically in relation to single-stage furnace fans in cooling mode.

Issue 2: DOE requests comment on its proposed definition for dual-fuel units. DOE further requests comment on its proposal to explicitly exclude these units from the scope of appendix AA.

Issue 3: DOE requests comment on its proposal to incorporate by reference ASHRAE 103–2017, ASHRAE 37–2009 (RA 2019), and maintain by reference ASHRAE 41.1–1986 (RA 2006).

Issue 4: DOE requests comment on the proposed test instructions for furnace fans unable to complete testing at the ESP values currently specified in appendix AA.

Issue 5: DOE requests comment on its tentative decision not to tighten the tolerance on fuel input ratings beyond what is required in ASHRAE 103–2017.

Issue 6: DOE requests comment on its proposal to modify the allowable ambient temperature range in appendix AA such that for all tests and all furnaces (*i.e.,* both condensing and non-condensing), ambient air temperature must be maintained between 65 °F and 85 °F. DOE also requests comment regarding any potential burden associated with the change in allowable ambient temperature. Additionally, DOE requests data of the typical ambient temperatures of testing facilities throughout the year as well as any data on the relationship between ambient temperature and FER.

[26] 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.

Issue 7: DOE requests comment on its proposal to require maintaining the room air RH between 20 percent and 80 percent during FER testing, and on its tentative determination that this proposal would decrease variability between tests. DOE also requests comment on its tentative determination that the requirement of room air RH to be maintained between 20 percent and 80 percent would not add burden for manufacturers or test laboratories. DOE requests comment on whether a tighter range for RH during testing (for example, 30 percent to 50 percent RH, which could further improve representativeness and further increase repeatability beyond the proposed range) would be possible to maintain without being unduly burdensome. DOE seeks data on ambient RH values at test facilities throughout the year and any data on the relationship between RH and FER variability.

Issue 8: DOE requests comment on its tentative conclusion that measuring airflow directly would be more accurate and result in less variability than the current method of calculating airflow based on temperature rise. Additionally, DOE requests comment on its estimated cost for an apparatus to measure airflow directly (up to $50,000). DOE also requests comment on whether test laboratories would need to purchase additional equipment for testing, if DOE adopts this proposal to measure4 airflow directly, or if test laboratories generally already have this equipment available.

Issue 9: DOE requests comment on whether it is necessary to reference AMCA 210–2007 and ASHRAE 41.2–1987 (RA 1992) in the test procedure instructions for constructing an airflow measuring apparatus.

Issue 10: DOE requests comment on alternative methods of direct airflow measurement, other than using the procedures and methods for measuring airflow specified in ASHRAE 37–2009 (RA 2019). For these alternatives, DOE requests comment on the expected measurement accuracy, the cost of associated instrumentation, and appropriate associated setup and operation procedures.

Issue 11: DOE requests comment on whether requiring that the external static pressure be measured at the location specified in Section 6.4 of ASHRAE 37–2009, as opposed to specifying that external static pressure taps always be placed 18 inches from the outlet, could improve test repeatability. DOE also requests comment on whether manufacturer facilities and other test laboratories would be able to accommodate the added duct length during testing. Further, if test facilities would not be able to accommodate the added duct length during testing, DOE requests comment on whether a different length requirement could improve test repeatability while not preventing any existing test facilities from completing a valid test for furnace fans.

Issue 12: DOE seeks comment on its proposal to change the term ''default airflow-control settings'' to ''specified airflow-control settings'' and to add the phrase ''unless otherwise specified within the test procedure'' to the end of the revised term's definition.

Issue 13: DOE requests further comment on this issue of whether it is necessary to specify that the maximum heating airflow-control setting used during testing be one that also allows for operation within the manufacturer-specified temperature rise range during testing. DOE is also interested in information regarding how often furnace fans operate outside of the manufacturer-specified temperature rise range during FER testing under the current requirements.

Issue 14: DOE requests data and information on the methods and granularity with which test facilities currently measure the aforementioned variables, particularly furnace fan power (E_{Max}, E_{Circ}, and E_{Heat}). DOE also requests comment on the intervals at which test facilities are currently capable of recording these measurements with their current instrumentation. Finally, DOE also requests information on whether there are variables besides the fan power consumption variables for which there are significant fluctuations in measurements that DOE should also consider requiring be determined as an average of multiple measurements.

Issue 15: DOE requests comment on the number of samples that should be taken and the length of time over which data should be collected in order for a representative average to be achieved. DOE also requests comment on the associated costs, if any, to upgrade measurement instruments or software to be able to collect furnace fan power consumption measurements at frequencies of once per second, once per minute, once per 5 minutes, and/or other recommended sampling frequencies.

Issue 16: DOE requests comment on its proposals to add definitions to certain variables and constants in the airflow equation and change the conversion factor from (kBtu/h)/W to (Btu/h)/W in the event that DOE were to decide not to adopt the proposal to directly measure airflow in the final rule. DOE seeks further comment regarding its proposal to redesignate the variable for relative humidity from ''W'' to ''φ.''

Issue 17: DOE requests comment, specifically from manufacturers and third-party test laboratories, on whether costs would be incurred as a result of the proposals in this NOPR to require measuring airflow directly; and if so, the total incurred cost expected for each test facility.

Issue 18: DOE requests comment on the impact and associated costs of the proposed amendments.

Issue 19: DOE requests comment on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for consumer furnace fans.

Issue 20: DOE requests comment on the number of small consumer furnace fan manufacturers. DOE also seeks comment on DOE's estimates of potential costs these small manufacturers may incur.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects in 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 May 2, 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 May 3, 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

part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Section 430.3 is amended by:
■ a. Redesignating paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5);
■ b. Adding new paragraph (b)(3);
■ c. Redesignating paragraphs (g)(17) and (18) as (g)(19) and (20) and paragraphs (g)(5) through (16) as paragraphs (g)(6) through (17), respectively;
■ d. Adding new paragraph (g)(5);
■ e. In newly redesignated paragraph (g)(6), removing the text ''(Reaffirmed 2006)'' and adding, in its place, the text ''(Reaffirmed 2006) (''ASHRAE 41.1–1986 (RA 2006)'')'';
■ f. In newly redesignated paragraph (g)(9), removing the text ''appendix F'' and adding in its place, the text ''appendices F and AA'';
■ g. In newly redesignated paragraph (g)(17), removing the text ''appendices O and AA'' and adding in its place, the text ''appendix O''; and
■ h. Adding new paragraph (g)(18).

The revisions and additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(b) * * *

(3) ANSI/AMCA 210–07, ANSI/ASHRAE 51–07 (''AMCA 210–2007''), Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating, ANSI-approved August 17, 2007, IBR approved for appendix AA to subpart B.

* * * * *

(g) * * *

(5) ANSI/ASHRAE Standard 37–2009 (RA 2019), (''ASHRAE 37–2009 (RA 2019)''), Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment (including Errata Sheets issued October 3, 2016 and April 25, 2019, ANSI-approved June 21; 2019, IBR approved for appendix AA to subpart B.

* * * * *

(18) ANSI/ASHRAE Standard 103–2017, (''ASHRAE 103–2017''), Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers; ANSI-approved July 3, 2017, IBR approved for appendices AA to subpart B.

* * * * *

■ 3. Appendix AA to subpart B of part 430 is revised to read as follows:

Appendix AA to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnace Fans

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire standard for ASHRAE 103–2017, ASHRAE 37–2009 (RA 2019), ASHRAE 41.1–1986 (RA 2006), AMCA 210–07, and ASHRAE 41.2–1987 (RA 1992). In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over the incorporated standards. Only enumerated provisions of AMCA 210–07 and ASHRAE 41.2–1987 (RA 1992) are applicable to this appendix, as follows:

0.1 AMCA 210–07

(i) Figure 12—Outlet Chamber Setup—Multiple Nozzles in Chamber

0.2 ASHRAE 41.2–1987 (RA 1992)

(i) Section 5.2—Test Ducts, Section 5.2.2—Mixers, 5.2.2.1—Performance of Mixers (excluding Figures 11 and 12 and Table 1);

(ii) Figure 14—Outlet Chamber Setup for Multiple Nozzles in Chamber

1. *Scope.* This appendix covers the test requirements used to measure the energy consumption of fans used in weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers. This appendix does not apply to furnace fans used in dual-fuel units.

2. *Definitions.* Definitions include the definitions as specified in Section 3 of ASHRAE 103–2017 and the following additional definitions, some of which supersede definitions found in ASHRAE 103–2017:

2.1. *Active mode* means the condition in which the product in which the furnace fan is integrated is connected to a power source and circulating air through ductwork.

2.2. *Airflow-control settings* are programmed or wired control system configurations that control a fan to achieve discrete, differing ranges of airflow—often designated for performing a specific function (*e.g.,* cooling, heating, or constant circulation)—without manual adjustment other than interaction with a user-operable control such as a thermostat that meets the manufacturer specifications for installed-use. For the purposes of this appendix, manufacturer specifications for installed-use shall be found in the product literature shipped with the unit.

2.3. *Dual-fuel unit* means a consumer product that includes both a heat pump and a burner in a single cabinet.

2.4. *External static pressure* (ESP) means the difference between static pressures measured in the outlet duct and return air opening (or return air duct when used for testing) of the product in which the furnace fan is integrated.

2.5. *Furnace fan* means an electrically-powered device used in a consumer product for the purpose of circulating air through ductwork.

2.6. *Modular blower* means a product which only uses single-phase electric current, and which:

(a) Is designed to be the principal air circulation source for the living space of a residence;

(b) Is not contained within the same cabinet as a furnace or central air conditioner; and

(c) Is designed to be paired with HVAC products that have a heat input rate of less than 225,000 Btu per hour and cooling capacity less than 65,000 Btu per hour.

2.7. *Off mode* means the condition in which the product in which the furnace fan is integrated either is not connected to the power source or is connected to the power source but not energized.

2.8. *Seasonal off switch* means a switch on the product in which the furnace fan is integrated that, when activated, results in a measurable change in energy consumption between the standby and off modes.

2.9. *Specified airflow-control settings* are the airflow-control settings specified for installed-use by the manufacturer. For the purposes of this appendix, manufacturer specifications for installed-use are those specifications provided for typical consumer installations in the product literature shipped with the product in which the furnace fan is installed. In instances where a manufacturer specifies multiple airflow-control settings for a given function to account for varying installation scenarios, the highest airflow-control setting specified for the given function shall be used for the procedures specified in this appendix, unless otherwise specified within this test procedure.

2.10. *Standby mode* means the condition in which the product in which the furnace fan is integrated is connected to the power source and energized, but the furnace fan is not circulating air.

2.11. *Thermal stack damper* means a type of stack damper that opens only during the direct conversion of thermal energy of the stack gases.

3. *Classifications.* Classifications are as specified in Section 4 of ASHRAE 103–2017.

4. *Requirements.* Requirements are as specified in Section 5 of ASHRAE 103–2017. In addition, Fan Energy Rating (FER) of furnace fans shall be determined using test data and estimated national average operating hours pursuant to section 10.1 of this appendix.

5. *Instruments.* Instruments must be as specified in section 6, not including Section 6.2, of ASHRAE 103–2017; and as specified in section 5.1 and 5.2 of this appendix.

5.1. *Temperature.* Temperature measuring instruments shall meet the provisions specified in Section 5.1 of ASHRAE 37–2009 (RA 2019), including the references to ASHRAE 41.1–1986 (RA 2006), and shall be accurate to within 0.75 degrees Fahrenheit (within 0.4 degrees Celsius).

5.1.1. *Outlet Air Temperature Thermocouple Grid.* Outlet air temperature shall be measured as described in Section 8.2.1.5.5 of ASHRAE 103–2017 and illustrated in Figure 2 of ASHRAE 103–2017. Thermocouples shall be placed downstream

of pressure taps used for external static pressure measurement.

5.2. *Humidity.* Air humidity shall be measured with a relative humidity sensor that is accurate to within 5% relative humidity. Air humidity shall be measured as close as possible to the inlet of the product in which the furnace fan is installed.

6. *Apparatus.* The apparatus used in conjunction with the furnace during the testing shall be as specified in Section 7 of ASHRAE 103–2017 except for section 7.1, the second paragraph of sections 7.2.2.2, 7.2.2.5, and 7.7, and as specified in sections 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, and 6.7 of this appendix.

6.1. *General.* The product in which the furnace fan is integrated shall be installed in the test room in accordance with the product manufacturer's written instructions that are shipped with the product unless required otherwise by a specific provision of this appendix. The apparatus described in this section is used in conjunction with the product in which the furnace fan is integrated. Each piece of the apparatus shall conform to material and construction specifications and the reference standard cited. Test rooms containing equipment shall have suitable facilities for providing the utilities necessary for performance of the test and be able to maintain conditions within the limits specified.

6.2. *Downflow furnaces.* Install the internal section of vent pipe the same size as the flue collar for connecting the flue collar to the top of the unit, if not supplied by the manufacturer. Do not insulate the internal vent pipe during steady-state test described in Section 9.1 of ASHRAE 103–2017. Do not insulate the internal vent pipe before the cool-down and heat-up tests described in Sections 9.5 and 9.6, respectively, of ASHRAE 103–2017. If the vent pipe is surrounded by a metal jacket, do not insulate the metal jacket. Install a 5-ft test stack of the same cross sectional area or perimeter as the vent pipe above the top of the furnace. Tape or seal around the junction connecting the vent pipe and the 5-ft test stack. Insulate the 5-ft test stack with insulation having a minimum R-value of 7 and an outer layer of aluminum foil. (*See* Figure 3–E of ASHRAE 103–2017.)

6.3. *Modular Blowers.* A modular blower shall be equipped with the electric heat resistance kit that is likely to have the largest volume of retail sales with that particular basic model of modular blower.

6.4. *Ducts and Plenums.* Ducts and plenums shall be built to the geometrical specifications in Section 7 of ASHRAE 103–2017 and section 6.7 of this appendix. An apparatus for measuring external static pressure shall be integrated in the plenum and test duct as specified in Sections 6.4 of ASHRAE 37–2009 (RA 2019), excluding specifications regarding the minimum length of the ducting and minimum distance between the external static pressure taps and product inlet and outlet, and Section 6.5 of ASHRAE 37–2009 (RA 2019). External static pressure measuring instruments shall be placed between the furnace openings and any restrictions or elbows in the test plenums or ducts. For all test configurations, external static pressure taps shall be placed 18 inches from the outlet.

6.4.1. *For tests conducted using a return air duct.* Additional external static pressure taps shall be placed 12 inches from the product inlet. Pressure shall be directly measured as a differential pressure as depicted in Figure 8 of ASHRAE 37–2009 (RA 2019) rather than determined by separately measuring inlet and outlet static pressure and subtracting the results.

6.4.2. *For tests conducted without a return air duct.* External static pressure shall be directly measured as the differential pressure between the outlet duct static pressure and the ambient static pressure as depicted in Figure 7a of ASHRAE 37–2009 (RA 2019).

6.5. *Air Filters.* Air filters shall be removed.

6.6. *Electrical Measurement.* Only electrical input power to the furnace fan (and electric resistance heat kit for electric furnaces and modular blowers) shall be measured for the purposes of this appendix. Electrical input power to the furnace fan and electric resistance hate kit shall be sub-metered separately. Electrical input power to all other electricity-consuming components of the product in which the furnace fan is integrated shall not be included in the electrical input power measurements used in the FER calculation. If the procedures of this appendix are being conducted at the same time as another test that requires metering of components other than the furnace fan and electric resistance heat kit, the electrical input power to the furnace fan and electric resistance heat kit shall be sub-metered separately from one another and separately from other electrical input power measurements.

6.7. *Airflow Measuring Apparatus.*

6.7.1. Fabricate and operate an airflow measuring apparatus as specified in Sections 6.2 and 6.3 of ASHRAE 37–2009 (RA 2019). Place the static pressure taps and position the diffusion baffle (settling means) relative to the chamber inlet as indicated in Figure 12 of AMCA 210–07 and/or Figure 14 of ASHRAE 41.2–1987 (RA 1992). When measuring the static pressure difference across nozzles and/or velocity pressure at nozzle throats using electronic pressure transducers and a data acquisition system, if high frequency fluctuations cause measurement variations to exceed the test tolerance limits specified in Section 9.2 and Table 2 of ASHRAE 37–2009 (RA 2019), dampen the measurement system such that the time constant associated with response to a step change in measurement (time for the response to change 63% of the way from the initial output to the final output) is no longer than five seconds.

6.7.2. Connect the airflow measuring apparatus to the outlet duct of the unit at a distance of at least $0.5 \times (A \times B)^{1/2}$ (where A and B are the duct dimensions) downstream of the outlet pressure taps (specified in section 6.4 of this appendix).

7. *Test Conditions.* The testing conditions shall be as specified in Section 8, not including Sections 8.5.2 and 8.6.1.1 of ASHRAE 103–2017; and as specified in sections 7.1 and 7.2 of this appendix.

7.1. *Ambient Temperature and Humidity Conditions.* During the time required to perform all tests, maintain the room temperature within ±5 °F (2.8 °C) of the air temperature value measured at the end of the steady-state performance test (T_{RA}). For condensing furnaces and boilers, maintain the relative humidity within ±5% of the relative humidity measured at the end of the steady-state performance test. During all tests, the room temperature shall not fall below 65 °F (18.3 °C) or exceed 85 °F (29.4 °C) and the relative humidity shall not fall below 20% or exceed 80%.

7.2. *Measurement of Jacket Surface Temperature (optional).* The jacket of the furnace or boiler shall be subdivided into 6-inch squares when practical, and otherwise into 36-square-inch regions comprising 4 in. x 9 in. or 3 in. x 12 in. sections, and the surface temperature at the center of each square or section shall be determined with a surface thermocouple. The 36-square-inch areas shall be recorded in groups where the temperature differential of the 36-square-inch area is less than 10 °F for temperature up to 100 °F above room temperature and less than 20 °F for temperature more than 100 °F above room temperature. For forced air central furnaces, the circulating air blower compartment is considered as part of the duct system and no surface temperature measurement of the blower compartment needs to be recorded for the purpose of this test. For downflow furnaces, measure all cabinet surface temperatures of the heat exchanger and combustion section, including the bottom around the outlet duct, and the burner door, using the 36 square-inch thermocouple grid. The cabinet surface temperatures around the blower section do not need to be measured (*see* Figure 3–E of ASHRAE 103–2017.)

8. *Test Procedure.* Testing and measurements shall be as specified in Section 9 of ASHRAE 103–2017 except for Sections 9.1.2.1, 9.3, 9.5.1.1, 9.5.1.2.1, 9.5.1.2.2, 9.5.2.1, and Section 9.7.1; and as specified in sections 8.1 through 8.6 of this appendix.

8.1. *Direct Measurement of Off-Cycle Losses Testing Method.* [Reserved]

8.2. *Measurement of Electrical Standby and Off Mode Power.* [Reserved]

8.3. *Steady-State Conditions for Hot Flow Tests for Gas and Oil Furnaces.* Steady-state conditions are indicated by an external static pressure within the range shown in Table 1 of this appendix and a temperature variation in three successive readings, taken 15 minutes apart, of not more than any of the following:

(a) 3 °F in the stack gas temperature for furnaces equipped with draft diverters;

(b) 5 °F in the stack gas temperature for furnaces equipped with either draft hoods, direct exhaust, or direct vent systems; and

(c) 1 °F in the flue gas temperature for condensing furnaces.

8.4. *Steady-state Conditions for Hot Flow Tests for Electric Furnaces and Modular Blowers.* Steady-state conditions are indicated by an external static pressure within the range shown in Table 1 of this appendix and a temperature variation of not more than 5 °F in the outlet air temperature in four successive temperature readings taken 15 minutes apart.

8.5. *Steady-State Conditions for Cold Flow Tests.* For tests during which the burner or

electric heating elements are turned off (*i.e.,* cold flow tests), steady-state conditions are indicated by an external static pressure within the range shown in Table 1 of this appendix and a variation in the difference between outlet temperature and ambient temperature of not more than 3 °F in three successive temperature readings taken 15 minutes apart.

8.6. *Fan Energy Rating (FER) Test.*

8.6.1. *Initial FER test conditions and maximum airflow-control setting measurements.* Measure the relative humidity (φ) and dry bulb temperature (T_{db}) of the test room.

8.6.1.1. *Furnace fans for which the maximum airflow-control setting is not a specified heating airflow-control setting.* The main burner or electric heating elements shall be turned off. Adjust the external static pressure to within the range shown in table 1 of this appendix. Maintain these settings until steady-state conditions are attained as specified in section 8.3, 8.4, and 8.5 of this appendix. Measure furnace fan electrical input power (E_{Max}), and airflow (Q_{Max}).

8.6.1.2. *Furnace fans for which the maximum airflow-control setting is a specified heating airflow-control setting.* Adjust the main burner or electric heating element controls to the default heat setting designated for the maximum airflow-control setting. Burner adjustments shall be made as specified by Section 8.4.1 of ASHRAE 103–2017. Adjust the furnace fan controls to the maximum airflow-control setting. Adjust the external static to within the range shown in table 1 of this appendix. Maintain these settings until steady-state conditions are attained as specified in section 8.3, 8.4, and 8.5 of this appendix and the temperature rise (ΔT_{Max}) is at least 18 °F. Measure furnace fan electrical input power (E_{Max}) and airflow (Q_{Max}).

TABLE 1—REQUIRED MINIMUM EXTERNAL STATIC PRESSURE IN THE MAXIMUM AIRFLOW-CONTROL SETTING BY INSTALLATION TYPE

Installation type	ESP (in. wc.)*
Units with an internal, factory-installed evaporator coil	0.50–0.55
Units designed to be paired with an evaporator coil, but without one installed	0.65–0.70
Mobile home	0.30–0.35

*Once the specified ESP has been achieved, the same outlet duct restrictions shall be used for the remainder of the furnace fan test. If the unit under test is unable to complete the testing (*i.e.,* the unit shuts down before completing a test), reduce the target ESP range by 0.05″ w.c. and restart the test. Repeat this process until the test can be completed.

8.6.2. *Constant circulation airflow-control setting measurements.* The main burner or electric heating elements shall be turned off. The furnace fan controls shall be adjusted to the specified constant circulation airflow-control setting. If the manufacturer does not specify a constant circulation airflow-control setting in the installation and operations manual supplied with the unit, the lowest airflow-control setting shall be used. Maintain these settings until steady-state conditions are attained as specified in sections 8.3, 8.4, and 8.5 of this appendix.

8.6.3. *Heating airflow-control setting measurements.* For single-stage gas and oil furnaces, the burner shall be fired at the maximum heat input rate. For single-stage electric furnaces, the electric heating elements shall be energized at the maximum heat input rate. For multi-stage and modulating furnaces the reduced heat input rate settings shall be used. Burner adjustments shall be made as specified by Section 8.4.1 of ASHRAE 103–2017. After the burner is activated and adjusted or the electric heating elements are energized, the furnace fan controls shall be adjusted to operate the fan in the default heat airflow-control setting. In instances where a manufacturer specifies multiple airflow-control settings for a given function to account for varying installation scenarios, the highest airflow-control setting specified for the given function shall be used. High heat and reduced heat shall be considered different functions for multi-stage heating units. Maintain these settings until steady-state conditions are attained as specified in section 8.3, 8.4, and 8.5 of this appendix and the temperature rise (ΔT_{Heat}) is at least 18 °F. Measure furnace fan electrical input power (E_{Heat}), airflow (Q_{Heat}), external static pressure (ESP_{Heat}), steady-state efficiency for this setting ($Effy_{SS}$) as specified in Sections 11.2 and 11.3 of ASHRAE 103–2017, outlet air temperature ($T_{Heat,\ Out}$) and temperature rise (ΔT_{Heat}).

9. *Nomenclature.* Nomenclature shall include the nomenclature specified in Section 10 of ASHRAE 103–2017 and the following additional variables:

CCH = annual furnace fan constant-circulation hours

E_{Circ} = furnace fan electrical consumption at the specified constant-circulation airflow-control setting (or minimum airflow-control setting operating point if a default constant-circulation airflow-control setting is not specified), in watts

E_{Heat} = furnace fan electrical consumption in the specified heat airflow-control setting for single-stage heating products or the specified low-heat setting for multi-stage heating products, in watts

E_{Max} = furnace fan electrical consumption in the maximum airflow-control setting, in watts

FER = fan energy rating, in watts/1000 cfm

HH = annual furnace fan heating operating hours

HCR = heating capacity ratio (nameplate reduced heat input capacity divided by nameplate maximum input heat capacity)

MH = annual furnace fan maximum airflow hours

$Q_{IN,,k}$ = nameplate fuel energy input rate, in Btu/h, at specified operating conditions *k,* where *k* can be ''H'' for the maximum heat setting or ''R'' for the reduced heat setting.

Q_{Max} = airflow at the maximum airflow-control setting, in cfm

10. *Calculation of derived results from test measurements for a single unit.* Calculations shall be as specified in Section 11 of ASHRAE 103–2017, except for appendices B and C; and as specified in sections 10.1 through 10.10 and Figure 1 of this appendix.

