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

Federal Register

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Presidential Documents

Title 3—

The President

Proclamation 9728 of April 20, 2018

National Park Week, 2018

By the President of the United States of America

A Proclamation

The magnificent coastlines, woodlands, plains, mountains, deserts, and historical and cultural monuments of our national parks inspire and exhilarate us. During National Park Week, we celebrate America's extraordinary landscapes and landmarks as we launch a new era of preservation to protect them for future generations.

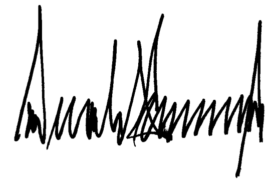
Our national parks demonstrate the power of nature and tell the scenic story of America. Last year, more than 330 million people visited the 417 areas included in the national park system. From the steep red cliffs and heavenly valleys of Zion to the towering majesty of the Statue of Liberty, America's national parks have something for everyone. Families bond over campfires; adventurers test their courage ascending intense rock formations; veterans find serenity in healing vistas; students watch history come to life at famous battle sites; and recreationists enjoy some of the most beautiful settings on earth.

America's special places bring out the freedom-loving, pioneering spirit of America, and they deserve our care and attention. My Administration is spearheading new initiatives to revitalize our national parks and to ensure that they continue to set the conservation standard for the rest of the world. We are working with the Congress to establish a Public Lands Infrastructure Fund, which would use revenues from certain energy production activities to help reduce the backlog of maintenance requirements in the national park system and in other programs administered by the Department of the Interior. My Administration is also enlisting park supporters, through public-private partnerships, to invest in significant upgrades to our Nation's most visible and visited public lands. Improving our trails, roads, bridges, buildings, campgrounds, and services will protect our natural and cultural heritage for many years to come.

Support for our national parks is strong and growing. Thousands of volunteers and partners work with the National Park Service to expand visitation, preserve sites, encourage the appropriate use of resources, and extend the economic benefits of parks into nearby communities. We must continue our efforts to preserve our natural and historic sites in order to maintain the splendor of our country for future generations.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 21 through April 29, 2018, as National Park Week. I encourage all Americans to celebrate by visiting our national parks and learning more about the natural, cultural, and historical heritage that belongs to each and every citizen of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of April, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



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Rules and Regulations

Federal Register

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 702

RIN 3133–AE80

Capital Planning and Supervisory Stress Testing

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing this final rule to amend its regulations regarding capital planning and stress testing for federally insured credit unions with $10 billion or more in assets (covered credit unions). The final rule reduces regulatory burden by removing some of the capital planning and stress testing requirements currently applicable to certain covered credit unions. The final rule also makes the NCUA's requirements more efficient by, among other things, authorizing covered credit unions to conduct their own stress tests in accordance with the NCUA's requirements and permitting covered credit unions to incorporate the stress test results into their capital plans.

DATES: This final rule is effective June 1, 2018.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Dale Klein, Senior Financial Analyst—CPST, Office of National Examinations and Supervision, at the above address or telephone (703) 518–6629; or *legal information:* John H. Brolin, Senior Staff Attorney; or Rachel Ackmann, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

At its October 19, 2017 meeting, the Board proposed amending its regulations regarding capital planning and stress testing for covered credit unions.[1] As noted, the proposal was designed to reduce regulatory burden and to make the NCUA's capital planning and stress testing requirements more efficient. The NCUA is now issuing the proposed rule as final with certain revisions and clarifications based on comments received on the proposed rule.

The NCUA is issuing this final rule pursuant to its authority under the Federal Credit Union Act (FCUA).[2] Section 120(a) of the FCUA authorizes the Board to ''prescribe rules and regulations for the administration of'' the FCUA.[3] Section 204 of the FCUA authorizes the Board, through its examiners, ''to examine any [federally] insured credit union . . . to determine the condition of any such credit union for insurance purposes.''[4] Section 206(e) of the FCUA authorizes the Board to take certain actions against a federally insured credit union, if, in the opinion of the Board, the credit union ''is engaging or has engaged, or the Board has reasonable cause to believe that the credit union or any institution affiliated party is about to engage, in any unsafe or unsound practice in conducting the business of such credit union.''[5]

II. Summary of Comments

The NCUA received a total of 17 comment letters from federally insured credit unions, credit union leagues, and credit union trade organizations. All of the commenters generally supported giving covered credit unions regulatory relief from the current capital planning and stress testing requirements. All also recommended, however, that the NCUA provide even more regulatory relief. The comments are discussed in more detail below.