10.1. *Fan Energy Rating (FER)*

$$FER = \frac{(MH \times E_{Max}) + (HH \times E_{Heat}) + (CCH \times E_{circ})}{(CH + 830 + CCH) \times Q_{Max}} \times 1000$$

The estimated national average operating hours presented in table 2 to this appendix shall be used to calculate FER.

TABLE 2—ESTIMATED NATIONAL AVERAGE OPERATING HOUR VALUES FOR CALCULATING FER

Operating mode	Variable	Single-stage (hours)	Multi-stage or modulating (hours)
Heating	HH	830	830/HCR
Maximum Airflow	MH	640	640
Constant Circulation	CCH	400	400

Where:

$$HCR = \frac{Q_{IN,R\ (nameplate)}}{Q_{IN,H\ (nameplate)}}$$

[FR Doc. 2022–09808 Filed 5–12–22; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 87 Friday,
No. 93 May 13, 2022

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

Amendments to National Marine Sanctuary Regulations; Interim Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 220415–0098]

RIN 0648–AV85

Amendments to National Marine Sanctuary Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Interim final rule; request for comments

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is amending the National Marine Sanctuaries program regulations. This interim final rule updates and reorganizes the existing regulations, eliminates redundancies across the sanctuary regulations, eliminates outmoded regulations, adopts standard boundary descriptions, and consolidates general regulations and permitting procedures. This rule adopts, with minor revisions and technical changes, the proposed rule previously published in the **Federal Register** on January 28, 2013, and provides further opportunity for comment.

DATES:

Effective date: This interim final rule is effective on June 27, 2022.

Comments due date: Comments must be received by NOAA on or before June 13, 2022.

ADDRESSES: You may submit comments, identified by NOAA–NOS–2011–0120, by the following method:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and search for docket NOAA–NOS–2011–0120. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, will not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Vicki Wedell, NOAA Office of National Marine Sanctuaries, (240) 533–0650, *Vicki.Wedell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Request for Comments

In 1972, Congress passed the National Marine Sanctuaries Act (NMSA), which established the National Marine Sanctuary System (System). The NMSA authorizes the Secretary of Commerce (Secretary) to designate, manage, and protect, as a national marine sanctuary (NMS), any area of the marine environment that is of special national significance due to its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities (16 U.S.C. 1431 *et seq.*). Since the NMSA was enacted, fifteen national marine sanctuaries have been designated. Day-to-day management of the System is delegated from the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). Regulations implementing the NMSA are codified in Title 15, Part 922 of the Code of Federal Regulations (CFR). Part 922 includes general regulations applicable to all sanctuaries (subparts A through E) and site-specific regulations that relate to each individual sanctuary (subparts F through T).

As the System evolved and new sanctuaries were designated, corresponding changes were made to the general and site-specific regulations. In certain instances, these changes produced redundant, inconsistent, outdated, or conflicting regulatory provisions. This rule updates both the general and site-specific regulations, making them more consistent, uniform, concise, organized, and understandable by:

• Reorganizing and consolidating existing general regulations published in subparts A (General), B (Sanctuary Nomination Process), C (Designation of National Marine Sanctuaries), D (Management Plan Development and Implementation, and E (Regulations of General Applicability) into a new subpart A (Regulations of General Applicability);

• Updating and consolidating sanctuary permitting procedures and requirements into a new subpart D (National Marine Sanctuary Permitting), which applies to all sanctuaries unless expressly stated in subpart D or the site-specific regulations;

• Reserving subparts B, C, and E; and

• Making non-substantive, administrative changes to the site-specific sanctuary regulations set forth in subparts F through T of 15 CFR part 922.

This rulemaking was originally part of NOAA's effort to carry out the directive set forth in Executive Order 13563, ''Improving Regulation and Regulatory Review,'' issued on January 18, 2011. This Executive Order directed all agencies to conduct a retrospective analysis of existing significant regulations and modify, repeal, or streamline (as deemed appropriate) any regulations that might be outmoded, ineffective, insufficient, or excessively burdensome. NOAA conducted a comprehensive review and analysis of the sanctuary regulations as directed and published a notice of proposed rulemaking (78 FR 5998, January 28, 2013). The 60-day comment period on the proposed rule closed on March 29, 2013. NOAA received 28 written public comments on the proposed rule, which may be viewed on *www.regulations.gov,* under docket ID NOAA–NOS–2011–0120. After reviewing the comments, NOAA in this interim final rule has made minor revisions and technical changes to the rule as proposed. NOAA responses to the public comments are set forth below in Section IV. Responses to Comments.

Although several years have passed since the proposed rule was published, NOAA believes that the organizational and clarifying changes contained in the proposed rule remain relevant and useful, and will make it easier for stakeholders and the public to understand and navigate the NMSA regulations. Indeed, any changes in the NMS landscape since the proposed rule was published likely only makes this rule more useful. Nonetheless, in recognition of the time that has elapsed since the proposed rule, NOAA is issuing this rule as an Interim Final Rule, adopting a 45-day delay in the effective date, and seeking additional public comments to provide NOAA with a further opportunity to consider the potential impact, including any relevant new issues or concerns that may have arisen in the years since the rule was proposed. While this is an Interim Final Rule, NOAA is not relying on ''good cause'' under the Administrative Procedure Act, 5 U.S.C. 553(b)(B) because NOAA has issued a proposed rule and responded to the comments received on the proposed rule.

NOAA encourages interested persons to submit comments on this interim final rule. NOAA will consider all comments received during the comment

period, and may modify the rule in view of the comments, as appropriate.

II. History of This Rulemaking and Summary of the Changes From the Proposed Rule to This Interim Final Rule

In the proposed rule published in January 2013, NOAA anticipated that changes to the final rule might be necessary (78 FR 5998, January 28, 2013). Scoping for regulatory revisions to the Florida Keys NMS, Thunder Bay NMS, Hawaiian Islands Humpback Whale NMS, and Monitor NMS were concurrently underway. In the years following the publication of the proposed rule, NOAA finalized other revisions to the general and site-specific sanctuary regulations as follows:

2014: Amended the Thunder Bay regulations (79 FR 52960, September 5, 2014); Established a new Sanctuary Nomination Process (79 FR 33851, June 13, 2014); and Updated the regulations and management plan for Gray's Reef NMS (79 FR 41879, July 18, 2014).

2015 and 2018: Revised the Greater Farallones (formerly the Gulf of the Farallones) NMS and Cordell Bank NMS regulations (80 FR 13077, March 12, 2015, 83 FR 55956, November 9, 2018).

2016: Withdrew the Hawaiian Humpback Whale proposed amendments (81 FR 13303, March 14, 2016).

2019: Designated a new sanctuary, Mallows Bay-Potomac River NMS (84 FR 32586, September 26, 2019).

2021: Expanded Flower Garden Banks NMS (86 FR 4937, January 19, 2021); and designated a new sanctuary, Wisconsin Shipwreck Coast NMS (86 FR 32737, June 23, 2021).

During the intervening time between the proposed and this interim final rule, NOAA commenced several regulatory actions that took higher or competing precedence over finalizing this rule. NOAA geographically expanded and revised regulations for four sanctuaries (Thunder Bay NMS, Greater Farallones NMS, Cordell Bank NMS, and Flower Garden Banks NMS). NOAA also completed the management plan review and revised regulations for Gray's Reef NMS. NOAA proposed and ultimately withdrew an expansion for Hawaiian Islands Humpback Whale NMS. NOAA also established a new sanctuary nomination process and designated two new sanctuaries (Mallows Bay-Potomac River and Wisconsin Shipwreck Coast NMS). Each of these rulemakings involve changes to the general and site-specific regulations. As such, choosing an ideal time to finalize this regulatory action presented logistical challenges. In this rule, NOAA harmonizes the separate regulatory actions identified above and makes conforming changes to the general and site-specific regulations.

As described below, the changes between the proposed rule and this rule fall into four distinct categories: A. Include Sanctuary Nomination Regulations in this Interim Final Rule; B. Definitions That Will Remain in the Site-Specific Regulations; C. Revisions to Florida Keys NMS Site-Specific Regulations; and D. Other Conforming, Technical, and Administrative Changes.

A. Include Sanctuary Nomination Regulations in This Interim Final Rule

The proposed rule, published in January 2013, included several revisions to the then-existing procedural sanctuary regulations governing the identification, evaluation, and designation of new sites as national marine sanctuaries. Specifically, NOAA sought to re-organize and modify the regulatory text in the then existing subpart B (Sanctuary Evaluation List), eliminate and reserve most of the then existing subpart C (Designation of National Marine Sanctuaries), and eliminate subpart D (Management Plan Development and Implementation).

In a separate rulemaking finalized in 2014, NOAA issued new regulations establishing the Sanctuary Nomination Process (SNP) (79 FR 33851, June 13, 2014). The SNP final regulations eliminated the site evaluation list that was no longer active, and established a new process for communities to submit marine and Great Lakes sites for consideration as national marine sanctuaries. This final rule reorganizes the sanctuary regulations and includes, without change, the 2014 SNP final regulations. The SNP regulations currently set forth in subpart B, sections 922.10 and 922.11, are being moved to subpart A, sections 922.12 and 922.13, respectively. The SNP regulations were promulgated in accordance with the APA, this rule is a simple recodification of the current SNP regulations, and is consistent with the underlying recodification effort described in the January 2013 proposed rule for this action.

B. Definitions That Will Remain in the Site-Specific Regulations

In the **Federal Register** notice published in January 2013, NOAA proposed to:

- Consolidate, into the new subpart A, the site-specific definitions of ''motorized personal watercraft (MPWC)'' and ''personal watercraft;''
- Move the definition of ''oceangoing ship'' from the site-specific regulations to the new subpart A;
- Move the definition of ''Federal project'' from the site-specific regulations to the new subpart A;
- Consolidate the site-specific definitions of ''traditional fishing'' into the new subpart A; and,
- Consolidate site-specific definitions for the terms ''stowed and not available for immediate use'' and ''not available for immediate use'' into the new subpart A.

For the reasons set forth below, NOAA is not consolidating these definitions into subpart A. Instead, each definition will remain unchanged in its respective site-specific regulatory section (subparts F through T).

1. Motorized Personal Watercraft (MPWC)

During the comment period, NOAA received public comments that revealed that consolidating the definitions of MPWC and ''personal watercraft'' could create undesirable inconsistencies under the site-specific regulations for Channel Islands NMS, Greater Farallones NMS, Monterey Bay NMS, and the Florida Keys NMS and expand the number and types of vessels that could potentially be banned or restricted (*see* Comment 18 in Section IV. Responses to Comments). This matter cannot be easily resolved in this rulemaking. As such, NOAA believes more time is needed to gather more information, engage stakeholders and the sanctuary advisory councils, develop an alternative consolidated definition, and thoroughly evaluate the environmental impacts associated with such a consolidated definition. Therefore, NOAA has decided not to consolidate the definitions of MPWC and ''personal watercraft.'' The existing definitions of MPWC set forth in 15 CFR 922.71 (Channel Islands NMS), 922.81 (Greater Farallones NMS), and 922.131 (Monterey Bay NMS), and the existing definition of ''personal watercraft'' in 922.162 (Florida Keys NMS) shall remain unchanged at this time.

2. Oceangoing Ship

Due to concerns raised during the comment period about the scope of the definition ''oceangoing ship'' and its potential application to Department of Defense vessels, NOAA is not moving ''oceangoing ship'' from the site-specific regulations at 15 CFR 922.71 (Channel Islands NMS) to the general regulations in the new subpart A (*see* Comment 30 in Section IV. Responses to Comments). The definition for ''oceangoing ship'' set forth in the site-specific regulations at 15 CFR 922.71 shall remain unchanged at this time.

3. Federal Project

NOAA is not moving ''Federal project'' set forth in the site-specific regulations at 15 CFR 922.132 (Monterey Bay NMS) to the general regulations in the new subpart A because it might conflict with or create confusion with other similar terms, such as the undefined term ''Federal water resource development projects,'' used in the site-specific regulations at 922.163 (Florida Keys NMS). Accordingly, the definition for ''Federal project'' set forth in the site-specific regulations at 15 CFR 922.132 will remain unchanged and will not be moved to the general sanctuary definitions at 15 CFR 922.11 at this time.

4. Traditional Fishing

NOAA received adverse comments on its proposal to consolidate into the new subpart A the definitions of ''traditional fishing,'' which are found at 15 CFR 922.141 (Stellwagen Bank NMS), 922.162 (Florida Keys NMS), and 922.191 (Thunder Bay NMS). The commenters indicated that it was inappropriate to apply the definition from Florida Keys, Thunder Bay, and Stellwagen Bank across the entire System because fishing conducted by certain Native Americans and indigenous people in the American Samoa or Hawaiian Island Humpback Whale sanctuaries likely do not meet the definition of ''traditional fishing'' (*see* Comment 17 in Section IV. Responses to Comments). NOAA agrees with the comment and is not consolidating the definition of ''traditional fishing'' into the general regulations. At this time, the definition of ''traditional fishing'' will remain unchanged in the site-specific regulations for Stellwagen Bank, the Florida Keys, and Thunder Bay.

5. Stowed and Not Available for Immediate Use

NOAA decided not to adopt a single consolidated definition for the terms ''stowed and not available for immediate use'' and ''not available for immediate use.'' The former terms and separate definitions will remain in the site-specific subparts for Channel Islands NMS and Gray's Reef NMS. The latter term will remain in the site-specific subpart for Florida Keys NMS. NOAA determined that there would have been substantive implications for certain prohibitions in Florida Keys NMS regulations that refer to the term ''not available for immediate use'' that NOAA did not propose to update in the notice of proposed rulemaking. Because NOAA did not propose the associated revisions to those prohibitions, NOAA is not moving forward with the consolidated definition at this time.

C. Revisions to Florida Keys NMS Site Specific Regulations

In the **Federal Register** document published in January 2013, NOAA proposed to consolidate its sanctuary permitting procedures and review criteria in a new Subpart D, and revise and adopt uniform areal estimates and boundary coordinates. In August 2019, NOAA released a Draft Environmental Impact Statement (referred to as the ''Restoration Blueprint'') as part of an ongoing process to propose changes to the Florida Keys NMS site-specific regulations (84 FR 45728, August 30, 2019). Since NOAA is considering comprehensive changes to the Florida Keys NMS site-specific regulations, NOAA is not updating the Florida Keys NMS boundary coordinates or making technical corrections to the references to the Florida Administrative Code at this time. However, NOAA is updating the site-specific Florida Keys NMS regulations (15 CFR part 922, subpart P) to reference the general permitting regulations now in subpart D and is retaining certain site-specific permit language and review criteria set forth in subpart P.

D. Other Conforming, Technical, and Administrative Changes

The conforming, technical and administrative changes from the proposed rule that are described in this section merely recodify existing regulations or make technical corrections.

- NOAA updates a statutory reference in the definition of ''fish'' to correctly refer to a specific section of the Magnuson-Stevens Fishery Conservation and Management Act where the term appears (16 U.S.C. 1802(12)).
- NOAA revises the definition of ''harmful matter'' to include ''hazardous substances defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(14) and designated at 40 CFR 302.4.'' The language in the proposed rule previously read ''and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.'' NOAA changes the definition to use the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) term of art ''hazardous substance.'' The regulations implementing CERCLA cover designated hazardous substances that consist of ''listed'' and ''unlisted substances.'' NOAA did not intend to limit the scope of the harmful matter definition to only the listed CERCLA substances. NOAA also clarifies that this definition refers to harmful matter that poses the threat ''of injury'' to sanctuary resources or qualities.
- NOAA updates references in the site-specific regulations from ''seabed'' to ''submerged lands,'' where appropriate. This technical amendment updates regulatory text to align with the sanctuaries' terms of designation for those sites that now use the term ''submerged lands'' (Channel Islands NMS, Greater Farallones NMS, Gray's Reef NMS, Cordell Bank NMS, and Monterey Bay NMS). There are four sites (Flower Garden Banks NMS, Stellwagen Bank NMS, Hawaiian Islands Humpback Whale NMS, and Florida Keys NMS), whose terms of designation provide authority to regulate activities that affect the ''seabed.'' For those four sites, NOAA is not changing the regulatory text and is keeping the term ''seabed'' in the site-specific regulations.
- NOAA corrects an inadvertent omission from the proposed rule which left out of proposed Subpart D—National Marine Sanctuary Permitting the regulatory provision at 15 CFR 922.48(e) that states that permits are not transferable. The provision that permits are non-transferable has historically existed in all NOAA sanctuary regulations. The language was first introduced in 1975 with the interim final rule for the designation of Monitor NMS (40 FR 5349, 5350, February 5, 1975). NOAA adopted the permit procedures in all subsequent sanctuary regulations and later consolidated them into 15 CFR part 922 in 1995 (60 FR 66875, December 27, 1995). This final rule moves section 922.48(e) to section 922.33(b).
- NOAA updates the site-specific regulations for Greater Farallones NMS at 15 CFR 922.82(d), and Cordell Bank NMS at section 922.112(d) to reference the new subpart D on permit regulations. The proposed rule inadvertently omitted these conforming changes to the regulatory text for both sites (*see* 78 FR 6017, January 28, 2013).
- NOAA amends the Gray's Reef NMS site-specific regulations by: Revising paragraph (c) of section 922.92 to reference the new subpart D on permit regulations; and corrects a cross-reference in 922.93(a) which should refer to 922.92(a)(1) through (11) and the new subpart D. In 2014, the Gray's Reef NMS site-specific regulations were revised to clarify the anchoring

prohibition and provide an exemption to allow the use of weighted marker buoys continuously tended by vessel operators during lawful fishing or diving activities in section 922.92 (79 FR 41879, July 18, 2014). The cross-references in section 922.93 were not updated during the publication of the 2014 final rule for Gray's Reef NMS, but are being updated now.

- NOAA adds a cross-reference to section 922.36 in the Monterey Bay NMS site-specific regulations at paragraph 922.132(e).
- NOAA clarifies in section 922.37(a)(1) that an applicant or holder of a certification of any existing lease, permit, license or right of subsistence access pursuant to 922.10 may file an appeal of the conditioning, amendment, suspension or revocation of a certification. The proposed rule limited the appellant pool to any ''person requesting certification.'' The technical change makes clear that both applicants and holders of certifications may appeal, and makes the regulations consistent with existing practice.
- NOAA removes the reference to certifications in section 922.163(f). The existing regulation contains a cross-reference to an obsolete and outdated regulation that was re-designated (66 FR 4370, January 17, 2001) and subsequently removed from the Florida Keys NMS site-specific regulations in 2009 (74 FR 38093, July 31, 2009).
- NOAA removes and reserves section 922.194 because the section is no longer applicable. Section 922.194 gave the Director authority to allow certain otherwise prohibited activities to continue in the Thunder Bay NMS if such activity was specifically authorized by a valid Federal, state, or local lease, permit, license, approval or other authorization or valid right of subsistence use or access in existence on the effective date of sanctuary designation. This section is no longer applicable because the affected entities were allowed ninety (90) days from the designation of the sanctuary (September 25, 2000) or expansion (February 3, 2015) to notify the Director and request certification of any pre-existing and otherwise prohibited activities being conducted pursuant to a valid authorization in the sanctuary. The certification period has expired, and the implementing regulations are obsolete.
- NOAA designated Mallows Bay—Potomac River NMS, which became effective in September 2019 (84 FR 50736, September 26, 2019). The site-specific regulations for Mallows Bay—Potomac River NMS are codified at 15 CFR part 922, subpart S. References to the site-specific subparts in the new subpart A and subpart D are updated to reflect the addition of subpart S. Regulations on permit procedures set forth at section 922.205 are consolidated without change to the new subpart D. NOAA added an address for the submission of permit applications at paragraph 922.205(b). NOAA also corrected a reference in paragraph 922.206(a) that should refer to section 922.10 for certifications.
- NOAA designated Wisconsin Shipwreck Coast NMS, which became effective on August 16, 2021 (86 FR 45860, August 17, 2021). The site-specific regulations for Wisconsin Shipwreck Coast NMS are codified at 15 CFR part 922, subpart T. References to the site-specific subparts in the new subpart A and subpart D are updated to reflect the addition of subpart T. NOAA added an address to subpart T for the submission of permit applications at paragraph 922.215(b). Regulation on permit procedures set forth at 922.215 are consolidated without change to the new subpart D. Site-specific regulations on certifications set forth at 922.216 are modified to make conforming edits to reference 922.10 for the program regulations on certifications and to reference 922.37 on the appeals process.
- NOAA updates the office addresses for Monitor NMS (922.62(b)), Channel Islands NMS (922.74(b)), Monterey Bay NMS (922.132(c)(1)), Stellwagen Banks NMS (922.143(b)), Olympic Coast NMS (922.153(b)), and Florida Keys NMS (922.166(a)(1)).

III. Summary of the Final Regulations

A. Boundary Descriptions

With this rule, NOAA is adopting a uniform standard for describing the overall area of each sanctuary. In addition to using the proposed unit of measurement of square nautical miles, abbreviated as nmi^2, NOAA also provides in parentheses the area in square statute miles, abbreviated as sq. mi. The converter NOAA uses to convert nmi^2 to sq. mi. is 1 nmi^2 = 1.3243 sq. mi. For example, the area estimate of Monterey Bay NMS will now read as ''4601 nmi^2 (6093 sq. mi.).''

NOAA corrects the area estimate for Channel Islands NMS, which was mistakenly published in the proposed rule as 1128 nmi^2 but should have been 1110 nmi^2.

NOAA revises area estimates for Thunder Bay NMS, Greater Farallones NMS, and Cordell Bank NMS, in accordance with the final rules that expanded each sanctuary (79 FR 5291, September 5, 2014; 80 FR 13077, March 12, 2015 respectively).

NOAA retains the one-mile diameter boundary description for Monitor NMS because it is unique in that it is in a circle shape centered at specific coordinates. However, NOAA is currently considering revising the Monitor NMS boundary, which would be initiated through a separate rulemaking (81 FR 879, January 8, 2016).

With this rule, NOAA also converts the existing geographic coordinates to decimal degrees as calculated using the North American Datum of 1983. The conversion also includes updates to geographic coordinates for special zones of sanctuaries. The revised geographic coordinates discussed in this notice can be viewed and downloaded from *https://sanctuaries.noaa.gov/library/coordinates.html,* or obtained upon request at the address listed in the **ADDRESSES** section of this final rule.

B. Extend the Deadline for Draft Sanctuary Fishing Regulations

With this rule, and as proposed in January 2013, NOAA moves the existing 922.22(b) to the newly amended section 922.3 and extends the deadline from 120 days to 180 days for a Regional Fishery Management Council (RMFC) to respond to the Secretary's request for draft sanctuary fishing regulations. NOAA believes this additional time provides the RMFC with a more realistic timeframe to meet, vote, and develop fishing regulations for the sanctuary. NOAA provides additional information in section IV. Responses to Comments (Comment 9).

C. Definitions

In this rule, section 922.3 is renumbered as section 922.11, and as previously explained above, NOAA revises the general and site-specific regulations to: (1) Eliminate a definition in the regulations that is not being used; (2) Create definitions for terms that are used throughout the sanctuary regulations but were not defined; (3) Modify proposed definitions based on public comment; (4) Move terms without change from site-specific definition sections to the new section 922.11; (5) Amend definitions of existing terms; and, (6) Consolidate definitions.

Unless otherwise noted, the newly defined terms and the consolidated definitions are used in multiple site-specific regulations with consistency such that no impacts are anticipated. The definition for ''Washington Coast treaty tribe'' is the only term that is unique because it solely applies to the Olympic Coast National Marine Sanctuary. However, the definition for

''Washington Coast Treaty tribe'' appears in the general regulations to provide context since the term is referenced as a general permit category in section 922.30.

1. Eliminate Two Definitions in the Regulations That Are Not Being Used

In this rule and as stated in the proposed rule (78 FR 5998, January 28, 2013), NOAA is eliminating the term ''fish waste'' from the general definitions because it is not used in any of the general or site-specific regulations. NOAA also eliminates the definition for ''tropical fish'' in section 922.11. As the only site that uses the term, the site-specific regulations for Florida Keys NMS will retain its definition of ''tropical fish'' at section 922.162. The State of Florida manages marine life species, including tropical fish, as identified in Rule 68B–42.001 of the Florida Administrative Code. Because NOAA references the state-identified species for the sanctuary's definition of ''tropical fish'' in the Florida Keys NMS site-specific regulations, NOAA maintains unchanged a site-specific definition of ''tropical fish'' at section 922.162.

2. Create Definitions for Terms That Are Used Throughout the Sanctuary Regulations But Were Not Defined

The terms ''abandoning'' and ''effective date'' are two terms that are used throughout the existing sanctuary general and site-specific regulations, however, neither term was defined. In this interim final rule, and as stated in the proposed rule (78 FR 5998, January 28, 2013), NOAA now defines both terms and adds them to section 922.11.

(a) Abandoning

In this rule, the definition of ''Abandoning'' proposed in January 2013 remains unchanged and is reflected in revised section 922.11..