A. Capital Planning and Stress Testing Tiers

Under the proposal, covered credit unions would be subject to tiered regulatory requirements that would further ensure their capital plans and stress testing requirements are tailored to reflect their size, complexity, and financial condition. The proposal would divide covered credit unions into three tiers, with each tier subject to different regulatory requirements. The proposal defined: (1) A tier I credit union as a covered credit union that has completed fewer than three capital planning cycles and has less than $20 billion in total assets; (2) a tier II credit union as a covered credit union that has completed three or more capital planning cycles and has less than $20 billion in total assets, or is otherwise designated as a tier II credit union by the NCUA; and (3) a tier III credit union as a covered credit union that has $20 billion or more in total assets, or is otherwise designated as a tier III credit union by the NCUA. Nearly all of the commenters recommended changing the threshold levels for tier I, II, and III covered credit unions by increasing the size threshold levels for each tier. Several commenters suggested incorporating prudential factors into the threshold levels.

A majority of commenters encouraged the NCUA to increase the asset thresholds to be more consistent with the thresholds for banks. To achieve parity with banks, commenters generally recommended two different approaches to establishing size thresholds. A number of commenters recommended that the NCUA take the size thresholds established for banks and reduce that threshold to reflect the proportionately smaller size of the National Credit Union Share Insurance Fund (NCUSIF). The commenters explained that the NCUSIF is approximately one-seventh the size of the Deposit Insurance Fund (DIF), therefore, the appropriate threshold for credit unions would be about $36.5 billion (one-seventh of the proposed $250 billion threshold for banks).[6] Such comments are based on the premise that the DIF and NCUSIF are equivalent, but the DIF and NCUSIF are not structured similarly. For example, the NCUSIF has an equity deposit base which can lead to an undesirable pro-cyclical impact for all credit unions if a large loss were to occur. In addition, the NCUSIF has an

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[1] 82 FR 50094 (Oct. 30, 2017).

[2] 12 U.S.C. 1751 *et seq.*

[3] 12 U.S.C. 1766(a).

[4] 12 U.S.C. 1784(a).

[5] 12 U.S.C. 1786(e).

[6] The $250 billion cited by commenters is only a proposal and is not currently the size threshold for annual stress tests in the banking industry. Currently, the Dodd-Frank Wall-Street Reform and Consumer Protection Act requires that banks with total consolidated assets of more than $10 billion conduct annual stress tests. 12 U.S.C. 5365(i)(2). The Federal Reserve's annual Comprehensive Capital Analysis and Review applies to top-tier bank holding companies with average total consolidated assets of $50 billion or more and certain intermediate holding companies of foreign banking organizations.

operating equity ratio of 1.39 percent, whereas the DIF has a target reserve ratio of 2.0 percent. Therefore, the NCUA does not consider the size of the DIF as an appropriate benchmark for determining the asset thresholds for covered credit unions to conduct stress tests and capital planning exercises. The second approach suggested by commenters to ensure parity between banks and covered credit unions was to emulate the asset thresholds adopted by the banking agencies. The size threshold, however, for most banks is currently set at $10 billion. Additionally, as discussed above, the NCUA does not consider the risks that banks pose to the DIF as analogous to the risks that covered credit unions pose to the NCUSIF, and therefore, does not believe that at this time the size thresholds for banks are appropriate for covered credit unions.

While commenters consistently recommended increasing the size threshold levels, there were mixed opinions on the appropriate size thresholds that the NCUA should establish for each tier. Commenters that suggested using $36.5 billion or $50 billion as the appropriate size threshold may have differed on whether that threshold was appropriate for a tier I, II, or III covered credit union. For example, in the case of tier I covered credit unions, recommended size thresholds varied from $10 billion to $50 billion.