(b) Effective Date

In this rule, NOAA modifies the proposed definition of ''effective date'' to clarify and better track with related language in NMSA section 304(b) ''Taking effect of designations.'' Section 304(b) of the NMSA (16 U.S.C. 1434(b)) provides that a designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress, beginning on the date on which this federal rulemaking is published, unless the Governor of any State in which the national marine sanctuary is partially or entirely located certifies to the Secretary of Commerce during that same review period that the designation or any of its terms is unacceptable, in which case the designation or any unacceptable term shall not take effect. The delayed effective date for sanctuary designations under the NMSA is longer than that normally applied to final rules issued pursuant to section 4(d) of the Administrative Procedure Act (APA) (5 U.S.C. 553(d)). For other regulatory actions taken under the NMSA, which do not involve a designation or expansion, the normal APA rules concerning the effective date would continue to apply. As stated in the proposed rule (78 FR 5998, January 28, 2013), NOAA added the term ''effective date'' to the definition section because ''effective date'' was a term used throughout the sanctuary regulations which was not defined. The definition ensures that ''effective date'' is interpreted in a manner consistent with the NMSA.

Since publication of the proposed rule, NOAA has completed several rulemakings involving sanctuary expansions and a sanctuary designation (*see* Section II. History of this Rulemaking and Summary of the Changes from the Proposed Rule to the Final Rule). These rulemakings required NOAA to interpret NMSA section 304(b) and apply its requirements in determining an ''effective date'' of the final regulations and ensure compliance with the NMSA. NOAA revises the definition to make technical changes to make the language more consistent with the statutory language in NMSA section 304(b). NOAA clarifies that the effective date is the date described in the **Federal Register** notice promulgating the regulations or, for newly designated sanctuaries or any revisions to the terms of designation for existing sanctuaries, ''the date after the close of the review period of the 45th day of continuous session of Congress,'' and that it follows the submission of the ''**Federal Register** notice of the designation together with final regulations to implement the designation and any other matters required by law.'' NOAA also removed the word ''proposed'' in the second sentence because it was confusing to use it in conjunction with describing final regulations for the designation of a new sanctuary or revising the terms of designation.

The revised definition of ''Effective Date'' is reflected in revised section 922.11.

3. Modify Proposed Definitions Based on Public Comments

NOAA modifies the general regulations' proposed definitions for the terms ''injure,'' ''sanctuary resource,'' and ''take or taking'' based on public comments.

(a) Injure or Injury

NOAA updates the definition of ''injure'' to also include ''injury'' because that term appears throughout the regulations. However, NOAA is no longer including the phrase ''or impairment of a sanctuary resource service'' found in the proposed definition of ''injury.'' NOAA received comments reflecting confusion about the purpose of this addition, including concerns that NOAA was seeking to expand its NMSA enforcement authorities. NOAA disagrees that this proposed language would have expanded NOAA's authority, but finds that it is unnecessary to change the definition. As explained in the proposed rule, NOAA proposed to add ''impairment of a sanctuary resources service'' to the definition of injury in order to recognize the importance of protecting sanctuary resource services. A resource service is a function performed by a sanctuary resource for the benefit of another sanctuary resource or the public (*e.g.,* seagrass providing habitat and food for fish, or a coral reef providing recreational opportunities for members of the public who enjoy snorkeling). The statutory purpose of the NMSA already emphasizes the importance of ''maintain[ing] for future generations the habitat, and ecological services'' of the living resources in the sanctuaries. 16 U.S.C. 1431(a)(4). The statute also already provides NOAA the authority to seek damages for ''lost use of a sanctuary resource,'' which embodies the concept of losses of sanctuary resource services. 16 U.S.C. 1432(6). Despite this, NOAA has decided not to incorporate it into the regulations at this time, but NOAA will continue to work with agency partners and stakeholders to help them better understand the definition.

The definition of ''injure or injury'' is reflected in revised section 922.11.

(b) Sanctuary Resource

NOAA updates the definition of ''sanctuary resource'' by adding clarifying text ''national marine'' before ''sanctuary,'' and including the terms ''maritime heritage, cultural, archeological, and scientific'' resources for consistency with the statutory definition (*see* 16 U.S.C. 1432(8)). NOAA also updates the definition by replacing ''the substratum of the area of the sanctuary'' with ''waters of the sanctuary, the seabed or submerged lands of the sanctuary.'' NOAA added the term ''seabed'' in the previous

phrase to be inclusive of those sites that use that term in their site-specific regulations and terms of designation.

Within this rule and as previously stated in the proposed rule, the definition of ''sanctuary resource'' is modified by replacing the term ''seabirds'' with ''birds.'' When birds—seabirds, migratory birds, or water fowl—transit through the sanctuary they become part of the sanctuary resources that fall under the protection of NOAA consistent with the NMSA. Current prohibitions in four sanctuaries already regulate birds rather than limiting the class of protected animals to ''seabirds'' (Greater Farallones NMS, Cordell Bank NMS, Monterey Bay NMS, and Florida Keys NMS). The remaining four sanctuaries (Channel Islands NMS, NMS of American Samoa, Stellwagen Bank NMS, and Olympic Coast NMS) that discuss seabirds rather than birds in their prohibited activities sections already adopt by reference the list of protected species under the Migratory Bird Treaty Act (MBTA, listed at 50 CFR 10.13), which does not distinguish between seabirds and non-seabirds. Therefore, NOAA finds that the class of protections does not change with this clarification, and that finalizing this update meets the purposes of E.O. 13563 by streamlining the regulations to use consistent terms throughout. No new prohibitions are imposed with this update.

Consistent with the January 13, 2013 proposed rule, in this interim final rule, NOAA incorporates the phrase, ''or parts or products thereof'' after ''any living or non-living resource of a national marine sanctuary.'' This was added to ensure that protected resources are not dismembered and removed. NOAA harmonizes the definition with the sanctuary regulation of take, which includes ''parts thereof.'' In addition, NOAA includes reference to the newly-designated Wisconsin Shipwreck Coast NMS. As a result of public comment, NOAA revised the definition of ''sanctuary resource'' as reflected in revised section 922.11.

(c) Take (Taking or Taken) of a Marine Mammal, Sea Turtle, or Bird

The proposed rule sought to reformat and update the existing definition of ''take or taking.'' The proposed definition of ''take or taking'' also included a fourth provision to clarify that the definition did not only apply to marine mammals, sea turtles, or birds, but also applied to other sanctuary resources. In response to public comments concerned that the proposed definition of ''take or taking'' expanded the scope of the existing regulatory prohibitions (*see* Comment 24 in Section IV. Responses to Comments), NOAA is revising the proposed definition by eliminating the fourth provision. For other site-specific regulations that prohibit take of other living or non-living sanctuary resources (*e.g.,* 15 CFR 922.112(a); 922.132(11)(i); 922.163(a)(2), (5); 922.164(d)(ii)), the plain language reading of the term ''take (taking or taken)'' will continue to apply. NOAA does not intend to expand the existing scope of the term ''take.''

With this rule, NOAA also clarifies that the term ''take'' is inclusive of the terms ''taking'' and ''taken,'' as both terms are used throughout the site-specific regulations. For instance, Channel Islands NMS regulations at 15 CFR 922.72(a)(9) and (10) identify the following as prohibited or otherwise regulatory activities, ''[t]aking any marine mammal, sea turtle, or seabird within or above the Sanctuary'' and ''[p]ossessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird.'' Monterey Bay NMS, Stellwagen Banks NMS, Olympic Coast NMS, and Hawaiian Island Humpback Whale NMS all have similar prohibitions, which serve as additional examples.

The revised definition of ''take (taking or taken)'' applies only to marine mammals, sea turtles and birds. The definition also incorporates ''take'' as that term is defined in section 3(19) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1532(19); ESA), ''take'' as that term section 3(13) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1362(13); MMPA), and activities prohibited by section 703 of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703; MBTA). Eight sanctuaries (Channel Islands NMS, Greater Farallones NMS, Cordell Bank NMS, Monterey Bay NMS, Stellwagen Bank NMS, Olympic Coast NMS, Florida Keys NMS, and Hawaiian Islands Humpback Whale NMS) already incorporate one or more of these statutes in their site-specific regulations that prohibit ''take.'' Therefore, NOAA determined that the scope of the existing regulatory authority is not broadened by adopting the statutes by reference.

NOAA also recognized that the proposed definition inadvertently omitted a provision that is contained in the existing definition. Therefore, NOAA adds to the revised definition of take the inadvertently-omitted provision concerning the collection, restraint or detainment, tagging, or operation of a vessel or aircraft that results in disturbance of molestation of any marine mammal, sea turtle, or bird.

The revised definition is reflected in revised section 922.11.

4. Move Terms Without Change From Site-Specific Definition Sections to the New Section 922.11

In this rule and as stated in the proposed rule (78 FR 5998, January 28, 2013), NOAA moves the following terms and corresponding definitions from site-specific definition sections to section 922.11 without change: ''attract or attracting,'' ''clean,'' ''cruise ship,'' and ''lawful fishing.''

NOAA moves the definition for ''introduced species'' from four site-specific sanctuary regulations (Channel Islands NMS, Cordell Bank NMS, Greater Farallones NMS, and Monterey Bay NMS) without change, and from the NMS of American Samoa regulations with a technical modification that does not change the meaning or application of the definition. Specifically, this consolidated term was inadvertently omitted from the preamble discussion of the proposed rule, but was shown in the proposed list of definitions under the new section 922.11, and in the two sanctuaries that had definitions sections reprinted, the definition is shown as removed (Monterey Bay NMS and the NMS of American Samoa) (78 FR 5998, January 28, 2013). As such, NOAA finalizes the recodification of this definition to the general regulations with this action.

5. Amend Definitions of Existing Terms

In this rule and as stated in the proposed rule (78 FR 5998, January 28, 2013), NOAA amends the definitions of the following existing terms in the general definitions section 922.11 as follows:

(a) Benthic Community

NOAA updates the regulatory definition of ''benthic community'' by adding ''sea/ocean/lake'' before ''bottom'' to reflect the appropriate descriptive term, depending on the sanctuary. In this rule, NOAA defines the term ''benthic community'' is reflected in revised section 922.11.

(b) Conventional Hook and Line Gear

NOAA updates the term ''conventional hook and line gear'' by removing the phrase ''from aboard a vessel or'' from the definition, and replacing the descriptor ''hand- or electrically operated, hand-held or mounted'' with ''hand, electrically, or hydraulically operated, regardless of whether mounted,'' and replacing the descriptor ''fishing apparatus'' with

''fishing gear.'' The change is designed to track common fishing practices (*e.g.,* conventional hook and line fishing may occur from shore, from a bridge) and improve the description of the various fishing gear and methods captured in the definition of ''conventional hook and line gear.'' NOAA replaces the term ''bottom longline'' with the term ''longline'' in the last sentence of the definition of ''conventional hook and line gear.'' Since longline is a single line fitted with a series of offshoot lines along its entire length, it does not fit within the definition of ''conventional hook and line gear.'' By removing the word ''bottom'' from the definition, NOAA hopes to eliminate confusion that might exist and clarify that longline is not regarded as ''conventional hook and line gear'' particularly in Flower Garden Banks NMS. In Flower Garden Banks NMS, ''conventional hook and line gear'' is an exception to various regulatory prohibitions relating to the discharge or deposit of material within the sanctuary, injuring fish, whale shark and other sanctuary resources identified in the site-specific regulations at 922.122(a)(3)(i)(A) and (a)(7)–(10). In this rule, ''conventional hook and line gear'' is reflected in revised section 922.11.

(c) Commercial Fishing

NOAA modifies the term ''commercial fishing'' to include the phrase ''including any attempt to engage in such activity.'' The modification clarifies that the term ''commercial fishing'' not only applies to an activity that results in the sale or trade of fish, shellfish, algae or corals, but also applies to ''any attempt'' to sell or trade fish, shellfish, algae or corals for profit. Commercial fishing is reflected in revised section 922.11.

(d) Cultural Resource and Historic Resource

NOAA does not add the phrase ''but not limited to'' in the definition of the terms ''cultural resource'' and ''historical resource.'' Although the intent was to clarify that the list of resources are examples, the definitions are sufficiently broad to include the resources of concern to NOAA. The legal citation for the National Historic Preservation Act, which is already referenced in the existing definition, has been added to the definition of ''historical resource'' as it relates to the use of the term ''historic property.'' NOAA also makes technical edits to make the terms and the examples drafted in the singular. The definition also clarifies that a ''cultural resource'' may be considered a ''historical resource.'' The two terms are reflected in revised section 922.11.

(e) Director

NOAA updates the office reference for the definition of ''Director.'' Under the previous definition, the term ''Director'' referred to the ''Director of Ocean and Coastal Resource Management, NOAA or Designee.'' Following organizational changes within NOAA, the definition is updated to refer to the ''Director of the Office of National Marine Sanctuaries or designee'' unless otherwise specified. The term ''Director'' is reflected in revised section 922.11.

(f) Exclusive Economic Zone

The definition of ''exclusive economic zone'' includes a direct reference to Proclamation 5030, dated March 10, 1983, which establishes the exclusive economic zone. The term ''Exclusive Economic Zone'' is reflected in revised section 922.11.

(g) Fish

The Florida Keys NMS regulations site-specific definition of ''fish'' is being adopted in 922.11 because that definition is consistent with the definition of ''fish'' contained in the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). NOAA also amends the statutory reference to point to the specific section of the MSFCMA where the term appears (16 U.S.C. 1802(12)). The term ''fish'' is reflected in revised section 922.11.

(h) Indian Tribe

NOAA moves the term ''Indian tribe'' found in the Olympic Coast NMS and Thunder Bay NMS regulations to the general regulations, and mirrors the definition provided in Executive Order 13175. Updating the definition of ''Indian tribe'' in the general regulations does not result in any change from a management perspective with regard to any existing sanctuary.

(i) National Marine Sanctuary or Sanctuary

The definition of ''national marine sanctuary or sanctuary'' clarifies that the area of the marine environment of special national significance can be designated by NOAA or Congress.

(j) Regional Fishery Management Council

In the definition of ''Regional Fishery Management Council,'' NOAA updates the legal citation to ''section 302 of the Magnuson Fishery Conservation and Management Act.'' In 2006, this Act was reauthorized and renamed, ''the Magnuson-Stevens Fishery Conservation and Management Act. The term ''Regional Fishery Management Council'' is reflected in revised section 922.11.

(k) Sanctuary Quality

NOAA updates the definition of ''sanctuary quality'' by adding ''national marine'' before ''sanctuary.'' The revised definition is reflected in section 922.11.

(l) Vessel

NOAA modifies the definition of ''vessel'' by adding a non-exhaustive list of examples at the end of the sentence. NOAA also eliminates a redundant phrase ''capable of being used as a means of transportation in or on the waters of a Sanctuary'' included in the list of examples for the term ''vessel.'' The purpose of the change is to provide law enforcement with guidance regarding the types of watercraft that are considered ''vessels.'' The revised definition is reflected in revised section 922.11.

6. Consolidate Definition

(a) Deserting

NOAA moves the term ''deserting'' from the Monterey Bay NMS and Greater Farallones NMS regulations to the new definition section at 922.11, and amends it to include the following descriptors, ''wrecked, junked, or in a substantially dismantled condition.'' These descriptors are intended to provide guidance to law enforcement in applying the regulations and to assist the public in better understanding the regulations. The term is currently used only in the regulatory prohibitions for these two sites. While adding the descriptors ''wrecked, junked, or in a substantially dismantled condition'' could be interpreted to expand the universe of activities that constitute deserting a vessel, NOAA's intent is to provide additional examples without expanding the underlying meaning. NOAA made only grammatical changes between the proposed rule and this rule (*i.e.,* a comma was changed to semicolon). The revised definition is reflected in revised section 922.11.

D. Permit Categories and Review Procedures

With this rule, NOAA eliminates the existing subpart D (Management Plan Development and Implementation) and replaces it with a new ''Subpart D—National Marine Sanctuary Permitting.'' ONMS permit review criteria and procedures were located in several different sections of the regulations: 922.48 National Marine Sanctuary permits—application procedures and

issuance criteria; 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity; 922.50 Appeals of administrative action; and in subparts F through T in site-specific regulations. The rule consolidates most permitting regulations into a single subpart, and updates and clarifies ONMS permitting authority. NOAA makes several clarifications and technical revisions to the general sanctuary permitting procedures and criteria. In this section, NOAA also describes the details of the government-to-government consultation with the Washington Coast treaty tribes on the changes to the Olympic Coast NMS permit regulations.

1. Clarifications and Technical Revisions

- Section 922.10 provides the Director with authority to certify and regulate, but not terminate, the existence of any valid lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of sanctuary designation. This rule revises section 922.10 to clarify that certification requirements are related to the effective date of final regulations for a designation or revised terms of designation. This is a technical amendment made to ensure that the terms used in the sanctuary regulations are consistent. NOAA clarifies that certification criteria and procedures apply to new designations, and also to changes to terms of designation, which include both newly regulated activities throughout a sanctuary or to regulations in newly expanded areas of an existing sanctuary. Certification criteria and procedures do not apply to previously regulated activities in pre-expansion areas.
- NOAA clarifies that in addition to subpart D, site-specific subparts may also include applicable permit categories, review criteria, or other requirements.
- NOAA makes a technical revision to remove ''secondary'' from types of adverse impacts NOAA considers in its permit review criteria. The revision more closely aligns with National Environmental Policy Act (NEPA) terminology and retains consideration of indirect and cumulative effects of permitted activities.
- NOAA clarifies that a permit applicant's proposed methods should ''avoid, minimize, or otherwise mitigate adverse effects as much as possible.''
- NOAA makes a technical revision clarifying that the Director may make specific agreements with applicants for assessing and collecting special use permit (SUP) fees.
- NOAA clarifies that permit applications may be submitted by electronic means (as opposed to just by email) in addition to submission by mail. This clarification is intended to facilitate NOAA's plans to move forward with a web-based electronic application submission process in the future.
- NOAA clarifies that the Director may authorize a person to conduct an activity prohibited by subparts L through P, subpart R, and subpart S, if such activity is specifically authorized by any valid Federal, state, or local lease, permit, license, approval, or other authorization issued after the effective date of sanctuary designation or expansion. This form of approval, known as an ''authorization,'' is and will continue to be available in seven sanctuaries: Flower Garden Banks, Monterey Bay, Stellwagen Bank, Olympic Coast, Florida Keys, Thunder Bay, and Mallows Bay-Potomac River.
- NOAA makes a technical revision to eliminate the term ''renewal'' from discussion of permit or authorization amendments. Permit or authorization amendments include requests for time extensions.

2. General Permit Categories

ONMS has four primary ways by which it may allow otherwise prohibited activities in existing sanctuaries: General permits, special use permits, certifications, and authorizations. Some sanctuaries (*e.g.,* Thunder Bay NMS and Florida Keys NMS) also have site-specific permit categories described in their relevant subpart. General permits are divided into several categories that correspond with the primary purpose of the proposed activity. Most site-specific sanctuary regulations have at least three categories of general permits: (1) Management; (2) education; and, (3) research. NOAA consolidates these general permit categories into one section (922.30) and provides a single description of each permit category. Consolidating permit categories into subpart D does not preclude NOAA from creating or amending permit categories that only apply to a particular sanctuary.

Some sanctuaries also have general permit categories for other types of activities, such as salvage or recovery operations (associated with an air or marine casualty); restoration of natural habitats, populations, or ecological processes; furthering the natural or historical resource value of a sanctuary; and response to the imminent risk of a sanctuary resource injury. Following consolidation of the general permit categories, these activities will be considered under a permit category determined appropriate for the proposed action (*i.e.,* management, education, or research) and are not addressed as separate general permit categories.

In addition, a few sanctuaries have site-specific categories, procedures, and criteria for permit issuance that are unique to that sanctuary. These site-specific permit categories will continue to only apply to the specific sanctuary. However, three site-specific general permit categories are now moved to the general permit list at 922.30, including:

- *Monterey Bay NMS:* Jade removal;
- *Olympic Coast NMS:* Tribal self-determination; and,
- *Florida Keys NMS:* Activity furthers sanctuary purposes to the extent compatible with the primary objective of resource protection.

NOAA has become aware that certain conditions of the Monterey Bay NMS jade removal permit category previously codified at paragraphs 922.133(b)(6) and 922.133(d) were inadvertently left out of the notice of proposed rulemaking. The language of the jade removal permit category in the proposed rule did not capture the phrase ''without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools,'' which restricts the methods of jade removal in paragraph 922.133(b)(6). In addition, paragraph 922.133(d) states that ''preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes.'' NOAA has historically provided an exemption for limited, small-scale collection of jade in Monterey Bay NMS (63 FR 15083, March 30, 1998). NOAA did not intend to make substantive changes to the existing regulations currently codified at 15 CFR 922.133(b)(5) and (d), and there were no comments on the proposed rule addressing these jade removal provisions, or any other indication among stakeholders that these provisions should be substantively changed. Therefore, NOAA is correcting an inadvertent omission to ensure that the jade removal can continue under the general permit category at section 922.30(b)(4) in a manner that is consistent with historical practice in existence since 1998.

As noted above, the Florida Keys NMS released a Draft Environmental Impact Statement (referred to as the ''Restoration Blueprint'') in August 2019 as part of an ongoing process to propose changes to the Florida Keys NMS site-specific regulations (84 FR 45728,

August 30, 2019). While NOAA is including in subpart D the Florida Keys NMS site-specific general permit category listed above, Florida Keys NMS has additional site-specific permit categories that are not changed by this rule and will remain at 922.166 and 922.167. However, the Florida Keys NMS regulations and permit categories may be revised in the future through a separate rulemaking as part of the ongoing Restoration Blueprint process.

3. Permit Review Criteria

NOAA consolidates permit review criteria into subpart D to improve consistency and clarity. The list of permit review factors or criteria considered by the Director was not consistent across the sanctuary site-specific regulations, nor was the regulatory text for the factors or criteria consistent. The sanctuary site-specific regulations also varied on whether the factors or criteria were affirmative findings that shall be met or whether they were simply considerations in making permit decisions. To achieve greater consistency, NOAA establishes a single list of nine review criteria and publishes it in subpart D. Eight criteria are applicable to all sanctuaries, while one is unique to Olympic Coast NMS (the activity as proposed shall not adversely affect Washington Coast treaty tribes). NOAA also eliminates site-specific impact thresholds for permit issuance in favor of making the review criteria affirmative findings. The Director must still determine whether any additional site-specific review procedures or criteria were met prior to issuing a permit. For example, for Thunder Bay NMS, the permit procedures and review criteria in subpart R, section 922.195, will continue to apply. Likewise, the Florida Keys NMS site-specific permit procedures and review criteria in subpart P, sections 922.166 (b), (c), (d), (f) and (i) through (m) and 922.167 will continue to apply. Since NOAA is considering comprehensive changes to the Florida Keys NMS site-specific regulations, these site-specific permit procedures and review criteria may be revised in the future through a separate rulemaking as part of the ongoing Restoration Blueprint process.

4. Appeals

NOAA revises the appeal procedures and re-codifies the regulations into a new section 922.37. The regulations provide any applicant or holder of a sanctuary permit, special use permit, certification, or authorization with an opportunity to submit a written appeal to the Assistant Administrator for Ocean Services and Coastal Zone Management challenging the denial, conditioning, amendment, suspension or revocation of a general permit, special use permit, or authorization; or a certification.

In this rule, NOAA makes the administrative appeal process consistent across the National Marine Sanctuary System by restricting the potential appellants to applicants for and holders of sanctuary permits, special use permits, certifications, or authorizations; and by removing the requirement for the Assistant Administrator to hold hearings for appeals of permit decisions for Monitor NMS. NOAA also makes minor, non-substantive edits to improve readability and understanding. NOAA did not receive any public comments on the proposed changes that make the appeal process consistent across the System.

The previous regulations provided ''any interested party'' with an opportunity to appeal sanctuary decisions issued by the Director in six sanctuaries (Monitor NMS, Channel Islands NMS, Greater Farallones NMS, Gray's Reef, NMS of American Samoa, or Cordell Bank NMS). These interested party appeals are called ''third party appeals.'' A review of the regulatory history shows that the third party appeal provisions appear to have been carried over from the initial regulations implementing the designation of several of sites, including Channel Islands NMS (45 FR 65205, October 2, 1980), Greater Farallones NMS (46 FR 7941, January 26, 1981), Gray's Reef (46 FR 7946, January 26, 1981), NMS of American Samoa (51 FR 15883, April 29, 1986), and Cordell Bank NMS (54 FR 22425, May 24, 1989). However, the regulatory history of each site is silent as to this provision and provides no discernable reasons why NOAA supplied interested parties with opportunities to appeal sanctuary permit decisions in these sites and not others (78 FR 6005, January 26, 2013).

Sanctuary administrative appeals are commonly brought by applicants for or holders of sanctuary permits, special use permits, certifications, or authorizations (78 FR 6005, January 26, 2013). Only two third party appeals have been filed by interested parties. Both third party appeals were filed in 2014, involved the same appellant (a non-profit organization), and involved challenges to sanctuary permits issued to two separate recreational companies operating in the Greater Farallones NMS. The first third party appeal was decided against the appellant; and the second third party appeal was voluntarily withdrawn by the appellant. In light of the very limited number of times the third party appeal option has been invoked, and given the lack of discernible rationale for affording the opportunity for third party appeals in some sites and not others, the sanctuary appeal procedures are being amended to facilitate consistency by restricting the pool of potential appellants to applicants for, and holders of, sanctuary permits, special use permits, certifications, or authorizations. Interested third parties may provide input to the permit process through other mechanisms, including public review and comment of associated environmental analyses as part of the NEPA process or other statutory processes, as applicable.

As explained in the proposed rule, only the Monitor NMS regulations required the Assistant Administrator to hold informal hearings during administrative appeals. Other sanctuary regulations provided the Assistant Administrator with discretion on whether to hold an informal hearing (78 FR 6005). NOAA removes the hearing requirement for Monitor NMS and makes the appeal procedures for Monitor NMS consistent with that of all the other sanctuary sites.

5. Special Use Permits

In this rule, NOAA adds two new sections for special use permits and associated fees. NMSA section 310 provides the Secretary of Commerce (Secretary) with authority to issue special use permits (SUPs) (16 U.S.C. 1441). The Secretary has delegated authority to the ONMS Director to issue SUPs that authorize specific activities in a national marine sanctuary if such SUPs are necessary (1) to establish conditions of access to and use of any sanctuary resource, or (2) to promote public use and understanding of a sanctuary resource. The NMSA also provides ONMS with authority to assess and collect SUP fees. ONMS may collect fees to recover administrative costs, the cost of implementing the permit, and the fair market value of the use of sanctuary resources. The new special use permit fee regulations are set forth in a new section 922.35.

ONMS publishes in the **Federal Register** all categories of activities that may qualify for a SUP (*see e.g.,* 71 FR 4898, January 30, 2006; 78 FR 25957, May 3, 2013; 82 FR 42298, September 7, 2017). A few SUP categories are only applicable at specific sites. For example, the SUP category for recreational diving near the USS *Monitor* applies only in the Monitor NMS and the SUP category for the continued presence of a pipeline transporting seawater to or from a desalination facility applies only in

Monterey Bay NMS. Although all sanctuaries currently possess the authority to issue SUPs for certain activities as identified in the published SUP categories, the Florida Keys NMS is the only site that has site-specific implementing SUP regulations (15 CFR 922.166(d)). In order to avoid substantive changes to the Florida Keys NMS-specific regulations pertaining to SUPs, 15 CFR 922.166(d) will remain unchanged by this rule. Any proposed changes to FKNMS SUP regulations will be addressed through the public review process for the Restoration Blueprint DEIS and the associated rulemaking.

6. Application Requirements and Amendment Procedures

Through this rule, NOAA clarifies permit application requirements and procedures and keeps the requirements themselves largely unchanged (78 FR 6005, January 26, 2013). The changes clarify that the Director may refuse to further consider an incomplete application. Applications are deemed incomplete if an applicant fails to submit required or requested information, pay outstanding penalties, or comply with any permit previously issued to the applicant. In addition, the language in new section 922.34 governing permit amendments has been revised to clarify that NOAA does not issue ''renewal'' permits, but has a longstanding practice of ''amending'' the expiration dates of existing permits provided the permit has not expired.

7. Authorizations

In this rule, NOAA moves the regulations regarding authorizations from section 922.49 to a new section 922.36. The regulations provide the Director with authority to allow an otherwise prohibited activity ''if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization.'' An authorization is designed to streamline regulatory requirements by reducing the need for multiple permits (78 FR 6005, January 26, 2013). NOAA also finalizes the requirement that the Director consider the permit review criteria in making decisions on authorizations.

8. Consultation With Washington Coast Treaty Tribes on Permit Regulations

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with the tribal representatives from the Makah, Hoh, and Quileute Indian Tribes and the Quinault Indian Nation of the Olympic Coast Intergovernmental Policy Council (IPC). During the consultation, NOAA advised the IPC tribal representatives that this action would include non-substantive, technical changes to the existing permit regulations. In response to comments from the Makah Tribe, NOAA is including preamble text to clarify that the relocation of the tribal self-determination provision does not change the intent or application of this provision.

In this rule, NOAA adds a defined term ''Washington Coast treaty tribe,'' moves the tribal self-determination permit category to the national permitting regulations, modifies a permit review criterion to require that permitted activities shall not have an adverse effect on Washington Coast treaty tribes, and adds the consideration of all permit review criteria (including the effect of the activity on tribes) to the permit procedures in subpart D.

As noted above, NOAA has added the term ''Washington Coast treaty tribe'' to the general definitions in section 922.11. The term was suggested as a result of consultation during the Olympic Coast NMS management plan review process. The new definition specifically refers to any of the four tribes currently identified in the existing Olympic Coast NMS regulations and is defined as ''the Hoh, Makah, or Quileute Indian Tribes or the Quinault Indian Nation.''

For Olympic Coast NMS specifically, NOAA retains the permit category for activities that further tribal self-determination. NOAA moves without change the tribal self-determination permit category to the new permitting section under subpart D. The permit category continues to read: ''promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights or the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of a tribal member.'' As previously stated, the relocation of this permit category does not change the intent or application of this provision.

NOAA eliminates the Olympic Coast NMS site-specific impact threshold that permitted activities must not ''substantially injure'' sanctuary resources and qualities. The impact threshold is replaced by nine (9) affirmative findings as discussed earlier in the preamble to this rule. NOAA finds that this impact threshold is adequately captured in the findings that the activity must be (1) conducted in a manner compatible with the primary objective of resource protection, (4) the end value to the goals and objectives of the sanctuary outweighs potential adverse impacts, and (9) the activity does not adversely affect Washington Coast treaty tribes. The permit review criteria now require the Director to make affirmative findings, including that permitted activities would not adversely affect Washington Coast treaty tribes.

NOAA believes the changes to the permit review requirements increase consideration of tribal interests. With this rule, the Director must consider all of the permit review criteria when evaluating authorization requests. This includes understanding whether an activity adversely affects Washington Coast treaty tribes. The previous regulations did not explicitly require the Director to consider tribal interests when issuing permits. Therefore, this regulatory action should further increase deliberate consideration of and adverse effects of permit decisions on tribal interests.

Since the proposed rule published in the **Federal Register**, Olympic Coast NMS and the Makah Tribe also engaged in government-to-government consultation on tribal involvement in the consideration of Olympic Coast NMS permit applications and jointly developed a ''Protocol for Permit Consultation'' that specifies the procedures by which consultation and coordinated communication occurs between the Makah Tribe and the Olympic Coast NMS staff. Sanctuary staff and tribal representatives meet periodically to engage in permit consultations on ONMS permit applications, and the results of which are included in ONMS permit decision documents. In addition, the Makah Tribe and ONMS developed a protocol to engage in consultation as part of the NMSA section 304(d) interagency consultation process and have implemented it in two recent sanctuary consultations. Olympic Coast NMS regularly engages with the Washington Coast treaty tribes on various initiatives of mutual interest. The language that NOAA adopts in this rule has been vetted through public review and government-to-government consultation with the tribes.

IV. Responses to Comments

NOAA solicited public comments on the proposed rule, seeking to determine whether the proposed changes effectively streamlined or otherwise improved the regulations. NOAA also invited commenters to provide suggestions on how to make the regulations easier to understand. NOAA received written comments from 28 individuals or entities on the proposed rule and grouped them into 46

categories below. NOAA's response follows each comment.

General

1. Comment: Commenters commended NOAA's efforts to streamline the regulations to create consistency across the national marine sanctuary general regulations and site-specific regulations. They recognized it was complex work, in that the streamlining covered a wide range of regulations, including but not limited to, regulatory consolidation, elimination of regulations, amending regulatory procedures, and changes to regulatory definitions. In addition, commenters supported efforts to harmonize and consolidate definitions with broad applicability for the National Marine Sanctuary System. Commenters noted that definitions have important implications for sanctuary regulations and are key factors in determining access, restricted use, and user burdens.

Response: NOAA agrees with the comment.

NEPA Analysis

2. Comment: Commenters recommended that NOAA prepare and release for further public comment an environmental assessment that analyzes the proposed regulatory changes and their effect on the human environment. Commenters stated that a proper analysis would allow the public to better understand the purpose and need for the proposed changes as well as the potential impacts.

Response: NOAA determined that because this rule includes only technical and administrative changes to regulatory text it meets the definition in Appendix E of the NOAA NEPA Companion Manual under categorical exclusion reference number G7 ''Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis.'' In considering the list of extraordinary circumstances, NOAA determined that none would be triggered by this rule. Therefore, NOAA determined that this rule would not result in significant effects to the human environment and is categorically excluded from the need to prepare an environmental assessment (EA).

Executive Order 13563

3. Comment: Commenters support the review per the direction of Executive Order (E.O.) 13563 ''Improving Regulation and Regulatory Review.'' However, commenters also noted that section 3 of E.O. 13563 advises against redundant regulations and requires agencies to attempt to promote coordination, simplification, and harmonization across regulatory regimes. Commenters questioned whether ONMS conducted such a review, or if it only looked at its own regulations. The commenters suggested that ONMS consider potential regulatory redundancies and management duplication within sanctuaries and with other agencies with statutory authority over marine resources.

Response: ONMS consulted with other federal regulatory agencies, such as the NPS and NOAA's National Marine Fisheries Service (NMFS), with which ONMS frequently cooperates and shares related jurisdiction. ONMS also used the draft proposed regulations to identify whether there were any other additional redundancies that could be addressed. NOAA is committed to conducting periodic evaluations of individual sites and management plan reviews consistent with NMSA section 304(e) to revise the regulations and management plans as necessary to fulfill statutory mandates. The purpose and intent of E.O. 13563 is also considered as part of the management plan review process in each sanctuary.

Consolidation of Subparts

4. Comment: NOAA should not eliminate existing section 922.21, or the entirety of subpart C (Designation of National Marine Sanctuaries). Commenters contend that one of the purposes of regulations is to implement the provisions and requirements contained in Congressional statutes that are not only applicable to citizens, but to federal agencies as well. Commenters stated the regulations must maintain reference to the sanctuary designation requirements. Commenters also stated that the public generally does not read Congressional acts, so maintaining a reference to the sanctuary designation standards set forth in section 303 of the NMSA within the Code of Federal Regulations provides the public with a means to evaluate NOAA's transparency and compliance with the NMSA in future sanctuary actions.

Response: This comment is no longer relevant, and has been overtaken by intervening agency action. On June 13, 2014, NOAA eliminated and reserved section 922.21 through a separate rulemaking that established the sanctuary nomination process (SNP) (79 FR 33851, June 13, 2014). The 2014 SNP has been incorporated in this rule.

5. Comment: NOAA should maintain section 922.30(b) of subpart D pertaining to development and implementation of site-specific contingency and emergency-response plans designed to protect sanctuary resources, including alert procedures and actions to be taken in the event of an emergency such as a shipwreck or an oil spill.

Response: NOAA disagrees with this comment, and declines to retain section 922.30. The previous section 922.30 was vague and provided no direct information to the public concerning sanctuary-related emergency response plans. NOAA maintains that under section 304(a)(2)(C) of the NMSA it retains the authority and ability to develop such plans as needed and does not require regulations to direct the development of specific contingency and emergency-response plans. Therefore, NOAA has decided to remove the previous section 922.30 because it was duplicative of the statutory requirements.

Submerged Lands

6. Comment: Commenters noted that the term ''submerged lands'' carries a legal definition under the Submerged Lands Act, so NOAA should describe the impact of moving away from the term ''seabed'' and using ''submerged lands'' in its place. They stated that the public would benefit from more description with regard to States' rights and ownership of submerged lands. Another commenter stated that in Hawaii, submerged lands are considered ceded lands, which are, among other things, held in trust for the betterment of Native Hawaiians. Another commenter stated that NOAA appeared pre-decisional in that four sites (Flower Garden Banks NMS, Stellwagen Bank NMS, Hawaiian Islands Humpback Whale NMS, and Florida Keys NMS) would likely move towards a submerged lands definition.

Response: NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98–498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, there is no substantive change from moving away from the term ''seabed.''

NOAA updates references in certain site-specific regulations from ''seabed'' to ''submerged lands'' in order to align the regulations with the terms of designation for those particular sites

that now use the term ''submerged lands'' (Channel Islands NMS, Greater Farallones NMS, Gray's Reef NMS, Cordell Bank NMS, and Monterey Bay NMS). NOAA has decided not to add ''or submerged lands'' terminology to the site regulations for the following four sanctuaries—Flower Garden Banks NMS, Stellwagen Bank NMS, Olympic Coast NMS, and Florida Keys NMS—because the terms of designation for these sanctuaries use the term ''seabed.'' Updating the term ''seabed'' to ''submerged lands'' for the sites that use ''submerged lands'' in their terms of designation is not intended to result in any legal or substantive change to the regulations.

A discussion of State's rights in regard to submerged lands is beyond the scope of this rulemaking. However, the State of Hawaii and Native Hawaiians play an important role in the co-management of Hawaiian Islands Humpback Whale NMS. The sanctuary is co-managed through an agreement with the State of Hawaii and the sanctuary advisory council includes representation of Native Hawaiian interests. This coordination helps to ensure the views and concerns of Native Hawaiians are considered in the management of sanctuaries that overlap state submerged lands.

Site Evaluation List (SEL)

7. Comment: There was broad general support from the public for the proposal to remove the SEL requirement from section 922.10. Support was mainly from organizations and individuals who viewed the SEL requirement as an impediment to the potential nomination of noteworthy sites.

Response: NOAA appreciates the support of the general public and organized groups that might wish to submit nominations to consider new sites for designation as national marine sanctuaries. In 1995, NOAA deactivated the SEL and no new areas could be added to the list for sanctuary consideration. Commenters supported the proposal to remove the SEL regulations because it would remove a barrier for potential nomination of noteworthy sites. Since the publication of the proposal to remove the SEL requirement, NOAA, in a subsequent action established the sanctuary nomination process (SNP) regulations in subpart B and removed the SEL regulatory language at that time (79 FR 33851, June 13, 2014). As such, the SEL requirement has already been removed from the Part 922 regulations.

8. Comment: A few commenters expressed concerns about amending the regulations for the SEL. They stated that there were no specific details as to how the additional method for identifying and nominating sites would work, what programmatic objectives NOAA would use to evaluate them, and urged NOAA to follow sections 303 and 304 of the NMSA for interagency review. Other commenters expressed concerns over agency resources available to identify and add new sanctuaries to the system.

Response: As noted above, this comment is no longer relevant, and has been overtaken by intervening agency action. In June 2014, NOAA eliminated the SEL, and established the SNP, a community-driven nomination process for identifying and submitting to NOAA marine and Great Lakes sites for consideration as national marine sanctuaries. The SNP has been incorporated into this final rule, and is re-codified in new sections 922.12 and 922.13 without any changes to the existing language.

Fishing Regulations

9. Comment: Some commenters supported providing additional time to the RFMCs to develop draft fishing regulations, from the proposed 120 days to 180 days. Other commenters suggested that 180 days may still not be long enough to develop draft fishing regulations, especially considering the requirements of the MSFCMA, and if the National Environmental Policy Act requirements are to be completed prior to final Council action as encouraged by a National Marine Fisheries Service Policy Directive (February 2013). Commenters suggested at least one year or more as a more appropriate time frame.

Response: NOAA appreciates the administrative constraints of the RFMCs and attempted to relieve some of the burden by extending the timeline for developing draft fishing regulations. NOAA selected 180 days because typically two Council meetings can occur within this time frame, which allows the issue to be introduced at one meeting and a decision to be made at a second meeting. NOAA seeks to balance efficiency of its own rulemaking and environmental compliance processes with allowing sufficient time for the Councils to deliberate and develop draft fishing regulations, if they so choose. Therefore, no changes were made based on this comment.

10. Comment: Other commenters reiterated that fish and continental shelf fishery resources under the authority of the Secretary of Commerce should be managed pursuant to the MSA, and the RFMCs should prepare fishing regulations within a sanctuary in accordance with sections 302 and 304 of the MSA. They believe that under the RFMC process, fishery resources are managed consistently throughout their range and with the best scientific information available. Commenters stated that sanctuaries have neither the scientific expertise nor transparent and inclusive public process to address fishery management issues. In addition, the MSA contains specific National Standards, guidelines, scientific and economic considerations, and clear requirements for public input that include but extend beyond NEPA considerations.

Response: ONMS has not proposed any fishing regulations. The plain language of NMSA section 304(a)(5) provides clear guidance on the process for developing fishing regulations. The purpose of this action is merely to establish a clear schedule for the RFMCs to develop draft fishing regulations applicable in national marine sanctuaries.

Definitions

System-Wide Application

11. Comment: NOAA should not establish definitions that apply nation-wide. Commenters stated that sanctuaries by design are place-based and reflect local management objectives. They argue it is unclear what purpose nation-wide definitions serve for place-based sanctuaries. If anything, this may limit individual sanctuaries, and the local constituents and user groups they serve, from establishing local definitions that reflect the socio-cultural characteristics of a particular place or region.

Response: NOAA appreciates the commenters' concerns, but disagrees with the suggested approach. NOAA's decision to adopt general definitions is dependent on whether the term at issue applies across the System (*e.g.,* ''effective date'' is a general term that applies to all sanctuaries). Whenever a term has limited application, NOAA has chosen to retain the site-specific definition, which only applies to the corresponding site and has no general, system-wide applicability (*e.g.,* ''No activity zone'' in Flower Garden Banks NMS, and ''Davidson Seamount Management Zone'' in Monterey Bay NMS).

Adopting Other Statutory Definitions

12. Comment: Commenters were concerned that by adopting the definitions and, thereby, standards of several other statutes, NOAA may increase the overlap of regulatory programs. Commenters were concerned that this creates the potential for

duplicative and conflicting regulatory interpretations and outcomes, which increases litigation risk for the Department of Commerce, and for action proponent agencies. ONMS should seek to develop processes that complement, rather than overlap existing regulatory programs.

Response: NOAA disagrees and believes that the proposed approach serves to provide certainty and remove the potential for conflicting regulatory requirements. In this rulemaking, NOAA adopts the definitions of ''take'' from other relevant statutes. Through this approach, if those referenced authorities change over time—either through an agency changing its interpretation or Congressional updates—NOAA would not have to make corresponding changes to the sanctuary regulations and consistency across the statutory regimes will be maintained. NOAA believes this increases consistency and efficiency for both the federal government and the regulated community. By referencing the other statutes explicitly, NOAA eliminates the potential for conflicting regulatory interpretations. Doing so also provides law enforcement agencies notice of what laws apply all in one place. NOAA believes this provides an important level of certainty to law enforcement that is consistent with the NMSA goal to provide for comprehensive and coordinated conservation and management of sanctuaries (16 U.S.C. 1431(b)(2)).

13. Comment: Certain resources that may exist within sanctuary boundaries are already covered by the ESA, MMPA, and MBTA, and are not in need of protection under the NMSA via clauses (1), (2), and (3) of the proposed definition of ''take or taking.'' Commenters stated that ONMS should consider focusing protection resources on those areas not already protected through other regulatory programs.

Response: NOAA already incorporates the ESA, MMPA, and MBTA in its general regulations and site-specific regulations. Additionally, there may be circumstances where pursuing a ''take or taking'' under the ESA, MMPA, or MBTA could generate greater litigation risk or jeopardize adequate redress. ONMS believes that the concurrent authority to pursue violations under the NMSA provides important flexibility for considered judgment and adequate assurance that NOAA is able to sufficiently deter the illegal taking of sanctuary resources. Moreover, strengthening protections over already protected resources does not preclude NOAA from augmenting safeguards for other resources not granted similar protections under other statutes.

14. Comment: One commenter gave the following example: ''Adoption of other statutory definitions creates a situation where NMFS could be required to formally consult with the ONMS in permitting or regulatory actions such as when issuing new regulations for resources protected under the ESA and MMPA.'' The commenter stated that such an outcome appears to be contrary to the NMSA section 301(b)(2) which calls for ''coordinated conservation and management of [marine sanctuaries], and activities affecting them, in a manner which complements existing regulatory authorities.''

Response: NOAA does not believe the incorporation of other definitions is duplicative or conflicting. NOAA currently cross references the ESA, MMPA, MBTA, and other statutes in the existing sanctuary regulations. NOAA believes that efficiency is increased by adopting other statutory actions, and achieves the directive under NMSA section 301(b)(2). Incorporation of other statutory definitions of ''take'' is unrelated to other federal agencies duties to consult with ONMS under NMSA section 304(d). NMSA section 304(d) requires any federal agency (inclusive of other offices in NOAA) to consult with ONMS for actions that are likely to injure sanctuary resources. The regulatory definition of ''injure'' does not adopt by reference the other statutory definitions of ''take.''

15. Comment: In general, some commenters were concerned that adoption of terms ran a risk of these terms being used out of their original context and reasoning. For example, the commenters stated that apparently simple alterations to the definitions of ''injure,'' ''take or taking,'' ''harmful matter,'' and ''seabird'' change standards and create cascading effects and considerable expansion of responsibilities. Commenters expressed concern that expanded responsibilities might lead to litigation against ONMS and proponent agencies.

Response: As previously mentioned, in the existing sanctuary regulations, NOAA routinely cross references definitions as used in other statutes (*see* the existing definition of ''take or taking'' as set forth in 922.3). NOAA believes that referencing other statutes provides consistent terminology that benefits the public understanding and ability to comply with various Federal laws and regulations that overlap in one location. In addition, ONMS routinely works with partners on statutory and regulatory enforcement. These partners include the Fish and Wildlife Service (FWS), NMFS, the U.S. Coast Guard, the NPS, and state and local enforcement agencies. These partners have to reference different variations of definitions, and to correctly distinguish between them when issuing a citation. NOAA believes that adoption of uniform standards will help the many enforcement officers that use these definitions to more clearly and consistently identify violations, and should lead to greater overall protection of the resources under NOAA's authority.

As such, NOAA does not believe that the changes to definitions finalized in this action expand NOAA's authority or create additional administrative or enforcement burden. However, in response to these concerns, NOAA has modified the definition of ''injure or injury'' to remove the phrase ''or impairment of a sanctuary resource service.'' NOAA has modified the definition of ''take or taking'' to ensure the existing scope of these definitions is not unintentionally expanded.

Conventional Hook and Line Gear

16. Comment: The definition of ''conventional hook and line gear'' is too broad and appears to limit traditional fishing methods. For example, deep-water bottom fish hook and line gear includes branch lines with baited hooks and is a traditional fishing gear in Hawaii and other U.S. Pacific Islands, and in other areas fishers may use hook and line gear that include branch lines and baited hooks. The proposed definition does not include these methods, and also does not include vertical handline gear, vertical longline gear, shortlines, among others.

Response: NOAA continues to believe that longline and shortline gear is not ''conventional hook and line gear'' as the term is used in the existing site-specific regulations for the Flower Garden Banks NMS, section 922.122. Additionally, none of the fishing activities in the Pacific Region mentioned by the commenter would be affected by the definition of this term because it only appears in the Flower Garden Banks NMS prohibition and does not appear in any other site-specific regulations. If an activity is traditional fishing, then it is already included under the ''traditional fishing'' regulation, which is discussed further in the next comment.

Traditional Fishing

17. Comment: NOAA should not consolidate the term ''traditional fishing'' into a single definition. The commenters stated that under the

proposed definition, fishing conducted by Native Americans in sanctuaries on the West Coast, and by indigenous peoples in the American Samoa and Hawaiian Island Humpback Whale sanctuaries would not meet the definition of traditional fishing as many practices, some of which are only now being revitalized, are not identified in original sanctuary documents. Commenters suggested this was insensitive to indigenous cultures that have been fishing for thousands of years in areas that are now sanctuaries. The commenter states that furthermore, because the term is used only in the Florida Keys and Thunder Bay sanctuaries, it is not appropriate to apply this definition broadly to the entire sanctuary system.

Response: NOAA appreciates the concerns raised by the commenters. Pursuant to E.O. 13175 Consultation and Coordination with Indian Tribal Governments, in 2012, NOAA also invited Federally-recognized Indian tribes in the state of Washington (in particular, the Hoh, Makah, and Quileute Indian tribes and the Quinault Indian Nation) to engage in consultation. After reviewing consultation feedback and public comments, NOAA has decided not to consolidate the definition of ''traditional fishing.'' The term ''traditional fishing'' as referenced in three sanctuaries (Florida Keys NMS, Thunder Bay NMS, and Stellwagen Bank NMS) will remain in their respective site-specific regulatory sections.

Motorized Personal Watercraft (MPWC)

18. Comment: Some commenters were concerned about the effort to standardize the definition of a motorized personal watercraft (MPWC). Although these commenters generally supported the creation of a standard definition of MPWC, the commenters revealed that consolidating the definition could create undesirable outcomes under the site-specific regulations for Channel Islands, Greater Farallones, Monterey Bay, and the Florida Keys and potentially expand the number and types of vessels that could be banned or restricted from operation in the Sanctuary System. Another commenter suggested that NOAA adopt the term ''personal watercraft'' instead of adopting ''motorized personal watercraft.''