As compared to the proposed rule, the Board in the final rule has partially revised the thresholds for tier I and II covered credit unions. In the final rule, a tier I credit union is a covered credit union that has less than $15 billion in total assets and a tier II credit union is a covered credit union that has $15 billion or more in total assets, but less than $20 billion in total assets (or is otherwise designated as a tier II credit union by the NCUA). Therefore, in the final rule, a covered credit union that remains under $15 billion will not conduct annual stress tests, even if it has been subject to capital planning requirements for over three years. For such covered credit unions, the final rule provides additional regulatory relief from supervisory stress testing. However, a tier I credit union that crosses the $15 billion threshold in less than three years after becoming a covered credit union, will have to conduct stress tests earlier under the final rule than as proposed. The NCUA has determined to remove the three year phase-in period in favor of a strict asset-size threshold because the NCUA believes that size is one of the primary indicators of systemic risk to the NCUSIF. Specifically, the NCUA believes that a $15 billion threshold balances the goal of providing regulatory relief with the additional risk that larger, more systemically significant credit unions pose to the NCUSIF. Therefore, the NCUA believes that at $15 billion in total assets a covered credit union represents sufficient risk to the NCUSIF that supervisory stress tests are warranted. The designation for a tier III credit union remains the same as proposed and includes a covered credit union that has $20 billion or more in total assets (or is otherwise designated as a tier III credit union by the NCUA).

Several commenters recommended that the NCUA define the tier I, II, and III thresholds to include factors other than a credit union's size and number of completed capital planning cycles. A common theme among such commenters was that the NCUA should explicitly consider a covered credit union's financial health and risk profile in defining the thresholds. These commenters urged the NCUA to provide additional regulatory relief and flexibility to covered credit unions that pose less risk to the NCUSIF. Factors mentioned by commenters that the NCUA could consider in granting additional regulatory relief include prompt corrective action capital levels, CAMEL ratings (specifically composite, capital, and management ratings), levels of interest rate risk, earnings, rates of growth, and concentration risk.

Capital plan review and supervisory stress testing, however, are forward-looking assessments of a covered credit union's financial condition. In contrast, capital ratings, earnings, rates of growth, and concentration risk are important supervisory tools that are based on a covered credit union's current financial condition. Additionally, capital planning and supervisory stress testing contribute to a covered credit union's CAMEL ratings and overall risk assessments. Therefore, the NCUA believes that including CAMEL ratings as criteria for supervisory thresholds would create inappropriate circularity and has not incorporated prudential conditions into the thresholds for capital planning and stress testing requirements.

Several commenters recommended that the NCUA incorporate an additional grace period between the time when a covered credit union becomes a tier I credit union and when it becomes a tier II credit union. Commenters stated that such additional time would allow tier I covered credit unions to focus on building strong capital planning and capital adequacy assessment processes before having to incorporate supervisory stress testing programs. The NCUA agrees with commenters that it is important for tier I covered credit unions to focus on building strong capital planning and capital adequacy assessment processes before incorporating supervisory stress testing programs. Therefore, as discussed above, in the final rule, a tier I credit union will not be automatically subject to stress testing requirements after a three-year phase in period. Instead, a tier I credit union will only be subject to stress testing requirements after its total assets exceed $15 billion. The NCUA believes that the $15 billion threshold provides credit unions additional control over their timeline for beginning supervisory stress testing. In recent years, covered credit unions have grown an average of 10 percent per year. At this rate of growth, a covered credit union would have about four years to focus on their capital planning processes before becoming a tier II credit union and incorporating supervisory stress testing programs. The NCUA believes that modifying the thresholds by removing the three year phase-in period in favor of a strict asset-size threshold provides additional regulatory relief and that credit unions that grow in a safe and sound manner will have sufficient time to build upon their capital planning procedures before implementing stress testing requirements. The NCUA notes that a credit union with an exceptional rate of growth such that it must begin supervisory stress testing requirements less than three years after becoming a tier I credit union may raise supervisory concerns.