Response: Having considered the comments provided on the proposal to consolidate the definition of MPWC and ''personal watercraft,'' NOAA has determined that more time is needed to gather more information, engage stakeholders and the sanctuary advisory councils, develop alternative consolidated definitions of MPWC, and thoroughly evaluate the environmental impacts associated with said consolidated definitions. Therefore, NOAA has decided not to consolidate the definitions of MPWC or ''personal watercraft'' at this time. As a result, the existing definitions of MPWC set forth in 15 CFR 922.71 (Channel Islands NMS), 922.81 (Greater Farallones NMS), and 922.131 (Monterey Bay NMS), and the existing definition of ''personal watercraft'' in 922.162 (Florida Keys NMS) remain unchanged.

Injure or Injury

19. Comment: The commenters expressed concern that the proposed rule would expand the definition of ''injure'' to include direct and indirect ''impairment of a sanctuary resource service.'' The commenters were also concerned that the proposed change, if approved, would encompass short and long-term adverse changes to any chemical, biological or physical attribute or viability of a sanctuary resource and would not be limited to acts that cause loss or destruction. Commenters stated that this expanded definition of ''injury'' has been considered and rejected by Congress in past efforts to reauthorize the NMSA, and maintained that this is a broadening of the definition rather than a mere updating, as NOAA has indicated in the proposed rule. The commenters state that the proposal substantially enlarges the category of effects that constitute injury, and would change the type of cases or expand the pool of potential violations that are likely to be issued using this definition. Lastly, the commenters stated that while it is likely obvious to members of the public what it is to cause loss or outright destruction of a sanctuary resource, is it not clear what might constitute ''indirect'' injury.

Another commenter noted that the phrase ''or the impairment of a sanctuary resource service'' is redundant and leads to confusion. The commenter stated that if a ''resource service'' is a function performed by a sanctuary resource for the benefit of another sanctuary resource or the public, then impairment to that sanctuary resource's function would already constitute an injury to the resource itself. The commenter argues that an injury to the resource itself is already covered by the existing definition.

Response: In response to comments, NOAA will update the existing definition of ''injure'' to include ''injury '' and move the definition from 15 CFR 922.3 to 15 CFR 922.11. Additionally, NOAA is no longer including the phrase ''or impairment of a sanctuary resource service'' found in the proposed definition of ''injury.'' The updated definition will read as follows:

Injure or injury means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of. This includes, but is not limited to, to cause the loss of or destroy.

NOAA acknowledges potential confusion created by the insertion of the term ''impairment of a sanctuary resource service'' in the first sentence of the proposed definition of ''injure.'' With that stated, NOAA's proposed definition would not have expanded the definition of injury. NOAA merely attempted to clarify and codify existing statutory language and interpretation.

The term ''injure'' is not limited to acts that cause the loss of, or destroy. The statutory prohibition found in NMSA section 306 establishes that it is unlawful to ''destroy, cause the loss of, or injure any sanctuary resource.'' In adopting this language, Congress makes clear that ''injure'' is distinct, and not limited to, acts that ''destroy'' or ''cause the loss of'' a resource. The plain language reading of the term ''injure'' includes to ''impair the soundness of'' (*https://www.merriam-webster.com/dictionary/injure*).

The inclusion of ''impairment of a sanctuary resource service'' is consistent with the statutory purpose of the NMSA, which establishes a National Marine Sanctuary System to ''maintain for future generations the habitat, and ecological services'' of the living resources in the sanctuaries, 16 U.S.C. 1431(a)(4), and the definition of ''damage,'' 16 U.S.C. 1432(6), which recognizes ''lost use of a sanctuary resource'' as being compensable.

Additionally, the existing definition of injury codified at 15 CFR 922.3 already establishes that ''injure means to change adversely, in the short and long term, a chemical, biological, or physical attribute of, or viability of. This includes, but is not limited to, to cause the loss of or destroy.'' Therefore, NOAA has not broadened the definition of ''injury'' to encompass ''short and long term adverse changes to any chemical, biological or physical attribute or viability of a sanctuary resource.'' The use of the phrase ''impairment of a sanctuary resource service'' would have served as another example of what ''to change adversely'' means.

While NOAA has decided to remove this phrase ''impairment to a sanctuary resource service'' from the proposed definition of injury, NOAA will

continue to work with agency partners and stakeholders to help them better understand the definition.

Sanctuary Resource

20. Comment: NOAA should modify the definition of ''sanctuary resource'' to incorporate the phrase, ''or parts or products thereof'' after ''any living or non-living resource of a national marine sanctuary.''

Response: ONMS agrees with this comment and has incorporated the phrase into the definition.

21. Comment: Some commenters believe that: ''fishery resources'' should be specifically excluded from the definition of ''sanctuary resources.''

Response: NOAA maintains that fish and fisheries resources are some of the most significant resources in many sanctuaries, and as such, are appropriate for inclusion in the definition of ''sanctuary resources.'' In addition, inclusion of these resources as ''sanctuary resources'' is consistent with NMSA which contemplates fisheries regulation within the scope of NMSA regulatory authority (*see* 16 U.S.C. 1434(a)(5)).

22. Comment: Commenters were concerned that the inclusion of the seemingly innocuous phrase ''any living or non-living resource of a national marine sanctuary'' could have unintended consequences as animals and resources that may only pass through a sanctuary would now become a sanctuary resource. Excluding the phrase ''or parts or products thereof'' does not diminish or undermine protection for sanctuary resources that may be ''dismembered and removed.''

Response: The phrase ''any living or non-living resource of a national marine sanctuary'' is contained in the NMSA under the definitions at section 302(8). Therefore, excluding this phrase from the regulatory definition would be inconsistent with the NMSA. Since dead animals are captured in the phrase ''living or non-living,'' NOAA includes the phrase ''parts thereof'' in the regulatory text. This is consistent with the approach taken by other federal agencies, such as FWS, NMFS, and NPS.

A sanctuary resource needs only to contribute to the value of a sanctuary to be considered a ''sanctuary resource.'' Specifically, the NMSA states (16 U.S.C 1432(8)) ''sanctuary resource means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary.'' Therefore, a sanctuary resource may also be transitory.

Take or Taking

23. Comment: Several commenters expressed concerns about the revision of the definition of the term ''take or taking.'' Commenters stated that the term ''take'' could have a very low threshold for what activities could cause take (*i.e.,* Level A and B harassment for incidental take pursuant to the MMPA). Commenters also stated that ''take'' as defined in regulations implementing the ESA and MBTA are more direct and obvious acts which ''actually kills or injures wildlife'' (in the case of species protected under the ESA); and ''hunting, taking, capture, killing possession, sale, transportation of any . . . bird, or part, nest or egg'' (in the case of birds protected under the MBTA). The apparent differences of definitions and applications of ''take'' standards concerned some commenters. Commenters stated that absent a clear indication of how NOAA's Office of Law Enforcement would interpret an expanded definition, the proposal does not provide the public with transparent and fair warning.

Response: NOAA asserts that, by adopting these statutes by reference, the revised definition improves clarity and consistency with the ESA, MMPA, and MBTA and does not change the threshold for take. Both the ESA and MMPA apply to incidental and direct takes and include both physical injury and behavioral harassment (*see* response to comment 14). NOAA believes that adopting other statutes by reference ensures consistency should either those statutes or their implementing regulations be modified.

NOAA has determined that applying the definition to other sanctuary resources as originally proposed could be interpreted as expanding the applicable scope of take or taking in certain site-specific sanctuary regulations. As such, NOAA has decided not to apply the ''take'' definition to other sanctuary resources. Accordingly, the finalized definition is limited to marine mammals, sea turtles, and birds. NOAA also added additional language to capture a previously omitted phrase to ensure that there is no substantive difference between the previous definition and the definition established in this rule. The inadvertently omitted phrase ''to tag any sea turtle, marine mammal, and bird'' is also included in the definition of ''take''.

24. Comment: Some commenters also stated that instead of being a clarification, the proposed definition of ''take or taking'' would expand the scope of the regulation beyond the authority of the NMSA. They said the proposed definition goes too far because some of the actions listed in the proposed fourth provision of the new definition (*i.e.,* applying the take definition to other sanctuary resources) do not rise to the level of destruction, loss, or injury. Commenters stated that, when combined with existing site-specific regulations prohibiting ''take,'' the new definition would extend greater-than ESA-, MMPA-, and MBTA-level protections to resources not entitled to that level of protection under the NMSA (which prohibits destruction, loss, or injury). Some commenters expressed concern about the impact these changes would have on recreational fishing, which removes a species from a sanctuary's waters. They questioned if fishing and fish that are released but subsequently die would be considered a take. Some commenters asserted that NOAA proposed the ''take or taking'' definition changes as a means of reducing human activity wherever possible. They assert this was mission-creep and protectionism that is counter to the ''wise multiple use'' concept promised to secure fishermen's support for sanctuary creation.

Response: NOAA does not finalize the proposed fourth provision related to take of other sanctuary resources. Consistent with the original definition of ''take or taking,'' NOAA limits the applicability of the definition to ''take (taking or taken) of a marine mammal, sea turtle or bird.'' NOAA also includes the provision ''take also includes, but is not limited to, collection of any dead or injured marine mammal, sea turtle, or bird, or any part thereof; or restraint or detainment of any marine mammal, sea turtle, or bird, no matter how temporarily; tagging any marine mammal, sea turtle, or bird; or operating a vessel or aircraft or conduct any other act that results in the disturbance or molestation of any marine mammal, sea turtle, or bird.'' This retains certain aspects of the original definition that were omitted from the proposed rule. While the general definition of take applies to classes of resources protected under the ESA, MMPA, or MBTA, some site-specific regulations prohibit ''take'' of other sanctuary resources. For other site-specific regulations that prohibit take of other living or non-living sanctuary resources beyond the classes of resources protected under the ESA, MMPA, or MBTA, the plain meaning of the term ''take (taking or taken)'' will continue to apply. For a discussion of the interrelationship between ''take'' and ''injury'' (*see* comment response 14).

25. Comment: One commenter also expressed concerns that two new terms ''disturbance'' and ''molestation'' were introduced in the fourth provision of the proposed definition. Commenters said these appear to describe a new legal standard that was not identified as a level or threshold of expected protection and are undefined in the proposed regulation. They stated these terms are subject to divergent interpretation, create ambiguity, and are more restrictive than even the lowest levels of protection identified in other resource protection statutes.

Response: As discussed above, NOAA removes the fourth provision from the definition of take established in this rule. The terms ''disturbance'' and ''molestation'' were already included in the original definition of ''take or taking,'' which states that take also includes, but is not limited to operating a vessel or aircraft or conducting ''any other act that results in the disturbance or molestation of any marine mammal, sea turtle, or bird.'' NOAA is retaining that provision in the final definition as to not substantively change the definition.

Harmful Matter

26. Comment: Commenters were concerned the proposed change was overbroad and left the door open for regulating any and all substances and discharges currently regulated by the Clean Water Act (CWA) and the Clean Air Act (CAA). Commenters suggested that the term should be substantially narrowed to a discrete and discernible list of substances known to present a substantial threat to the sanctuary resources identified in the NMSA.

Response: NOAA understands the broad scope nature of the revised term, but due to the unique characteristics of each site, a single list of applicable substances is not appropriate. The intent of the clarification is mainly for prevention of harmful chemicals from entering sanctuaries, which are already prohibited in many cases. The definition of harmful matter includes those contaminants identified as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (as designated at 40 CFR 302.4). The intent of reference to the CERCLA regulatory definition of hazardous substances in the definition of harmful matter is to ensure that any subsequent updates to the CERCLA list at 40 CFR 302.4(a), or other definitional changes, are automatically included within the NMSA regulatory definition of harmful matter. NOAA is aware, and believes it appropriate, that substances and discharges currently regulated by the CWA and the CAA may also be ''harmful matter'' pursuant to the NMSA regulatory definition.

27. Comment: There was concern that the proposed definition of ''harmful matter'' would encompass the release of military expended materials within a sanctuary in the course of conducting training activities, and would substantially alter existing protections for military readiness activities. Commenters claim that the release of military expended materials is purposeful and is not debris, should not be considered a harmful matter across all sanctuaries, and regulation of these materials should not be expanded.

Response: NOAA's changes to the definition of the term ''harmful matter'' are limited to technical revisions that improve readability and do not substantively affect its application in the regulations. The revised definition also would not revise any existing exemptions for military activities that are currently contained in the existing site-specific regulations.

Substituting ''Bird'' for ''Seabird''

28. Comment: Commenters expressed concern that substitution of the term ''bird'' for ''seabird'' expands the statutory protection for all birds that transit through a sanctuary, under the theory that even temporary presence or transits make the birds a sanctuary resource. Commenters stated that this change would impermissibly enlarge the scope of the regulation beyond that authorized by the NMSA, which they believe only includes discrete areas of the marine environment. Commenters continued that seabirds are those adapted to life in the marine environment and routinely use sanctuary resource services for survival and arguably fit the statutory definition of a sanctuary resource. However, other migratory birds which temporarily transit through airspace over the sanctuary, are not adapted to the marine environment, or do not depend on the marine environment during their life cycle, do not fit the definition and should not be included.

Response: The NMSA focuses upon protecting sanctuary resources, and authorizes the Secretary to regulate activities—both inside and, and in some cases, outside of a sanctuary—that affect sanctuary resources within a sanctuary. This authority was clarified in 1992 with the enactment of the prohibitions found at section 306 of the Act (which was discussed in the accompanying legislative history at H.R. Rep. 102–565, § 7 (Jun. 15, 1992)). Based upon this authority, sanctuaries have promulgated a variety of regulations that not only regulate activities that occur in sanctuaries, but also in limited cases, regulate some activities that occur outside a sanctuary, because they may impact sanctuary resources within sanctuary boundaries (*e.g.,* discharges that are released outside of a sanctuary), or over a sanctuary (*e.g.,* overflights on the west coast).

The intent of this regulatory action is to remove inconsistencies and redundancies. In four sanctuaries (discussed in the preamble section II.C.1.e.2 above), prohibitions already regulate birds rather than limiting the class of protected animals to ''seabirds.'' In addition, the existing regulatory prohibitions already adopt by reference the list of protected species under the MBTA (listed at 50 CFR 10.13), which does not distinguish between a seabird and non-seabird. Therefore, NOAA continues to believe this action clarifies the term for the purposes of E.O. 13563, and NOAA has the requisite legal authority to promulgate the amended regulation.

Oceangoing Ship

29. Comment: Moving the definition of oceangoing ship—currently found only in existing subpart G, Channel Islands NMS—to the program-wide regulation, should reflect that prohibitions and other restrictions for oceangoing ships do not apply to Department of Defense activities (as explicitly stated in subpart G, section 922.72(b)). Balancing national security and protection of important marine resources is best done where restrictions contemplated for public vessels are tailored to each sanctuary. However, the commenter agreed that subpart G can be hard to follow or can be misconstrued, and recommended that, consistent with the effort to streamline and improve organization, if the definition was moved as proposed, that ''military vessels'' should be removed from the definition.

Response: NOAA has withdrawn this proposed action from this rule.

30. Comment: One commenter applauded the efforts of ONMS, but opposed moving the definition of ''oceangoing ship.'' They contended that ships and vessels that: (1) Never leave the Great Lakes; (2) are generally too large to exit the Great Lakes via the Welland Canal and St. Lawrence Seaway; and (3) are by law forbidden to operate on the oceans would be defined as an ''oceangoing ship.'' Therefore, ONMS should not move the definition of ''oceangoing ship'' from its current location in the regulations unless an exception is inserted in the definition as

to ships operated exclusively on the Great Lakes, comparable to the Note in 33 CFR 151.05.

Response: NOAA has withdrawn this proposed action from this rule.

Permits

Consolidation to Subpart D

31. Comment: The Makah Tribe did not object to moving the tribal self-determination permit category to subpart D because there would be no operative change in the application of the provision within Olympic Coast NMS. However, the Tribe requested that NOAA further clarify that the relocation of the permit category does not change the intent or the application of this provision.

Response: NOAA's explanation in the proposed rule preamble did attempt to explain that the tribal self-determination permit category was moved without change. In response to comments from the Makah Tribe, NOAA has provided additional clarification in the preamble to this interim final rule to confirm that the no substantive change to the tribal self-determination permit category will result from this move to subpart D.

32. Comment: The Makah believe that the Tribe should be afforded an opportunity to review any permit application for activities within or that have the potential to affect the Makah Usual and Accustomed area and consult with the Olympic Coast NMS.

Response: Olympic Coast NMS and the Makah Tribe engaged in government-to-government consultation on this issue and jointly developed a Protocol for Permit Consultation that specifies the procedures by which consultation and coordinated communication will occur between the Makah Tribe and the Olympic Coast NMS staff. The sanctuary staff and tribal representatives meet periodically to engage in consultation on ONMS permit applications, the results of which are included in ONMS permit decision documents. In addition, the Makah Tribe and ONMS developed a protocol to engage in consultation as part of the NMSA section 304(d) interagency consultation process and have implemented it in two recent sanctuary consultations. Olympic Coast NMS regularly engages with the Washington Coast treaty tribes on various initiatives of mutual interest.

33. Comment: The commenter indicates that the preamble for this action should clarify that the regulations do not limit the ability of sanctuaries to create site-specific permit categories. The commenter also believes that the review criteria for permits and authorizations need to be clarified.

Response: NOAA has explained in the preamble of this rule that consolidating permit categories and criteria into subpart D does not prevent NOAA from creating or amending permit categories that would only apply to a particular sanctuary.

NOAA consolidates permit review criteria into subpart D to improve consistency and clarity. The list of permit review factors or criteria considered by the Director was not consistent across the sanctuary site-specific regulations, nor was the regulatory text for the factors or criteria consistent. The sanctuary site-specific regulations also varied on whether the factors or criteria were affirmative findings that shall be met or whether they were simply considerations in making permit decisions. To achieve greater consistency, NOAA establishes a single list of nine review criteria and publishes it in subpart D. Eight criteria are applicable to all sanctuaries, while one is unique to Olympic Coast NMS (the activity as proposed shall not adversely affect Washington Coast treaty tribes). NOAA also eliminates site-specific impact thresholds for permit issuance in favor of making the review criteria affirmative findings. The Director must still determine whether any additional site-specific review procedures or criteria were met prior to issuing a permit. The regulation on authorizations in paragraph 922.36(c)(2) establishes that the permit review criteria set forth in 922.33(a) must also be considered by the Director when making decisions on authorizations.

34. Comment: NOAA should clearly identify the process by which the ONMS Director can issue a special use permit. Specifically, NOAA should clarify what the public comment process is and whether the requirements of the National Environmental Policy Act (NEPA) are required.

Response: NMSA section 310 establishes the authority for ONMS to issue special use permits and requires the Secretary to provide appropriate public notice before identifying any category of activity subject to a special use permit. For established special use permit categories. For established special use permit categories the process for applying for special use permits and general permits are similar. Permit application and instructions can be found at *https://sanctuaries.noaa.gov/management/permits/*. Special use permits must additionally meet requirements set forth in NMSA section 310. The Director evaluates all activities that may require a permit in accordance with statutory and regulatory requirements. Permit decisions are federal actions that require compliance with NEPA and any applicable interagency or tribal consultations. Public comment is not required for the issuance of any ONMS general or special use permit. However, NOAA may choose to seek public comment as part of the NEPA process.

35. Comment: NOAA should not allow the ONMS Director the authority to provide an authorization to allow an otherwise lawful activity that includes mandatory terms and conditions. NOAA should also explain the process the ONMS Director would use to establish terms and conditions and further explain how the public is involved in this process.

Response: This rule does not change the authority of the ONMS Director to authorize a person to conduct an activity otherwise prohibited by subparts L through P or subparts R through S, if such activity is specifically allowed by any valid federal, state, or local lease, permit, license, approval, or other authorization. The authority for the ONMS Director to establish mandatory terms and conditions for authorizations has already been established in section 922.49(a)(4). Public comment is not required for the issuance of any ONMS permit, except as may be done as part of an environmental analysis completed for the purposes of NEPA.

Other Topics

Effective Date of Regulations

36. Comment: The proposed rule and discussion do not explain how changes to the regulations will impact ongoing actions by federal agencies and actions proposed but not yet approved by action proponents before the effective date of these regulation changes.

Response: Because the changes that are finalized with this action are administrative and technical in nature, and because no prohibitions were proposed, NOAA does not anticipate that the changes will have any impact on existing federal agency actions. There are several ONMS regulatory actions underway and ONMS intends to harmonize those regulations with this rule.

37. Comment: NOAA should state that ongoing actions by federal agencies and those federal agency actions proposed before the effective date of these regulatory changes will not require amendment or consultation in accordance with the new regulations.

Response: NOAA is not making any substantive change to any prohibitions

through this action. Therefore, NOAA does not anticipate any issues arising from the timing of this rule and activities currently conducted or proposed by federal agencies.

Comments on Topics Not Affected by This Rulemaking

NOAA received several additional comments, as described below, that it does not address in this rule as the comments pertain to matters that are beyond the scope of, and are not relevant to, this rulemaking.

38. Comment: There are competing management jurisdictions between the NMSA and the MSFCMA when it comes to fishing regulations, with unnecessary duplication of bureaucracy and its related costs. The root cause of the specific problem appears in section 304 of the NMSA whereby RFMCs are afforded the opportunity to prepare draft regulations using the MSA as guidance only ''to the extent that the standards are consistent and compatible with the goals and objectives'' and only during the sanctuary designation process.

Response: The intent of this rulemaking is to update and reorganize the existing regulations, eliminate redundancies across the sanctuary regulations, eliminate outmoded regulations, adopt standard boundary descriptions, and consolidate general regulations and permitting procedures. The concerns raised by this comment, regarding the development of fishing regulations pursuant to section 304 of the NMSA, are best addressed by Congress through a separate process and are beyond the scope of this action. Therefore, no changes are being made to address the commenter's concerns.

39. Comment: All fisheries management should be vested in the RFMC process rather than in ONMS or individual sanctuaries.

Response: The intent of this rulemaking is to update and reorganize the existing regulations, eliminate redundancies across the sanctuary regulations, eliminate outmoded regulations, adopt standard boundary descriptions, and consolidate general regulations and permitting procedures. The concerns raised by this comment suggests changes be made to all sanctuary regulation relevant to the management of fisheries activities and are beyond the scope of this rulemaking. Therefore, no changes are being made to address the commenter's concerns.

40. Comment: One commenter wanted to know if the public could petition NOAA to eliminate or reduce the size of a sanctuary, and what process would NOAA follow in considering such a petition.

Response: Any modification to the geographic area of an existing sanctuary would be governed by section 304 of the NMSA and section 4 of the Administrative Procedure Act. No changes are being made in response to this comment.

41. Comment: NOAA should consider changes to Charters and Protocols for sanctuary advisory councils (SACs). Currently, all of the functions of the SACs (*e.g.* member appointments, agendas, communications) are controlled by sanctuary management. The greatest strength of the sanctuaries comes from community and stakeholder support, and the structure of SAC governance works against achieving that support.

Response: The comment proposes changes to SAC governing procedures. The intent of this rulemaking is to update and reorganize the existing regulations, eliminate redundancies across the sanctuary regulations, eliminate outmoded regulations, adopt standard boundary descriptions, and consolidate general regulations and permitting procedures. Significantly changing SAC governance is outside the scope of this rulemaking. Therefore, no changes are being made to address the commenter's concerns.

42. Comment: Sanctuaries should be tasked explicitly to utilize a robust and transparent peer review process for science products, including socioeconomic evaluations, in sanctuary decision-making.

Response: ONMS makes sanctuary decisions in an open and transparent manner guided by the best scientific information and data available, employing sound methods to ensure scientific quality, objectivity, and integrity, and utilizing—where appropriate—peer review panels to ensure sanctuary decisions are informed by independent and diverse viewpoints in accordance with the Information Quality Act (Pub. L. 106–554), the Foundations for Evidence-Based Policymaking Act of 2018 (Pub. L. 115–435), and related-guidance issued by the Office of Management and Budget (OMB), the U.S. Department of Commerce (DOC), and NOAA. In doing so, ONMS follows OMB and NOAA policy on peer review for science products, including socioeconomic evaluations (*https://www.noaa.gov/organization/information-technology/peer-review-plans* and *https://www.noaa.gov/office-of-chief-information-officer/it-policy-oversight/information-quality*). A 2004 OMB memo describes how peer review enhances the quality and credibility of science products (*https://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf*). More information on the ONMS conservation science division is available on our website, *https://sanctuaries.noaa.gov/science/*. The intent of this rulemaking is to clarify existing sanctuary regulations. Adding an explicit science policy requirement to this rule would be outside its intent and scope. Therefore, no changes are being made to address the commenter's concerns.

43. Comment: NOAA should provide clarification in the regulations that permitting and authorizations do not apply to federal agency activities including Navy testing, training, or military readiness activities conducted in or around sanctuaries.

Response: NOAA believes the requested clarification is unnecessary in this rulemaking. The existing site-specific regulations adequately provide certain exemptions to the list of prohibited or otherwise regulated activities at each sanctuary site. For instance, the Department of Defense (DoD) exemptions for Channel Islands NMS are set forth at section 922.72(b), those for Greater Farallones are set forth at section 922.82(b), and those for Gray's Reef NMS are set forth at section 922.92(b). The site-specific regulations also provide exemptions for law enforcement and any activity necessary to respond to an emergency threatening life, property, or the environment, which might be carried out by a federal agency. Exemptions of this type are unique to each specific sanctuary. Providing a general exemption for all federal agency activities would be a substantive expansion of the existing site- specific exemptions and beyond the scope of this rulemaking. Therefore, no changes are being made in this rulemaking to address the commenter's concerns.

44. Comment: Under the definitions of sanctuary resources, the culture and heritage of fishing in coastal communities alongside national marine sanctuaries should be considered for protections just as are other living resources and habitats.

Response: NOAA does not believe that changes to the definition of sanctuary resources are appropriate. Human uses are taken into consideration as part of the sanctuary designation and periodic management plan review processes performed under NMSA sections 303 and 304, and NEPA. Therefore, no changes are being made to address the commenter's concerns.

V. Classification

A. National Environmental Policy Act [1]

NOAA Administrative Order (NAO) 216–6A and the Companion Manual for NAO 216–6A (*https://www.nepa.noaa.gov/docs/NOAA-NAO-216-6A-Companion-Manual-01132017.pdf*) establish NOAA's policy and procedures for compliance with NEPA and the associated Council on Environmental Quality's regulations. NAO 216–6A, Environmental Review Procedures, requires all proposed actions to be reviewed with respect to environmental consequences on the human environment.

In the proposed rule (78 FR 5998; January 28, 2013), NOAA stated that it was preparing a draft EA to analyze the potential environmental impacts of the proposed rulemaking and that the draft EA would be released for public comment. The analysis in the draft EA would have focused on analyzing the potential environmental impacts of the consolidated definition of MPWC. Based on public comment received on the proposed rule, NOAA decided to withdraw the proposal to consolidate the MPWC definition. As a result, NOAA determined that preparation of a draft EA was not necessary for this rule. NOAA determined that because the rule includes only technical and administrative changes to regulatory text it meets the definition in Appendix E of the NOAA NEPA Companion Manual under categorical exclusion reference number G7 ''Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis.'' In considering the list of extraordinary circumstances, NOAA determined that none would be triggered by this final rule. Therefore, NOAA determined that this rule would not result in significant effects to the human environment and is categorically excluded from the need to prepare an EA.

[1] In 1978, the White House Council on Environmental Quality (CEQ) issued regulations, codified at 40 CFR parts 1500–1508, to implement NEPA. 43 FR 55.977 (Nov. 29, 1978). Most recently, the CEQ updated the NEPA regulations. 85 FR 43,304 (Jul. 16, 2020) (codified at 40 C.F.R parts 1500–1508, 1515–1518). Pursuant to those updated NEPA regulations, NEPA reviews initiated prior to September 14, 2020 may be conducted using the 1978 version of the regulations. The effective date of the 2020 CEQ NEPA Regulations was September 14, 2020. This review began before January 13, 2013 and the agency has decided to proceed under the 1978 regulations.

B. Executive Orders 12866 and 13563

This rule has been determined to be significant within the meaning of Executive Order 12866. The rule is part of NOAA's effort to carry out the directive under Executive Order 13563 for retrospective regulatory review.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Pursuant to Executive Order 13175, NOAA has an obligation to consult with federally-recognized tribes on actions that may have tribal implications. NOAA determined that the amendments to the Olympic Coast NMS permitting regulations in the consolidation of permit procedures and review criteria into the new subpart D, although not resulting in a substantive change to permitting requirements, could be perceived as having tribal implications because some of the regulatory text is specific to the federally-recognized tribes along the Washington Coast (Coastal Treaty Tribes). Therefore, we have determined that this regulation has tribal implications as defined in Executive Order 13175. NOAA certifies that this final rule was developed after meaningful consultation and collaboration with tribal representatives in accordance with Executive Order 13175. NOAA engaged in government-to-government consultation with tribal representatives from the Makah, Hoh and Quileute Indian Tribes and the Quinault Indian Nation of the Olympic Coast Intergovernmental Policy Council (IPC). NOAA determined that this regulatory action did not have implications for any other federally-recognized tribes at other sites.

In January 2012, NOAA initiated a dialogue with the Coastal Treaty Tribes for a potential rulemaking action that would revise and consolidate program-wide and site-specific regulations. ONMS staff presented initial items for consideration by the IPC and its members at a February 8, 2012 meeting. In May 2012, NOAA addressed initial concerns that were raised at the February meeting. At that time, NOAA provided a summary of the proposed regulatory changes, and invited the IPC members to consult if there were concerns about the general proposals. In October 2012, NOAA provided more detailed information including pre-release draft regulatory language for program-wide regulations and Olympic Coast NMS site-specific regulations that could be of interest to the tribes. After the proposed rule was published in the **Federal Register**, NOAA forwarded the notice to the Washington Coast treaty tribes on February 15, 2013.

The Makah Tribe provided comments on the rulemaking raising three priority issues. In addition to the matter noted in the Response to Comment section of this action, the Makah Tribe reiterated its long-standing position about the role of RFMCs in fisheries management, which did not require action in this rulemaking. The Makah Tribe also expressed interest in improved tribal involvement in the consideration of Olympic Coast NMS permit applications. Since the publication of this proposed rule, Olympic Coast NMS and the Makah Tribe engaged in government-to-government consultation in the development of a joint ''Protocol for Permit Consultation'' that specifies the procedures by which consultation and coordinated communication will occur between the Makah Tribe and Olympic Coast NMS staff (dated April 10, 2015). The sanctuary staff and tribal representatives meet periodically to engage in permit consultations on ONMS permit applications, and the results of which are included in ONMS permit decision documents. In addition, the Makah Tribe and ONMS developed a protocol to engage in consultation as part of the NMSA section 304(d) interagency consultation process and have implemented it in two recent sanctuary consultations. Olympic Coast NMS regularly engages with the Washington Coast treaty tribes on various initiatives of mutual interest.

D. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

E. Paperwork Reduction Act

This rule does not create any new information collection requirements, nor does it change existing information collection requirements approved by OMB (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (PRA). There are no changes to the reporting burden as a result of these regulatory changes. 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.

F. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that the changes are administrative in nature and generally would not alter substantive legal obligations for the regulated community. Specifically:

- Moving current sections of the regulations to different subparts and revising text as finalized in this rule will not substantively change the effect or impact of the regulations;
- Making the technical corrections to citations and obsolete sections of the regulations in this rule will not substantively change the effect or impact of the regulations; and
- Amending and consolidating the permitting regulations from many site-specific regulations to a single subpart does not substantively change the requirements to apply for permits, nor does it change the burden on applicants who wish to apply for permits.

Therefore, these changes should not alter the current operations of small businesses because the changes are administrative and technical in nature. NOAA did revise the permit appeals regulation to limit the pool of appellants of a permit decision to only applicants or holders of permits. To date, only two appeals have been filed by ''any interested party.'' NOAA did not receive any comments from the public or from any small businesses on this particular action. NOAA does not anticipate that limiting the appellant pool will adversely impact small businesses. NOAA believes the overall changes will provide consistency within the regulations across sanctuaries. Therefore, these changes should not impact the current operations of small business operators, and may improve ease of applying for permits by removing inconsistencies and confusion that might otherwise occur. Interested third parties may provide input to the permit process through other mechanisms, including public review and comment of associated environmental analyses as part of the NEPA process or other statutory processes, as applicable.

The intent of this rulemaking is to update and reorganize the existing regulations, eliminate redundancies across the sanctuary regulations, eliminate outmoded regulations, adopt standard boundary descriptions, and consolidate general regulations and permitting procedures. The regulatory changes are not expected to have a significant impact on a substantial number of small business entities. As a result, a regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Amendments, Appeals, Appellant, Application requirements, Authorizations, Definitions, Designation, Environmental protection, Marine resources, Motorized personal watercraft, Natural resources, Permitting, Permit procedures, Prohibited activities, Special use permit, Stowed and not available for immediate use, Resources, Research, Traditional fishing, Water resources.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.

Accordingly, for the reasons set forth above, NOAA is amending 15 CFR part 922 as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Revise subpart A to read as follows:

Subpart A—Regulations of General Applicability

Sec.

§ 922.1 Purposes and applicability of the regulations.

(a) The purposes of this part are:

(1) To implement title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.,* also known as the National Marine Sanctuaries Act (NMSA or Act)), the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) (Pub. L. 101–605) and the Hawaiian Islands National Marine Sanctuary Act (sections 2301–2307 of Pub. L. 102–587); and

(2) To implement the designations of the national marine sanctuaries, for which site specific regulations appear in subparts F through T, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve, manage, and thereby ensure the health, integrity and continued availability of the conservation, recreational, ecological, historical, scientific, educational, cultural, archeological and aesthetic resources and qualities of these areas.

(b) The regulations of this part are binding on any person subject to the jurisdiction of the United States. Designation of a national marine sanctuary beyond the U.S. territorial sea does not constitute any claim to territorial jurisdiction on the part of the United States. The regulations of this part shall be applied in accordance with generally recognized principles of international law [1], and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation of this part shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

(1) Generally recognized principles of international law;

(2) An agreement between the United States and the foreign state of which the person is a citizen; or

(3) An agreement between the United States and the flag state of the foreign vessel, if the person is a crew member of the vessel.

(c) Unless noted otherwise, the regulations in Subparts A and D apply to all national marine sanctuaries immediately upon designation.

§ 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in the Act, the mission of the Office of National Marine Sanctuaries (Office) is to identify, designate, protect, restore, and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or aesthetic resources and qualities.

[1] Based on the legislative history of the NMSA, NOAA has long interpreted the text of *16 U.S.C. 1435*(a) as encompassing international law, including customary international law.

(b) The goal of the Office is to carry out the mission of the Act in a manner consistent with the purposes and policies of the Act (16 U.S.C. 1431(b)); the Florida Keys National Marine Sanctuary and Protection Act (Pub. L. 101–605) which designated Florida Keys National Marine Sanctuary; the Hawaiian Islands National Marine Sanctuary and Protection Act (Pub. L. 102–587), which designated Hawaiian Islands Humpback Whale National Marine Sanctuary; the Oceans Act of 1992 (Pub. L. 102–587), which designated Stellwagen Bank National Marine Sanctuary; and the National Marine Sanctuaries Preservation Act of 1996 (Pub. L. 104–283), which added Stetson Bank to Flower Garden Banks National Marine Sanctuary.

(c) Management efforts will be coordinated to the extent practicable with other countries managing marine protected areas;

(d) Program regulations, policies, standards, guidelines, and procedures developed pursuant to the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 54 U.S.C. 300101 *et seq.,* the Archeological and Historical Preservation Act of 1974, 54 U.S.C. 312501 *et seq.,* and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.* The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated national marine sanctuaries. The management of historical resources under the authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations. The Secretary of the Interior's Standards and Guidelines for Archeology may also be consulted for guidance.

§ 922.3 Issuance of regulations for fishing.

If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s). The appropriate Council(s) shall have one hundred and eighty (180) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishing regulations for the area within the exclusive economic zone and submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Any fishing activities not proposed for regulation under section 304(a)(5) of the NMSA may be listed in the draft Sanctuary designation document as being subject to regulation, without following the procedures specified in section 304(a)(5) of the NMSA. If the Secretary subsequently determines that regulation of fishing is necessary, then NOAA will follow the procedures specified in section 304(a)(5) of the NMSA.

§ 922.4 Boundaries.

The boundaries for each of the fifteen National Marine Sanctuaries covered by this part are described in subparts F through T, respectively.

§ 922.5 Allowed activities.

All activities (*e.g.,* fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in Subparts F through T, subject to any emergency regulations promulgated pursuant to § 922.7, 922.112(b), 922.165, 922.185, 922.196, 922.204, or 922.211 subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, tribal, or local authority of competent jurisdiction, including, but not limited to, Federal, Tribal, and State fishery management authorities, and subject to the provisions of section 312 of the NMSA. The Director may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

§ 922.6 Prohibited or otherwise regulated activities.

Subparts F through T set forth site-specific regulations applicable to the activities specified therein.

§ 922.7 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.

(b) This section does not apply to the following national marine sanctuaries with site-specific regulations that establish procedures for issuing emergency regulations:

(1) Cordell Bank National Marine Sanctuary, § 922.112(e).

(2) Florida Keys National Marine Sanctuary, § 922.165.

(3) Hawaiian Islands Humpback Whale National Marine Sanctuary, § 922.185.

(4) Thunder Bay National Marine Sanctuary, § 922.196.

(5) Mallows Bay-Potomac River National Marine Sanctuary, § 922.204.

(6) Wisconsin Shipwreck Coast National Marine Sanctuary, § 922.211.

§ 922.8 Penalties.

(a) Each violation of the NMSA or the other statutes designating national marine sanctuaries listed in § 922 .2 (b), any regulation in this part or any permit issued pursuant thereto, is subject to a civil penalty. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

§ 922.9 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury. Any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable *in rem* to the United States for response costs and damages resulting from such destruction, loss, or injury.

§ 922.10 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

Any valid lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of final regulations for a designation or revised terms of designation of any National Marine Sanctuary may not be terminated by the Director. The Director may, however, regulate the exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

§ 922.11 Definitions.

The following definitions shall apply to this part, unless modified by the definitions for a specific subpart or regulation:

Abandoning means leaving without intent to remove any structure, material,

or other matter on or in the seabed or submerged lands of a Sanctuary. For Thunder Bay National Marine Sanctuary and Underwater Preserve, abandoning means leaving without intent to remove any structure, material or other matter on the lake bottom associated with underwater cultural resources.

Act or NMSA means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.,* also known as the National Marine Sanctuaries Act.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA) or designee.

Attract or attracting means the conduct of any activity that lures or may lure any animal by using food, bait, chum, dyes, decoys (*e.g.,* surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (*e.g.,* swimmers, divers, boaters, kayakers, surfers).

Benthic community means the assemblage of organisms, substrate, and structural formations found at or near the sea/ocean/lake bottom that is periodically or permanently covered by water.

Clean means not containing detectable levels of harmful matter.

Commercial fishing means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals, including any attempt to engage in such activity.

Conventional hook and line gear means any fishing gear composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand, electrically, or hydraulically operated, regardless of whether mounted. This term does not include longlines.

Cruise ship means any vessel with 250 or more passenger berths for hire.

Cultural resource means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

Deserting means leaving a vessel aground, adrift, wrecked, junked, or in a substantially dismantled condition without notification to the Director of the vessel going aground or becoming adrift, wrecked, junked, or substantially dismantled within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification; after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Director means, except where otherwise specified, the Director of the Office of National Marine Sanctuaries or designee.

Effective date means the date of final regulations described and published in the **Federal Register**. For regulations governing the designation of a new sanctuary or revising terms of designation, effective date means the date after the close of the review period of the 45th day of continuous session of Congress following submission of the **Federal Register** notice of the designation together with final regulations to implement the designation and any other matters required by law, unless the Governor of any state in which the sanctuary is completely or partially located certifies that the designation or any of its terms is unacceptable pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)).

Exclusive economic zone means the zone established by Proclamation 5030, dated March 10, 1983, and as defined in the Magnuson-Stevens Fishery Conservation and Management Act, as amended 16 U.S.C. 1801 *et seq.*

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds, as defined in the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1802(12)).

Graywater means graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat of injury to Sanctuary resources or qualities. Such substances or combination of substances may include, but is not limited to: fishing nets, fishing line, hooks, fuel, oil, and hazardous substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(14) and designated at 40 CFR 302.4.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including a site, contextual information, structure, district, and object significantly associated with or representative of earlier people, culture, maritime heritage, and human activities and events. Historical resource includes ''cultural resource,'' ''submerged cultural resource,'' and ''historical property'' as that term is used in the National Historic Preservation Act, as amended, 54 U.S.C. 300101 *et seq.* and its implementing regulations, as amended.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130.

Injure or injury means to change adversely, either in the short or long term, a chemical, biological or physical attribute, or the viability, of a sanctuary resource. This includes, but is not limited to, to cause the loss of or destroy.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Inventory means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

Lawful fishing means fishing authorized by a tribal, State or Federal entity with jurisdiction over the activity.

Lightering means at-sea transfer of petroleum-based products, materials, or other matter from vessel to vessel.

Marine means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other matter of commercial value.

National historic landmark means a district, site, building, structure or object designated as such by the Secretary of the Interior under the National Historic Landmarks Program (36 CFR part 65).

National Marine Sanctuary or Sanctuary means an area of the marine environment of special national significance designated as such by the

National Oceanic and Atmospheric Administration (NOAA) pursuant to the Act or by Congress pursuant to legislation.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, of any State or local unit of government, or of any foreign government.

Regional Fishery Management Council means any fishery council established under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of a national marine sanctuary, including, but not limited to, water quality, sediment quality, and air quality.

Sanctuary resource means any living or non-living resource of a national marine sanctuary, or the parts or products thereof, that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the national marine sanctuary, including, but not limited to, waters of the sanctuary, the seabed or submerged lands of the sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, birds, sea turtles and other marine reptiles, marine mammals, and maritime heritage, cultural, archeological, and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource is defined at § 922.191. For Hawaiian Islands Humpback Whale, Sanctuary resource is defined at § 922.182. For Mallows Bay-Potomac River National Marine Sanctuary, Sanctuary resource is defined at § 922.201(a). For Wisconsin Shipwreck Coast National Marine Sanctuary, sanctuary resource is defined at § 922.211.

Seagrass means any species of marine angiosperms (flowering plants) that inhabits a portion of the seabed in a national marine sanctuary. Those species include, but are not limited to: *Zostera asiatica* (Asian eelgrass), *Zostera marina* (eelgrass/common eelgrass); *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens* (paddle grass), *H. engelmannii* (Engelmann's seagrass), *H. johnsonii* (Johnson's seagrass); and *Ruppia maritima* (widgeon grass).

Secretary means the Secretary of the United States Department of Commerce, or designee.

Shunt means to discharge expended drilling cuttings and fluids near the ocean seafloor.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

Subsistence use means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or non-edible items other than money, if the exchange is of a limited and non-commercial nature.

Take (taking or taken) of a marine mammal, sea turtle, or bird means:

(1) Take as that term is defined in section 3(19) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1532(19) (ESA);

(2) Take as that term is defined in section 3(13) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1362(13) (MMPA); or

(3) Conducting an activity prohibited by section 703 of the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 (MBTA).

For purposes of paragraphs (1), (2), and (3) of this definition, take also includes, but is not limited to, collection of any dead or injured marine mammal, sea turtle, or bird, or any part thereof; or restraint or detainment of any marine mammal, sea turtle, or bird, no matter how temporarily; tagging any marine mammal, sea turtle, or bird, or operating a vessel or aircraft or conducting any other act that results in the disturbance or molestation of any marine mammal, sea turtle, or bird.

Vessel means a watercraft of any description capable of being used as a means of transportation in or on the waters of a sanctuary. The term includes but is not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while maneuvering on the water. For purposes of this part, the terms ''vessel,'' ''watercraft,'' and ''boat'' have the same meaning.

Washington Coast treaty tribe means the Hoh, Makah, or Quileute Indian Tribes or the Quinault Indian Nation.

§ 922.12 Sanctuary Nomination Process

(a) *Nomination process.* The sanctuary nomination process (*see* National Marine Sanctuaries website *www.sanctuaries.noaa.gov*) is the means by which the public can submit areas of the marine and Great Lakes environments for consideration by NOAA as a national marine sanctuary.

(b) *National significance criteria.* The Director will consider the following in determining if a nominated area is of special national significance:

(1) The area's natural resources and ecological qualities are of special significance and contribute to: Biological productivity or diversity; maintenance or enhancement of ecosystem structure and function; maintenance of ecologically or commercially important species or species assemblages; maintenance or enhancement of critical habitat, representative biogeographic assemblages, or both; or maintenance or enhancement of connectivity to other ecologically significant resources.

(2) The area contains submerged maritime heritage resources of special historical, cultural, or archaeological significance, that: Individually or collectively are consistent with the criteria of eligibility or listing on the National Register of Historic Places; have met or which would meet the criteria for designation as a National Historic Landmark; or have special or sacred meaning to the indigenous people of the region or nation.

(3) The area supports present and potential economic uses, such as: Tourism; commercial and recreational fishing; subsistence and traditional uses; diving; and other recreational uses that depend on conservation and management of the area's resources.

(4) The publicly-derived benefits of the area, such as aesthetic value, public recreation, and access to places depend on conservation and management of the area's resources.

(c) *Management considerations.* The Director will consider the following in determining the manageability of a nominated area:

(1) The area provides or enhances opportunities for research in marine science, including marine archaeology.

(2) The area provides or enhances opportunities for education, including the understanding and appreciation of the marine and Great Lakes environments.

(3) Adverse impacts from current or future uses and activities threaten the area's significance, values, qualities, and resources.

(4) A national marine sanctuary would provide unique conservation and

management value for this area that also have beneficial values for adjacent areas.

(5) The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area.

(6) There are commitments or possible commitments for partnerships opportunities such as cost sharing, office space or exhibit space, vessel time, or other collaborations to aid conservation or management programs for the area.

(7) There is community-based support for the nomination expressed by a broad range of interests, such as: Individuals or locally-based groups (*e.g.,* friends of group, chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (*e.g.,* a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association).

(d) Following evaluation of a nomination against the national significance criteria and management considerations, the Director may place nominated areas in a publicly available inventory for future consideration of designation as a national marine sanctuary.

(e) A determination that a site is eligible for national marine sanctuary designation, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

§ 922.13 Selection of nominated areas for national marine sanctuary designation.

(a) The Director may select a nominated area from the inventory for future consideration as a national marine sanctuary.

(b) Selection of a nominated area from the inventory shall begin the formal sanctuary designation process. A notice of intent to prepare a draft environmental impact statement shall be published in the **Federal Register** and posted on the Office of National Marine Sanctuaries website. Any designation process will follow the procedures for designation and implementation set forth in section 304 of the Act.

Subpart B [Removed and Reserved]

■ 3. Remove and reserve subpart B.

Subpart C—[Removed and Reserved]

■ 4. Remove and reserve part 922 subpart C.

■ 5. Revise subpart D to read as follows:

Subpart D—National Marine Sanctuary Permitting

Sec.

§ 922.30 National Marine Sanctuary general permits.

(a) *Authority to issue general permits.* The Director may allow a person to conduct an activity that would otherwise be prohibited by this part through issuance of a general permit, provided the applicant complies with:

(1) The provisions of this subpart; and

(2) The permit procedures and criteria for all national marine sanctuaries in which the proposed activity is to take place in accordance with relevant site specific regulations appearing in subparts F through T.

(b) *Sanctuary general permit categories.* The Director may issue a sanctuary general permit under this subpart and the relevant site-specific subpart, subject to such terms and conditions as he or she deems appropriate, if the Director finds that the proposed activity falls within one of the following categories or a category in the relevant site-specific subpart:

(1) Research—activities that constitute scientific research or scientific monitoring of a national marine sanctuary resource or quality;

(2) Education—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resource or quality;

(3) Management—activities that assist in managing a national marine sanctuary;

(4) Jade removal—the removal of loose jade from the Jade Cove area, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, within Monterey Bay National Marine Sanctuary that cannot be collected under 15 CFR 922.132(a)(1)(ii) and (iii). Preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes;

(5) Tribal self-determination—activities conducted by a Washington Coast treaty tribe and/or its designee as certified by the governing body of the tribe to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights, the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of tribal members; and

(6) Further FKNMS purposes—activities that further the purposes of Florida Keys National Marine Sanctuary, including those that facilitate multiple use of the sanctuary, to the extent compatible with the primary objective of resource protection.

§ 922.31 National Marine Sanctuary special use permits.

(a) *In general.* A person may conduct a specified special use permit activity, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, manner, terms and conditions of, a special use permit issued under this section.

(b) *Authority to issue.* The Director, at his or her discretion, may issue a special use permit in accordance with this subpart and section 310 of the Act (16 U.S.C. 1441).

(c) *Public notice.* The Director will not issue a special use permit for any category of activity unless the Director has published a notice in the **Federal Register** that such category of activity is subject to the requirements of section 310 of the Act.

(d) *Fees.* The Director may assess and collect fees for the conduct of any activity authorized by a special use permit issued pursuant to this section. The fee will be assessed in accordance with § 922.35.

§ 922.32 Application requirements and procedures.

(a) *Submitting applications.* Permit applications must be submitted by mail to the address listed in the subpart for the relevant national marine sanctuary or by electronic means as defined in the instructions for the ONMS permit application. Applicants proposing to conduct an activity in more than one national marine sanctuary should send the application to each NOAA office for the relevant national marine sanctuaries in which the activity is proposed.

(b) *Application requirements.* All applications for a permit under this section must include the following information:

(1) A detailed description of the proposed activity including:

(i) A timetable for completion of the activity;

(ii) A detailed description of the proposed location for the activity; and

(iii) The equipment, personnel and methodology to be employed;

(2) The qualifications and experience of all personnel;

(3) The financial resources available to the applicant to conduct and complete the proposed activity and comply with any terms and conditions deemed necessary;

(4) A statement as to why it is necessary to conduct the activity within a national marine sanctuary;

(5) A description of the potential impacts of the activity, if any, on sanctuary resources and qualities;

(6) A description of the benefits the conduct of the activity would have for the national marine sanctuary or national marine sanctuary system;

(7) Copies of all other required licenses, permits, approvals, or other authorizations; and

(8) Such other information as the Director may request or is specified in the relevant subpart.