A few commenters recommended removing the proposed language allowing the NCUA the discretion to designate a credit union as a tier II or tier III credit union. Alternatively, the commenters suggested setting clear criteria, along with examples, to delineate the situations when this could happen. The NCUA recognizes that size alone does not provide a complete view of risk at a credit union. Each credit union is unique and matters of complexity and financial condition are nuanced. To maintain flexibility, to avoid creating a ''one size fits all'' rule, and to incorporate the unique attributes of individual credit unions, the Board is retaining in the final rule the ability to elevate a credit union's tier designations. Thus, in the final rule, asset size establishes the baseline for determining the credit union's tier designation, but a credit union's financial condition, complexity, and other environmental matters may be considered by the Board to elevate its tier designation. In addition, the NCUA does not believe that codifying a strict set of conditions to delineate when this discretion is to be exercised is prudent given the highly fact specific nature of the determination.

B. Capital Planning Requirements

Under the proposed rule, a covered credit union would continue to annually develop and submit to the NCUA a capital plan. For tier I and II covered credit unions, however, review of their capital plans would be incorporated into their supervisory oversight. For tier III covered credit unions, review of their capital plans would continue to be subject to the current requirement that the NCUA formally approve or reject them. A few commenters specifically expressed support for the proposed changes to the capital planning requirements. Several other commenters, however, recommended specific changes to further reduce the burden of capital planning requirements.

Specifically, several commenters stated that the NCUA should reduce the frequency of capital planning requirements. For example, a commenter recommended that the NCUA eliminate the requirement that covered credit unions provide annual capital plans. Instead, the commenter recommended that the NCUA use the supervisory process to evaluate capital. Other commenters suggested that for certain covered credit unions, capital plans should only be required every two to three years. The NCUA believes that capital adequacy considerations and capital actions should be regular and ongoing activities at covered credit unions and viewed alongside the credit union's strategic and financial plans. Annual revisions and more frequent reviews of capital plans are appropriate so that the credit union has a current view of threats to capital and can take timely mitigating action. The NCUA does not consider annual capital plan preparation, even with incorporated supervisory stress tests, to be an excessive burden, and therefore, the final rule continues to require annual development of capital plans for all covered credit unions.

Additionally, a few commenters recommended tailoring capital planning requirements to complement the stress testing changes by providing tiered expectations for capital planning requirements. The NCUA notes that it will review tier I and tier II credit union capital plans through the supervisory process and those plans are not subject to formal approval by the NCUA. Commenters also had different opinions on whether the NCUA should formally approve or reject any covered credit union's capital plan. For example, a commenter recommended that the NCUA review all capital plans through the supervisory process, while another commenter supported the proposal to retain the requirement that the NCUA approve or reject a tier III credit union's capital plan. The final rule's tiered approach enables the NCUA to tailor capital plan expectations to the individual credit union, reserving the highest expectations and most critical assessment for the tier III credit unions. For tier III credit unions, which pose the most systemic risk to the NCUSIF, it is prudent to establish formal triggers requiring action to mitigate NCUSIF risk exposure. Therefore, in the final rule, capital plans for tier III credit unions will continue to be subject to formal approval requirements.

C. Stress Testing Requirements

Under the proposal, the NCUA would no longer conduct the annual supervisory stress tests on applicable covered credit unions. Rather, the covered credit unions themselves would conduct the stress tests according to the NCUA's instructions, which ensures that the stress tests performed by credit unions are conducted in a consistent and comparable manner. Covered credit unions also would be subject to tiered stress testing requirements. Tier I credit unions would no longer be subject to stress testing requirements, and tier II and III credit unions would conduct annual stress tests. Additionally, unlike their larger counterparts in tier III, tier II credit unions would not be subject to a 5 percent minimum stress test capital threshold. Commenters had mixed opinions on whether the proposed changes to stress testing requirements provided meaningful regulatory relief. Commenters also had varied opinions on whether the NCUA or covered credit unions should conduct the required stress tests. Several commenters specifically stated their support for allowing covered credit unions to conduct their own stress tests. Other commenters, however, stated that such a change would increase operational burden and expense for credit unions. Another commenter recommended retaining the current opt-in approach to conducting stress tests. The NCUA believes that credit unions are better informed of risk when they perform their own capital adequacy assessments. Having covered credit unions conduct their own supervisory stress tests further informs their capital analysis. Also, it eliminates any negative consequences that could result from the NCUA conducting the tests, namely that a covered credit union might abdicate its responsibility to perform rigorous capital analyses to the NCUA. Furthermore, the NCUA views the production and reporting of supervisory stress test results as incidental given the expectation that credit unions have sound capital adequacy assessment processes. Therefore, the NCUA is not changing the proposed requirement to have tier II and III covered credit unions conduct their own supervisory stress tests.