(c) *Additional information.* Upon receipt of an application, and as part of the evaluation of the permit application, the Director may:

(1) Request such additional information as he or she deems necessary to act on the application;

(2) Require a site visit; and

(3) Seek the views of any persons.

(d) *Time limit for submitting additional information.* Unless otherwise specified in writing by the Director, any information requested by the Director under paragraph (c) of this section must be received by the Director within 30 days of the postmark date of the request or, if email, the date of the email. Failure to provide such additional information may be deemed by the Director to constitute withdrawal of the permit application.

(e) *Incomplete applications.* The Director may consider an application incomplete, and therefore may refuse to further consider the application, if the applicant:

(1) Has failed to submit any of the information required under paragraph (b);

(2) Has failed to submit any of the information requested by the Director under paragraph (c) of this section;

(3) Has failed to pay any outstanding penalties that resulted from a violation of this part; or

(4) Has failed to fully comply with a permit issued pursuant to this subpart.

§ 922.33 Review procedures and evaluation.

(a) *Review criteria.* In addition to any relevant site-specific permit review criteria, the Director shall not issue a permit under this subpart or the relevant subpart, unless he or she also finds that:

(1) The proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, taking into account the following factors: The extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and any indirect or cumulative effects of the activity;

(2) It is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's stated purpose and avoid, minimize, or otherwise mitigate adverse effects on sanctuary resources and qualities as much as possible;

(4) The duration of the proposed activity and its effects are no longer than necessary to achieve the activity's stated purpose;

(5) The expected end value of the activity to the furtherance of national marine sanctuary goals and purposes outweighs any potential adverse impacts on sanctuary resources and qualities from the conduct of the activity;

(6) The applicant is professionally qualified to conduct and complete the proposed activity;

(7) The applicant has adequate financial resources available to conduct and complete the proposed activity and terms and conditions of the permit;

(8) There are no other factors that would make the issuance of a permit for the activity inappropriate; and

(9) For Olympic Coast National Marine Sanctuary, the activity as proposed does not adversely affect any Washington Coast treaty tribe.

(b) *Permit terms and conditions.* The Director, at his or her discretion, may subject a permit issued under this subpart or other relevant subpart to such terms and conditions as he or she deems appropriate. A permit granted pursuant to this subpart is nontransferable.

(c) *Permit actions.* The Director may amend, suspend, or revoke a permit issued pursuant to this part or other relevant subpart for good cause. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(d) *Denial of permit application.* The Director may deny a permit application, in whole or in part, if it is determined that:

(1) The proposed activity does not meet the review criteria specified in this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(2) The permittee or applicant has acted in violation of the terms and conditions of a permit issued under this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(3) The permittee or applicant has acted in violation of any regulation set forth in this subpart, the NMSA, or the FKNMSPA;

(4) The proposed activity has resulted in unforeseen adverse impacts to Sanctuary resources or qualities; or

(5) For other good cause.

(e) *Communication of actions and denials.* Any action taken by the Director under paragraphs (c) and (d) of this section shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken.

§ 922.34 Permit amendments.

(a) *Request for amendments.* Any person who has been issued a permit under this part (a permittee) may request to amend the permit at any time while that permit is valid. For purposes of this section, a permit time extension is treated as a permit amendment. A request for permit amendment must be submitted to the same NOAA office(s) as the original permit and include sufficient information to describe the requested amendment and any additional supporting information.

(b) *Review of amendment requests.* After receiving the permittee's request for amendment, the Director will:

(1) Review all reports submitted by the permittee as required by the permit terms and conditions; and

(2) Request such additional information as may be necessary to evaluate the request.

(c) *Denial of amendment request.* The Director may deny a permit amendment request, in whole or in part, if it is determined that:

(1) The proposed activity does not meet the review criteria specified in this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(2) The permittee or applicant has acted in violation of the terms or conditions of a permit issued under this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(3) The permittee or applicant has acted in violation of any regulation set

forth in this subpart, the NMSA, or the FKNMSPA;

(4) The proposed activity has resulted in unforeseen adverse impacts to Sanctuary resources or qualities; or

(5) For other good cause.

§ 922.35 Special Use Permit fees.

(a) *Authority to assess fees.* The Director may assess a fee for the conduct of any activity authorized under a special use permit issued under § 922.31. The Director may collect assessed fees through agreement with the permit applicant. No special use permit may be effective until all assessed fees are received unless otherwise provided by the Director by a fee schedule set forth as a permit condition.

(b) *Components of permit fees.* A fee assessed under this section may include:

(1) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

(i) Personnel;

(ii) Personnel hours;

(iii) Equipment;

(iv) Environmental analysis, assessment or consultation;

(v) Copying; and

(vi) Overhead costs directly related to reviewing and processing the permit application;

(2) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the permit is being issued, including, but not limited to:

(i) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to sanctuary resources and qualities;

(ii) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(iii) Overhead costs directly related to the permitted activity; and

(3) An amount which represents the fair market value of the use of the sanctuary resource.

§ 922.36 National Marine Sanctuary authorizations.

(a) *Authority to issue authorizations.* The Director may authorize a person to conduct an activity otherwise prohibited by subparts L through P or subpart R of this part, if such activity is specifically allowed by any valid federal, state, or local lease, permit, license, approval, or other authorization (hereafter called ''agency approval'') issued after the effective date of sanctuary designation or expansion, provided the applicant complies with the provisions of this section. Such an authorization by ONMS is hereafter referred to as an ''ONMS authorization.''

(b) *Authorization notification to the Director*—(1) *Notification requirement.* An applicant must notify the Director in writing of the request for an ONMS authorization of an agency approval. The Director may treat an amendment or extension of such an agency approval as constituting a new agency approval for purposes of this section.

(i) Notification must occur within fifteen days after the date the applicant files of filing of the application for the agency approval.

(ii) Notification must be sent to the Director, Office of National Marine Sanctuaries, to the attention of the relevant Sanctuary Superintendent(s) at the address specified in subparts L through P, or subpart R through S, as appropriate.

(iii) A copy of the application for the agency approval must accompany the notification.

(2) *Director's response to notification.* The Director shall respond in writing to the applicant and provide periodic updates on pending ONMS authorization request.

(c) *Authorization review procedures and evaluation*—(1) *Additional information.* The Director may request additional information from the applicant as the Director deems reasonably necessary to determine whether to issue an ONMS authorization and what terms and conditions are reasonably necessary to protect sanctuary resources and qualities.

(i) The information requested must be received by the Director within 45 days of the postmark date of the Director's request.

(ii) The Director may seek the views of any persons on the application.

(2) *Review criteria.* The Director shall consider the review criteria in § 922.33(a)(1)–(9) when deciding whether to issue an ONMS authorization.

(3) *Director's response.* The Director shall respond in writing to the applicant to inform the applicant of the Director's decision regarding the authorization request.

(i) The Director may deny a request for an ONMS authorization and shall provide the reason(s) therefore. If the Director denies a request for an ONMS authorization, the applicant remains prohibited from conducting the activity in the sanctuary.

(ii) The Director may issue an ONMS authorization containing terms and conditions deemed reasonably necessary to protect sanctuary resources and qualities. Failure to comply with an ONMS authorization constitutes a violation of the NMSA and these regulations, which may result in an enforcement action and assessment of penalties.

(d) *Authorization actions.* The Director may amend, suspend, or revoke an ONMS authorization issued pursuant to this part for good cause. Procedures governing ONMS sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(e) *Communication of actions and denials.* Any action taken by the Director under paragraphs (c) and (d) of this section to deny, amend, suspend, or revoke an ONMS authorization shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken.

(f) *Time limits.* Any time limit prescribed in or established under § 922.36 may be extended by the Director for good cause.

§ 922.37 Appeals of permitting decisions.

(a) *Potential appellant.* The following person may appeal an action listed in paragraph (b) of this section (hereinafter referred to as ''appellant''):

(1) An applicant or holder of a certification of any existing lease, permit, license, or right of subsistence use or of access pursuant to § 922.10;

(2) An applicant or a holder of a National Marine Sanctuary permit issued pursuant to § 922.30 or pursuant to site-specific regulations appearing in subparts F through T of this part;

(3) An applicant or a holder of a special use permit issued pursuant to section 310 of the Act and § 922.31; and

(4) An applicant or a holder of an ONMS authorization of an agency approval issued by any Federal, State, or local authority of competent jurisdiction pursuant to § 922.36.

(b) *Actions that may be appealed.* An appellant may appeal the following actions to the Assistant Administrator:

(1) The denial, conditioning, amendment, suspension, or revocation by the Director of a general permit pursuant to § 922.30 or other relevant subpart, special use permit pursuant to section 310 of the Act and § 922.31, or an ONMS authorization issued pursuant to § 922.36; or a certification under § 922.10.

(2) Reserved.

(c) *Appeal requirements.* Appeals must be made in writing to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910 and must:

(1) State the action(s) by the Director being appealed;

(2) State the reason(s) for the appeal; and

(3) Be received within 30 days of the appellant's receipt of notice of the action by the Director.

(d) *Appeal procedures.* (1) The Assistant Administrator may request the appellant submit such information as the Assistant Administrator deems necessary in order to render a decision on the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request.

(2) The Assistant Administrator may seek the views of any other persons when deciding an appeal.

(3) The Assistant Administrator may hold an informal hearing. If an informal hearing is held:

(i) The Assistant Administrator may designate an officer before whom the hearing shall be held;

(ii) The hearing officer shall give notice in the **Federal Register** of the time, place and subject matter of the hearing;

(iii) The appellant and Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer; and

(iv) The hearing officer shall recommend a decision in writing to the Assistant Administrator within 60 days after the record for the hearing closes.

(e) *Deciding an appeal.* (1) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted at the Assistant Administrator's request pursuant to paragraphs (d)(1) or (d)(2) of this section, regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision.

(2) The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing.

(3) The Assistant Administrator's decision shall constitute final agency action for purposes of the Administrative Procedure Act.

(f) *Authority to extend time limits.* Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal pursuant to paragraph (c)(3) of this section may be extended by the Assistant Administrator for good cause.

Subpart E [Removed and Reserved]

■ 6. Remove and reserve subpart E.

Subpart F—Monitor National Marine Sanctuary

■ 7. Revise § 922.60 to read as follows:

§ 922.60 Boundary.

The Monitor National Marine Sanctuary (Sanctuary) consists of a vertical water column in the Atlantic Ocean one mile in diameter (0.593 square nautical miles (nmi^2) or (0.785 sq. mi.)) extending from the surface to the seabed, the center of which is at the following coordinates 35.00639, −75.40889.

■ 8. Revise § 922.62 to read as follows:

§ 922.62 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.61 if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monitor National Marine Sanctuary, c/o The Mariners' Museum, 100 Museum Drive, Newport News, VA 23606.

(c) In addition to the requirements of subpart D of this part, the Director may not issue a permit under this section unless the Director also finds that the extent to which the conduct of the proposed activity may diminish the value of the Monitor as a source of historic, cultural, aesthetic and/or maritime information is appropriate in relation to goals of the proposed activity.

(d) In considering any application submitted pursuant to this section, the Director shall seek and consider the views of the Advisory Council on Historic Preservation.

Subpart G—Channel Islands National Marine Sanctuary

■ 9. Amend § 922.70 by revising the first sentence to read as follows:

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of approximately 1,110 square nautical miles (nmi^2) (1,470 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. * * *

■ 10. Amend § 922.71 by:

■ a. Revising the introductory text; and

■ b. Removing the definitions of ''Cruise ship'', ''Graywater'', and ''Introduced species''.

The revision reads as follows:

§ 922.71 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

■ 11. Amend § 922.72 by revising paragraph (c) to read as follows:

§ 922.72 Prohibited or otherwise regulated activities—Sanctuary wide.

* * * * *

(c) The prohibitions in paragraphs (a)(3) through (a)(10), (a)(12), and (a)(13) of this section and in § 922.73 do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.74.

* * * * *

■ 12. Revise § 922.74 to read as follows:

§ 922.74 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.72 or § 922.73 if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Permit applications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Channel Islands National Marine Sanctuary, University of California Santa Barbara, Ocean Science Education Building 514, MC 6155, Santa Barbara, CA 93106–6155.

Subpart H—Greater Farallones National Marine Sanctuary

■ 13. Amend § 922.80 by revising the first sentence in paragraph (a) to read as follows:

§ 922.80 Boundary.

(a) Greater Farallones National Marine Sanctuary (Sanctuary) encompasses an area of approximately 2,488 square nautical miles (nmi^2) (3,295 sq. mi.) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands and Noonday Rock along the northern coast of California. * * *

* * * * *

■ 14. Amend § 922.81 by—

■ a. Revising the introductory text of § 922.81; and

■ b. Removing the definitions of ''Attract or attracting'', ''Clean'', ''Deserting'', ''Harmful matter'', ''Introduced species'', and ''Seagrass''.

The revision reads as follows:

§ 922.81 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

■ 15. Amend § 922.82 by revising paragraph (c) and (d) to read as follows:

§ 922.82 Prohibited or otherwise regulated activities.

* * * * *

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with subpart D of this part.

(d) The prohibitions in paragraphs (a)(2) through (9) and (a)(11) through (16) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued in accordance with subpart D of this part and § 922.83, or a special use permit issued pursuant to subpart D of this part.

■ 16. Revise § 922.83 to read as follows:

§ 922.83 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.82 (a)(2) through (9) and (a)(11) through (16) if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Greater Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

Subpart I—Gray's Reef National Marine Sanctuary

■ 17. Amend § 922.90 to read as follows:

§ 922.90 Boundary.

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of approximately 16.68 square nautical miles (nmi²) (22 sq. mi.) of ocean waters and the submerged lands thereunder, off the coast of Georgia. The Sanctuary boundary includes all waters and submerged lands within the geodetic lines connecting the following coordinates. (Coordinates listed are unprojected (geographic) and based on the North American Datum of 1983.):

Point	Latitude	Longitude
1	31.36273	−80.92120
2	31.42106	−80.92120
3	31.42106	−80.82814
4	31.36273	−80.82814
5	31.36273	−80.92120

■ 18. Amend § 922.91 by revising the introductory text to read as follows:

§ 922.91 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

■ 19. Amend § 922.92 by revising paragraphs (a) and (c) as follows:

§ 922.92 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.93 and § 922.94, the following activities are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

* * * * *

(c) The prohibitions in this section and in § 922.94 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.93.

* * * * *

■ 20. Revise § 922.93 to read as follows:

§ 922.93 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.92(a)(1) through (11), and § 922.94 if the activity is specifically authorized by and conducted in accordance within the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

Subpart J—National Marine Sanctuary of American Samoa

■ 21. Amend § 922.101 by revising the introductory text and paragraph (a) to read as follows:

§ 922.101 Boundary.

The Sanctuary is comprised of six distinct units, forming a network of marine protected areas around the islands of the Territory of American Samoa. Tables containing the exact coordinates of each point described below can be found in Appendix to Subpart J—National Marine Sanctuary of American Samoa Boundary Coordinates. The total areal estimate of the six units combined is 10,255 nmi² (13,581 sq. mi.).

(a) *Fagatele Bay Unit.* The Fagatele Bay unit is a coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, Territory of American Samoa, and includes Fagatele Bay in its entirety. The landward boundary is defined by the mean high high water line of Fagatele Bay until the point at which it intersects the seaward boundary of the Sanctuary as defined by a straight line between Fagatele Point (−14.36527, −170.76932) and Steps Point (−14.37291, −170.76056) from the point at which it intersects the mean high high water line seaward.

* * * * *

■ 22. Amend § 922.102 by—

■ a. Revising the introductory text of § 922.102; and

■ b. Removing the definitions of ''Clean'', ''Fishing'', ''Harmful matter'', and ''Introduced species''.

The revision reads as follows:

§ 922.102 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

■ 23. Amend § 922.103 by revising paragraph (e) to read as follows:

§ 922.103 Prohibited or otherwise regulated activities—Sanctuary-wide.

* * * * *

(e) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.107.

■ 24. Revise § 922.107 to read as follows:

§ 922.107 Permit procedures.

(a) Any person in possession of a valid permit issued by the Director, in consultation with the ASDOC, in accordance with this section and subpart D of the part may conduct an activity otherwise prohibited by

§ 922.103, § 922.104, and § 922.105 in the Sanctuary.

(b) Permit applications shall be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, American Samoa National Marine Sanctuary, P.O. Box 4318, Pago Pago, AS 96799.

Subpart K—Cordell Bank National Marine Sanctuary

■ 25. Amend § 922.110 by revising the first sentence to read as follows:

§ 922.110 Boundary.

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 971 square nautical miles (nmi²) (1,286 sq. mi.) of offshore ocean waters, and submerged lands thereunder, surrounding the submarine plateau known as Cordell Bank along the northern coast of California, approximately 45 nautical miles west-northwest of San Francisco, California.
* * *

§ 922.111 [Removed and Reserved]

■ 26. Remove and reserve § 922.111.

■ 27. Amend § 922.112 by revising paragraphs (b) and (d) as follows:

§ 922.112 Prohibited or otherwise regulated activities.

* * * * *

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.113.

* * * * *

(d) The prohibitions in paragraphs (a)(2) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.113, or a special use permit issued pursuant to subpart D of this part.

* * * * *

■ 28. Revise § 922.113 to read as follows:

§ 922.113 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.112 (a)(2) through (7) if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

Subpart L—Flower Garden Banks National Marine Sanctuary

■ 29. Revise § 922.120 to read as follows:

§ 922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of three separate areas of ocean waters over and surrounding the East and West Flower Garden Banks and Stetson Bank, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (nmi) south-southwest of Cameron, Louisiana, and encompasses 19.20 square nautical miles (nmi²) (25 sq. mi.). The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.61 nmi² (30 sq. mi.). The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi² (0.84 sq. mi.). The three areas encompass a total of 42.5 nmi² (56 sq. mi.). The boundary coordinates for each area are listed in appendix A to this subpart.

■ 30. Amend § 922.121 by—

■ a. Revise the introductory text of § 922.121; and

■ b. Removing the definitions of ''Attract or attracting'' and ''Clean''.

The revision reads as follows:

§ 922.121 Definitions.

In addition to those definitions found at § 922.11, the following definitions applies to this subpart:

* * * * *

■ 31. Amend § 922.122 by revising paragraphs (a)(7), (f) and (h) to read as follows:

§ 922.122 Prohibited or otherwise regulated activities.

(a) * * *

(7) Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

* * * * *

(f) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit or ONMS authorization issued pursuant to subpart D of this part and § 922.123 or a special use permit issued pursuant to subpart D of this part.

* * * * *

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under subpart D of this part and § 922.123 authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone and issued after January 18, 1994 shall be invalid.

■ 32. Revise § 922.123 to read as follows:

§ 922.123 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.122(a) (2) through (10) if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

■ 33. Revise Appendix A to Subpart L of Part 922 to read as follows:

Appendix A to Subpart L of Part 922—Flower Garden Banks National Marine Sanctuary Boundary Coordinates

Coordinates listed in this Appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point	Latitude (N)	Longitude (W)
East Flower Garden Bank		
E–1	27.88190	−93.62829
E–2	27.89328	−93.63997
E–3	27.92073	−93.64469
E–4	27.95880	−93.64273
E–5	27.97462	−93.62963
E–6	27.98399	−93.59230
E–7	27.98374	−93.58618
E–8	27.92315	−93.57092
E–9	27.90140	−93.57206
E–10	27.89102	−93.58487
E–11	27.88140	−93.61605
West Flower Garden Bank		
W–1	27.81976	−93.84607
W–2	27.83704	−93.86973
W–3	27.85384	−93.88117
W–4	27.85927	−93.88090
W–5	27.88080	−93.87371
W–6	27.91720	−93.82896
W–7	27.91647	−93.81059
W–8	27.91006	−93.78636
W–9	27.90438	−93.78051
W–10	27.89350	−93.78106
W–11	27.88287	−93.78773
W–12	27.84479	−93.78964
W–13	27.81997	−93.81202
Stetson Bank		
S–1	28.15862	−94.30888
S–2	28.16950	−94.30839
S–3	28.16884	−94.28997
S–4	28.15796	−94.29047

Subpart M—Monterey Bay National Marine Sanctuary

■ 34. Revise § 922.130 introductory text and the first sentence of paragraph (b) to read as follows:

§ 922.130 Boundary.

The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate areas. The combined area of both parts is approximately 4,601 square nautical miles (nmi²) (6,093 sq. mi.). (a) The first area consists of an area of approximately 4,016 square nautical miles (nmi²) (5,318 sq. mi.) of coastal and ocean waters, and submerged lands thereunder, in and surrounding Monterey Bay off the central coast of California.

* * * * *

(b) The Davidson Seamount Management Zone is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 square nmi (nmi²) (774 sq. mi.) of ocean waters and the submerged lands thereunder. * * *

■ 35. Amend § 922.131 by—

■ a. Revising the introductory text of § 922.131; and

■ b. Removing the definitions of ''Attract or attracting'', ''Clean'', ''Cruise ship'', ''Deserting'', ''Harmful matter'', and ''Introduced species''.

The revision reads as follows:

§ 922.131 Definitions.

In addition to those definitions found at 15 CFR 922.11, the following definitions apply to this subpart:

* * * * *

■ 36. Amend § 922.132 by revising paragraphs (c)(1) and (d) through (f) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

* * * * *

(c)(1) All Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (11) and (a)(13) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Monterey Bay National Marine Sanctuary, 99 Pacific Street, Bldg. 455A, Monterey, California 93940.) For purposes of the Davidson Seamount Management Zone, these activities are listed in the 2008 Final Environmental Impact Statement. New activities may be exempted from the prohibitions in paragraphs (a)(2) through (11) and (a)(13) of this section by the Director after consultation between the Director and the Department of Defense.

* * * * *

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, and paragraphs (a)(2) through (11) and (a)(13) of this section, do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.133 or a special use permit issued pursuant to subpart D of this part.

(e) The prohibitions in paragraphs (a)(2) through (a)(13) of this section do not apply to any activity authorized by

any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation (January 1, 1993) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with § 922.36, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part authorizing, or otherwise approve, the exploration for, development, or production of oil, gas, or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.10, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) before January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

■ 37. Revise § 922.133 to read as follows:

§ 922.133 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a)(2) through (11), and (a)(13) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monterey Bay National Marine Sanctuary, 99 Pacific Street, Bldg. 455A, Monterey, California 93940.

Subpart N—Stellwagen Bank National Marine Sanctuary

■ 38. Amend § 922.140 by revising the first sentence in paragraph (a) and revising paragraph (b) to read as follows:

§ 922.140 Boundary.

(a) The Stellwagen Bank National Marine Sanctuary (Sanctuary) consists of an area of approximately 639 square nautical miles (nmi²) (846 sq. mi.) of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank and other submerged features off the coast of Massachusetts. * * *

(b) The Sanctuary boundary is identified by the following coordinates, indicating the most northeast, southeast, southwest, west-northwest, and north-northwest points: 42.76672 −70.21664 (NE); 42.09330 −70.03506 (SE); 42.12924 −70.47043 (SW); 42.54830 −70.59737 (WNW); and 42.65123 −70.50262 (NNW). The western border is formed by a straight line connecting the most southwest and the west-northwest points of the Sanctuary. At the most west-northwest point, the Sanctuary border follows a line contiguous with the three-mile jurisdictional boundary of Massachusetts to the most north-northwest point. From this point, the northern border is formed by a straight line connecting the most north-northwest point and the most northeast point. The eastern border is formed by a straight line connecting the most northeast and the most southeast points of the Sanctuary. The southern border follows a straight line between the most southwest point and a point located at 42.11526 −70.27800. From that point, the southern border then continues in a west-to-east direction along a line contiguous with the three-mile jurisdictional boundary of Massachusetts until reaching the most southeast point of the Sanctuary. The boundary coordinates are listed in appendix A to this subpart.

■ 39. Amend § 922.141 by revising the introductory text and the definition of ''Industrial material'' to read as follows:

§ 922.141 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Industrial material means mineral, as defined in § 922.11.

* * * * *

■ 40. Amend § 922.142 by revising paragraphs (d) and (f) to read as follows:

§ 922.142 Prohibited or otherwise regulated activities:

* * * * *

(d) The prohibitions in paragraphs (a)(1) and (3) through (7) of this section do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.143 or a special use permit issued pursuant to subpart D of this part.

* * * * *

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a permit under subpart D of this part and § 922.143, or under section 310 of the act, authorizing, or otherwise approving, the exploration for, development or production of industrial materials within the Sanctuary, or the disposal of dredged materials within the Sanctuary (except by a certification, pursuant to § 922.10, of valid authorizations in existence on November 4, 1992) and any leases, licenses, permits, approvals or other authorizations authorizing the exploration for, development or production of industrial materials in the Sanctuary issued by other authorities after November 4, 1992, shall be invalid.

■ 41. Revise § 922.143 to read as follows:

§ 922.143 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.142 (a)(1) and (3) through (7) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066.

■ 42. Revise Appendix A to Subpart N of Part 922 to read as follows:

Appendix A to Subpart N of Part 922—Stellwagen Bank National Marine Sanctuary Boundary Coordinates

Coordinates listed in this Appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point	Latitude	Longitude
E1	42.76672	−70.21664
E2	42.09330	−70.03506
E3	42.10239	−70.05434
E4	42.10081	−70.06707
E5	42.11752	−70.08658
E6	42.12038	−70.10607
E7	42.12675	−70.12388
E8	42.12853	−70.14005
E9	42.13342	−70.15497
E10	42.13481	−70.17292
E11	42.13210	−70.19605
E12	42.13339	−70.21707
E13	42.12970	−70.23889
E14	42.12435	−70.25585

Point	Latitude	Longitude
E15	42.11526	−70.27800
E16	42.12924	−70.47043
E17	42.54830	−70.59737
E18	42.55850	−70.58697
E19	42.56347	−70.58388
E20	42.57522	−70.57254
E21	42.58075	−70.55558
E22	42.58790	−70.54179
E23	42.59504	−70.52843
E24	42.60651	−70.51587
E25	42.62107	−70.50588
E26	42.63312	−70.50132
E27	42.64245	−70.50130
E28	42.65123	−70.50262

Subpart O—Olympic Coast National Marine Sanctuary

■ 43. Amend § 922.150 by revising paragraph (a) to read as follows:

§ 922.150 Boundary.

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2,408 square nautical miles (nmi²) (3,188 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

* * * * *

■ 44. Amend § 922.151 by—
■ a. Revising the introductory text; and
■ b. Removing the definitions of ''Clean'', ''Cruise ship'', and ''Harmful matter''.

The revision reads as follows:

§ 922.151 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

■ 45. Amend § 922.152 by revising paragraphs (a)(5) introductory text, (e) and (h) to read as follows:

§ 922.152 Prohibited or otherwise regulated activities:

(a) * * *

(5) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged lands of the Sanctuary, except as an incidental result of:

* * * * *

(e) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity specifically authorized by and conducted under and in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit or an ONMS authorization issued pursuant to subpart D of this part and § 922.153 or a special use permit issued pursuant to subpart D of this part

* * * * *

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part and § 922.153 or a special use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.10, of valid authorizations in existence on July 22, 1994 and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to the Quillayute River Navigation Project; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

■ 46. Revise § 922.153 to read as follows:

§ 922.153 Permit procedures.

(a) A person may conduct an activity prohibited by § 922.152 (a)(2) through (8) if conducted in accordance with the scope, purpose, terms and conditions of a permit or ONMS authorization issued under this section and subpart D of this part.

(b) Applications for such permits or ONMS authorizations should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Olympic Coast National Marine Sanctuary, 115 E Railroad Ave., Suite 301, Port Angeles, WA 98362.

(c) The Director shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe.

(d) Removal or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry onto a significant cultural site designated by a tribal governing body, the Director shall require the express written consent of the governing body of the tribe or tribes to which such cultural site pertains.

(e) Where the issuance or denial of a permit is requested by the governing body of a Washington Coast treaty tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the tribe.

■ 47. Revise Appendix A to Subpart O of Part 922 to read as follows:

Appendix A to Subpart O of Part 922—Olympic Coast National Marine Sanctuary Boundary Coordinates

Coordinates listed in this Appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point	Latitude	Longitude
1	47.12917	−124.18389
2	47.12917	−124.97000
3	47.58472	−125.00000
4	47.66806	−125.07889
5	47.83361	−125.09500
6	47.95361	−125.48694
7	48.12583	−125.63889
8	48.25000	−125.68167
9	48.30589	−125.50081
10	48.33756	−125.38136
11	48.44617	−125.15469
12	48.45256	−125.14164
13	48.46894	−125.09775
14	48.49533	−125.00303
15	48.49894	−124.98886
16	48.50367	−124.91581
17	48.50589	−124.84053
18	48.50283	−124.78831
19	48.49344	−124.72725
20	48.46889	−124.63694
21	48.38806	−124.63694

Subpart P—Florida Keys National Marine Sanctuary

■ 48. Revise § 922.161 to read as follows:

§ 922.161 Boundary.

The sanctuary consists of an area of approximately 2,872 square nautical miles (nmi²) (3,803 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. Appendix I to this subpart sets forth the precise Sanctuary boundary.

■ 49. Amend § 922.162 by—
■ a. Revising paragraphs (a) introductory text and (b); and
■ b. Removing the definition of ''Fish''.

The revisions read as follows:

§ 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a term appears in § 922.11 and this

section, the definition in this section governs.

* * * * *

(b) Other terms appearing in the regulations in this part are defined at § 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

■ 50. Amend § 922.163 by revising paragraphs (b), (c) and (f) to read as follows:

§ 922.163 Prohibited activities—Sanctuary-wide.

* * * * *

(b) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to § 922.166 and subpart D of this part.

(c) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, provided that the applicant complies with § 922.36, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities. Amendments of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

* * * * *

(f) In no event may the Director issue a certification, authorization, or permit under §§ 922.10, 922.163(c), 922.166, and subpart D of this part, respectively, authorizing, or otherwise approving, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary other than in connection with beach renourishment or Sanctuary restoration projects, or the discharge of untreated or primary treated sewage, and any purported authorizations issued by other authorities for any of these activities within the Sanctuary shall be invalid.

* * * * *

■ 52. Amend § 922.166 by revising paragraph (a) and removing and reserving paragraphs (e), (g), and (h) to read as follows:

§ 922.166 Permits other than for access to the Tortugas Ecological Reserve—application procedures and issuance criteria.

(a) A person may conduct an activity otherwise prohibited by §§ 922.163 or 922.164 if the activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040.

(2) For activities proposed to be conducted within any of the areas described in § 922.164 (b)–(e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in §§ 922.162 and 922.164 and in the management plan for the Sanctuary.

(3) A person may conduct an activity otherwise prohibited by §§ 922.163 or 922.164, if such activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part, and any additional permit issuance criteria and requirements in 922.166(b), (c), (f) and (i) to (m).

* * * * *

Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary

■ 53. Amend § 922.181 by revising paragraph (a) introductory text to read as follows:

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary encompasses approximately 1,032 square nautical miles (nmi^2) (1,366 sq. mi.), and consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

* * * * *

■ 54. Amend § 922.182 by revising paragraph (b) to read as follows:

§ 922.182 Definitions.

* * * * *

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.,* and 16 U.S.C. 1431 *et seq.*

■ 55. In Appendix A to Subpart Q of Part 922 amend section B by revising the table and amend section C by revising the table to read as follows:

Appendix A to Subpart Q of Part 922—Hawaiian Islands Humpback Whale, National Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas.

* * * * *

B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (see Figure 2).

* * * * *

Bound No. (Fig. 2)	Geographic name	Number of points	Latitude	Longitude
1a	Kailiu Pt., Kauai	2	22.22353	−159.58117
1b	Kailiu Pt., Kauai		22.27597	−159.59983
2a	Mokolea Pt., Kauai	2	22.22497	−159.38217
2b	Mokolea Pt., Kauai		22.24872	−159.37203
3a	Puaena Pt., N. Oahu	2	21.64017	−158.14056
3b	Puaena Pt., N. Oahu		21.60233	−158.10681
4a	Mahie Pt., N. Oahu	2	21.56036	−157.86442
4b	Mahie Pt., N. Oahu		21.59228	−157.83486
5a	Kapahulu Groin, S. Oahu	3	21.25158	−157.84097
5b	Kapahulu Groin, S. Oahu		21.26836	−157.82381
5c	Kapahulu Groin, S. Oahu		21.26839	−157.82328

Bound No. (Fig. 2)	Geographic name	Number of points	Latitude	Longitude
6a	Makapuu Pt., S. Oahu	2	21.31100	−157.64908
6b	Makapuu Pt., S. Oahu		21.32908	−157.59614
7a	Ilio Pt, Molokai	2	21.22381	−157.31272
7b	Ilio Pt, Molokai		21.22417	−157.25400
8a	Pailolo Channel, C. Halawa to Lipoa Pt	2	21.02494	−156.63944
8b	Pailolo Channel, C. Halaw to Lipoa Pt		21.15819	−156.71033
9a	Hanamanoia Lighthouse, Maui	2	20.57272	−156.44753
9b	Hanamanoia Lighthouse, Maui		20.58289	−156.41256
10a	3 Nmi. closure around Kahoolawe	51	20.59947	−156.49222
10b	3 Nmi. closure around Kahoolawe		20.59997	−156.49250
10c	3 Nmi. closure around Kahoolawe		20.60108	−156.49319
10d	3 Nmi. closure around Kahoolawe		20.60183	−156.49358
10e	3 Nmi. closure around Kahoolawe		20.60453	−156.49531
10f	3 Nmi. closure around Kahoolawe		20.60714	−156.49719
10g	3 Nmi. closure around Kahoolawe		20.60961	−156.49925
10h	3 Nmi. closure around Kahoolawe		20.61108	−156.50061
10i	3 Nmi. closure around Kahoolawe		20.61217	−156.50153
10j	3 Nmi. closure around Kahoolawe		20.61411	−156.50336
10k	3 Nmi. closure around Kahoolawe		20.61639	−156.50458
10l	3 Nmi. closure around Kahoolawe		20.63297	−156.50631
10m	3 Nmi. closure around Kahoolawe		20.62169	−156.50819
10n	3 Nmi. closure around Kahoolawe		20.62417	−156.51022
10o	3 Nmi. closure around Kahoolawe		20.62653	−156.51244
10p	3 Nmi. closure around Kahoolawe		20.62872	−156.51483
10q	3 Nmi. closure around Kahoolawe		20.63081	−156.51733
10r	3 Nmi. closure around Kahoolawe		20.63233	−156.51944
10s	3 Nmi. closure around Kahoolawe		20.63306	−156.52033
10t	3 Nmi. closure around Kahoolawe		20.63500	−156.52297
10u	3 Nmi. closure around Kahoolawe		20.63572	−156.52411
10v	3 Nmi. closure around Kahoolawe		20.63633	−156.52497
10w	3 Nmi. closure around Kahoolawe		20.63811	−156.52775
10x	3 Nmi. closure around Kahoolawe		20.63858	−156.52861
10y	3 Nmi. closure around Kahoolawe		20.63983	−156.53011
10z	3 Nmi. closure around Kahoolawe		20.64175	−156.53278
10aa	3 Nmi. closure around Kahoolawe		20.64350	−156.53553
10bb	3 Nmi. closure around Kahoolawe		20.64511	−156.53842
10cc	3 Nmi. closure around Kahoolawe		20.64539	−156.53903
10dd	3 Nmi. closure around Kahoolawe		20.64622	−156.54053
10ee	3 Nmi. closure around Kahoolawe		20.64764	−156.54353
10ff	3 Nmi. closure around Kahoolawe		20.64889	−156.54658
10gg	3 Nmi. closure around Kahoolawe		20.64994	−156.54975
10hh	3 Nmi. closure around Kahoolawe		20.65083	−156.55297
10ii	3 Nmi. closure around Kahoolawe		20.65111	−156.55436
10jj	3 Nmi. closure around Kahoolawe		20.65122	−156.55472
10kk	3 Nmi. closure around Kahoolawe		20.65147	−156.55586
10ll	3 Nmi. closure around Kahoolawe		20.65189	−156.55797
10mm	3 Nmi. closure around Kahoolawe		20.65239	−156.56131
10nn	3 Nmi. closure around Kahoolawe		20.65247	−156.56233
10oo	3 Nmi. closure around Kahoolawe		20.65269	−156.56378
10pp	3 Nmi. closure around Kahoolawe		20.65281	−156.56494
10qq	3 Nmi. closure around Kahoolawe		20.65306	−156.56675
10rr	3 Nmi. closure around Kahoolawe		20.65336	−156.57011
10ss	3 Nmi. closure around Kahoolawe		20.65347	−156.57344
10tt	3 Nmi. closure around Kahoolawe		20.65344	−156.57372
10uu	3 Nmi. closure around Kahoolawe		20.65350	−156.57514
10vv	3 Nmi. closure around Kahoolawe		20.65339	−156.57850
10ww	3 Nmi. closure around Kahoolawe		20.65328	−156.57992
10xx	3 Nmi. closure around Kahoolawe		20.65325	−156.58025
10yy	3 Nmi. closure around Kahoolawe		20.65314	−156.58217
11a	Technical Closure	2	20.69422	−156.61875
11b	Technical Closure		20.69583	−156.63433
12a	Upolu Pt., Hawaii (Big Island)	2	20.26814	−155.85014
12b	Upolu Pt., Hawaii (Big Island)		20.29997	−155.85478
13a	Keahole Pt., Hawaii (Big Island)	2	19.72767	−156.06186
13b	Keahole Pt., Hawaii (Big Island)		19.72819	−156.07069

C. Excluded Ports and Harbors Bounds (see Figure 3).

* * * * *

Bound No. (Fig. 2)	Geographic name	Number of points	Latitude	Longitude
14a	Kawaihae Harbor, Big Island exclusion	2	20.03731	−155.83403
14b	Kawaihae Harbor, Big Island exclusion		20.04036	−155.83269
15a	Haleolono Harbor, Molokai exclusion	2	21.08431	−157.24961
15b	Haleolono Harbor, Molokai exclusion		21.08467	−157.24867
16a	Kaunakakai Harbor, Molokai exclusion	4	21.08719	−157.02658
16b	Kaunakakai Harbor, Molokai exclusion		21.08033	−157.03286
16c	Kaunakakai Harbor, Molokai exclusion		21.07736	−157.02811
16d	Kaunakakai Harbor, Molokai exclusion		21.08539	−157.02083
17a	Kaumalapau Harbor, Lanai exclusion	2	20.78589	−156.99228
17b	Kaumalapau Harbor, Lanai exclusion		20.78364	−156.99203
18a	Manele Harbor, Lanai exclusion	2	20.74256	−156.88692
18b	Manele Harbor, Lanai exclusion		20.74311	−156.88725
19a	Lahaina Harbor, Maui exclusion	2	20.87175	−156.67917
19b	Lahaina Harbor, Maui exclusion		20.87189	−156.67889
20a	Maalaea Harbor, Maui exclusion	2	20.79225	−156.50972
20b	Maalaea Harbor, Maui exclusion		20.79022	−156.51100
21a	Western closure Kuapa Pond (Hawaii Kai), Oahu	2	21.28528	−157.71881
21b	Western closure Kuapa Pond (Hawaii Kai), Oahu		21.28514	−157.71861
22a	Eastern closure Kuapa Pond (Hawaii Kai), Oahu	2	21.28147	−157.71186
22b	Eastern closure Kuapa Pond (Hawaii Kai), Oahu		21.28108	−157.71119

Subpart R—Thunder Bay Bank National Marine Sanctuary And Underwater Preserve

■ 56. Amend § 922.190 by revising paragraph (a) to read as follows:

§ 922.190 Boundary.

(a) Except as provided in paragraph (b) of this section, the Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 3,247 square nautical miles (nmi^2) (4,300 sq. mi.) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The eastern boundary of the sanctuary begins at the intersection of the southern Alcona County boundary and the U.S./Canada international boundary (Point 1). The eastern boundary of the sanctuary approximates the international boundary passing through Points 2–5. The boundary continues west through Point 6 and then back to the northeast until it intersects with the 45.83333°N line of latitude at Point 7. The northern boundary follows the line of latitude 45.83333°N westward until it intersects the −84.33333°W line of longitude at Point 8. The western boundary extends south along the −84.33333°W line of longitude towards Point 9 until it intersects the ordinary high water mark at Cordwood Point. From there, the western boundary follows the ordinary high water mark as defined by Part 325, Great Lakes Submerged Lands, of P.A. 451 (1994), as amended, cutting across the mouths of rivers and streams until it intersects the line formed between Point 10 and Point 11 south of Rogers City, MI. From there the boundary moves offshore through Points 11–15 in order until it intersects the ordinary high water mark along the line formed between Point 15 and Point 16. At this intersection the boundary continues to follow the ordinary high water mark south until it intersects with the line formed between Point 17 and Point 18 near Stoneport Harbor Light in Presque Isle, MI.

* * * * *

§ 922.194 [Removed and Reserved].

■ 57. Remove and reserve § 922.194.

■ 58. Revise § 922.195 to read as follows:

§ 922.195 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.193 (a)(1) through (3), if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a State Permit provided that:

(1) The State Archaeologist certifies to NOAA that the activity authorized under the State Permit will be conducted consistent with the Programmatic Agreement, in which case such State Permit shall be deemed to have met the requirements of subpart D of this part; or

(2) In the case where the State Archaeologist does not certify that the activity to be authorized under a State Permit will be conducted consistent with the Programmatic Agreement, the person complies with the requirements of subpart D of this part.

(b) In instances where the conduct of an activity is prohibited by § 922.193 (a)(1) through (3) is not addressed under a State or other Federal lease, license, permit or other authorization, a person may conduct such activity if it is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued pursuant to subpart D of this part and the Programmatic Agreement.

(c) A permit for recovery of an underwater cultural resource may be issued if:

(1) The proposed activity satisfies the requirements for permits described under paragraphs (a) through (b) of this section and section 922.33;

(2) The recovery of the underwater cultural resource is in the public interest;

(3) Recovery of the underwater cultural resource is part of research to preserve historic information for public use; and

(4) Recovery of the underwater cultural resource is necessary or appropriate to protect the resource, preserve historical information, or further the policies of the Sanctuary.

(d) A person shall file an application for a permit with the Michigan Department of Environmental Quality, Land and Water Management Division, P.O. Box 30458, Lansing, MI, 48909–7958. The application shall contain all of the following information:

(1) The name and address of the applicant;

(2) Research plan that describes in detail the specific research objectives and previous work done at the site. An archaeological survey must be conducted on a site before an archaeological permit allowing excavation can be issued;

(3) Description of significant previous work in the area of interest, how the proposed effort would enhance or

contribute to improving the state of knowledge, why the proposed effort should be performed in the Sanctuary, and its potential benefits to the Sanctuary;

(4) An operational plan that describes the tasks required to accomplish the project's objectives and the professional qualifications of those conducting and supervising those tasks (*see* paragraph (e)(9) of this section). The plan must provide adequate description of methods to be used for excavation, recovery and the storage of artifacts and related materials on site, and describe the rationale for selecting the proposed methods over any alternative methods;

(5) Archaeological recording, including site maps, feature maps, scaled photographs, and field notes;

(6) An excavation plan describing the excavation, recovery and handling of artifacts;

(7)(i) A conservation plan documenting:

(A) The conservation facility's equipment;

(B) Ventilation temperature and humidity control; and

(C) storage space.

(ii) Documentation of intended conservation methods and processes must also be included;

(8) A curation and display plan for the curation of the conserved artifacts to ensure the maintenance and safety of the artifacts in keeping with the Sanctuary's federal stewardship responsibilities under the Federal Archaeology Program (36 CFR part 79, Curation of Federally-Owned and Administered Archaeological Collections); and

(9) Documentation of the professional standards of an archaeologist supervising the archaeological recovery of historical artifacts. The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:

(i) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(ii) At least four months of supervised field and analytic experience in general North American archaeology;

(iii) Demonstrated ability to carry research to completion; and

(iv) At least one year of full-time professional experience at a supervisory level in the study of archeological resources in the underwater environment.

■ 59. Revise Appendix A to Subpart R of Part 922 to read as follows:

Appendix A to Subpart R of Part 922—Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Coordinates

Coordinates listed in this Appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point	Latitude	Longitude
1	45.20708	−83.38850
2	45.20708	−83.00000
3	44.85847	−83.00000
4	44.85847	−83.32147

Subpart S—Mallows Bay-Potomac River National Marine Sanctuary

■ 60. Revise § 922.205 to read as follows:

§ 922.205 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.203 (a)(1) and (2) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Mallows Bay—Potomac River National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

■ 61. Amend § 922.206 by revising paragraphs (a) and (j) to read as follows:

§ 922.206 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.203(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

* * * * *

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

* * * * *

Subpart T—Wisconsin Shipwreck Coast National Marine Sanctuary

■ 62. Revise § 922.215 to read as follows:

§ 922.215 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § § 922.213 (a)(1) and (2) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Wisconsin Shipwreck Coast National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

■ 63. Amend § 922.216 by revising paragraphs (a) and (j) to read as follows:

§ 922.216 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.213(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

* * * * *

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

* * * * *

[FR Doc. 2022–09626 Filed 5–12–22; 8:45 am]

BILLING CODE 3510–NK–P

FEDERAL REGISTER

Vol. 87 Friday,
No. 93 May 13, 2022

Part V

The President

Notice of May 12, 2022—Continuation of the National Emergency With Respect to Securing the Information and Communications Technology and Services Supply Chain

Federal Register
Vol. 87, No. 93
Friday, May 13, 2022

Presidential Documents

Title 3—

The President

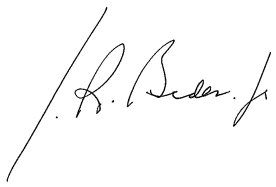
Notice of May 12, 2022

Continuation of the National Emergency With Respect to Securing the Information and Communications Technology and Services Supply Chain

On May 15, 2019, by Executive Order 13873, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the unrestricted acquisition and use of certain information and communications technology and services transactions.

The unrestricted acquisition or use in the United States of information and communications technology or services designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries augments the ability of these foreign adversaries to create and exploit vulnerabilities in information and communications technology or services, with potentially catastrophic effects. This threat continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared on May 15, 2019, must continue in effect beyond May 15, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13873 with respect to securing the information and communications technology and services supply chain.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 12, 2022.

[FR Doc. 2022–10561
Filed 5–12–22; 11:15 am]
Billing code 3395–F2–P

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Vol. 87, No. 93

Friday, May 13, 2022

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FEDERAL REGISTER PAGES AND DATE, MAY

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

20 CFR

220.....27512
404.....26268
641.....26988
Proposed Rules:
641.....27041

21 CFR

73.....27931
870.....26989
876.....26991
878.....26993
Proposed Rules:
172.....26707
1162.....26311, 26454
1166.....26311, 26396

23 CFR

650.....27396

26 CFR

Proposed Rules:
1.....26806
20.....26806
25.....26806

28 CFR

50.....27936
85.....27513

30 CFR

917.....27938

31 CFR

589.....26094

32 CFR

310.....28774

33 CFR

100 .....25571, 25572, 26270, 26273, 26996, 27943
165 .....26273, 26675, 26996, 26998, 27943, 27944, 27945, 27947, 28776, 29041, 29043, 29226, 29228
Proposed Rules:
100 .....26313, 26315, 27041
117.....26145
165 .....27959, 29244, 29246
334.....25595

36 CFR

Proposed Rules:
242.....29061

37 CFR

Proposed Rules:
1.....27043

38 CFR

3.....26124

39 CFR

Proposed Rules:
3055.....25595

40 CFR

50.....29045
51.....29045
52 .....26677, 26999, 27519, 27521, 27524, 27526, 27528, 27949, 29046, 29048, 29228, 29232
62.....26680
63.....27002
82.....26276
180 .....26684, 26687, 26691, 29050, 29053, 29056
194.....26126
271.....26136
312.....25572
Proposed Rules:
2.....26146, 29078
52 .....26707, 26710, 27048, 27050, 27540, 28783, 29103, 29105, 29108
59.....26146
60.....26146
75.....29108
78.....29108
80.....26146
81 .....26146, 26710, 27540
85.....26147
86.....26146
87.....26146
97.....29108
152.....27059
271.....26151
600.....26146
702.....29078
703.....29078
704.....27060, 29078
707.....29078
716.....29078
717.....29078
720.....29078
723.....29078
725.....29078
790.....29078
1027.....26146
1030.....26146
1033.....26146
1036.....26146
1037.....26146
1039.....26146
1042.....26146
1043.....26146
1045.....26146
1048.....26146
1051.....26146
1054.....26146
1060.....26146
1065.....26146
1066.....26146
1068.....26146
1090.....26146

42 CFR

417.....27704
422.....27704
423.....27704
Proposed Rules:
88.....27961
412.....28108
413.....28108
482.....28108
485.....28108
495.....28108

45 CFR

144.....27208
147.....27208
153.....27208
155.....27208
156.....27208
158.....27208
Proposed Rules:
2507.....25598

46 CFR

Proposed Rules:
520.....27971

47 CFR

20.....26139
Proposed Rules:
15.....29248
20.....29248
22.....29248
24.....29248
25.....29248
27.....29248
30.....29248
73.....29248
74.....29248
76.....29248
78.....29248
80.....29248
87.....29248
90.....29248
95.....29248
96.....29248
101.....29248

48 CFR

4.....25572

49 CFR

107.....28779
190.....28779
191.....26296
192.....26296
214.....27530
531.....25710
533.....25710
536.....25710
537.....25710
Proposed Rules:
350.....27981
393.....26317
1146.....25609
1249.....27549

50 CFR

17.....26141
622.....25573, 29236
635.....26299
648.....27952
660.....27530
665.....25590
Proposed Rules:
17 .....26152, 26319, 29272
100.....29061
622.....26178
660.....27557

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List May 12, 2022

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