Many commenters encouraged the NCUA to consider providing more substantial regulatory relief, including reducing or eliminating stress testing requirements. Several commenters recommended eliminating the stress testing requirements altogether. Others suggested reducing the frequency of testing or waiving certain requirements based on the credit union's risk profile. The primary objective of stress testing is for the NCUA and the covered credit union to have an understanding of the credit union's ability to absorb the impact of significant economic stresses and to determine with a high degree of confidence when a covered credit union does not have sufficient capital to protect the NCUSIF from losses. Annual supervisory stress testing is an important prudential tool that provides the NCUA an aggregate view of the covered credit union's financial condition and capital resiliency. Therefore, in the final rule, tier II and III credit unions will continue to be required to conduct annual stress tests.

Commenters also had specific recommendations for the stress testing process. For example, a few commenters objected to the proposed timeline for conducting stress tests and completing capital plans. The commenters believed that the May 31st submission date provides insufficient time to complete the stress tests and incorporate results into the capital planning process. Instead, commenters suggested submission dates of July 31st or August 31st. As recently as 2015, the NCUA considered the timing of capital planning and stress test elements. In July 2015, the NCUA adopted a revised capital planning and stress testing schedule, which included consideration of the potential for credit union run stress testing.[7] In that final rule, the NCUA amended the capital planning and stress testing rule to establish a due date of May 31st for covered credit unions to submit their capital plans. This change provided covered credit unions with five months from the as-of

[7] 80 FR 48010 (Aug. 11, 2015).

date (and three months from the scenario release date) to prepare their capital plans, as commenters requested. The NCUA continues to believe that the release date of supervisory stress test scenarios and the due date for credit union capital plans provide ample time for a credit union to produce and report credible stress test results. Therefore, the final rule retains the May 31st submission date for annual stress tests. A number of commenters also encouraged the NCUA to provide stress testing instructions earlier in the capital planning process. The NCUA agrees with the commenters. The NCUA intends to post instructions on its website that will generally remain the same each year. If any modifications are necessary to the instructions due to a particular year's scenarios, such modifications will be released at the same time as the scenarios.

A minority of commenters discussed the scenarios required for stress testing. For example, a commenter recommended that tier II covered credit unions be exempt from the baseline and adverse stress test scenarios. The NCUA believes that each scenario is necessary for the NCUA and a credit union to have a complete understanding of the credit union's risks and that each scenario serves a distinct purpose in the stress test exercise. Specifically, the baseline scenario, conducted under the NCUA's instructions, serves as a benchmark to evaluate results under the stress scenarios. The stress scenarios are used to stress different aspects of a credit union's positions under unfavorable conditions and may be designed to focus on different risk characteristics of a credit union's portfolio. The spectrum of scenarios is necessary to have a complete understanding of a credit union's capital position in different economic conditions. Therefore, the NCUA believes that all stress tests should include all scenarios. Furthermore, consistent testing parameters ensure that credit union results are comparable to each other. Another commenter recommended that the NCUA continue utilizing the Federal Reserve Board's stress test assumption scenarios rather than designing its own unique tests. The commenter believed that standardization across the financial services industry is preferable. The NCUA agrees with this commenter. Consistent with past practice, the NCUA intends to publish scenarios that are consistent with the scenarios published by the banking agencies. However, the NCUA reserves the right to modify scenarios or produce unique scenarios to ensure risk at covered credit unions is sufficiently captured in the exercise.

D. Data Submission

Covered credit unions are currently required to submit data to the NCUA as part of the stress testing process, and the proposal did not include any changes to these requirements. Several commenters, nevertheless, encouraged the NCUA to eliminate or substantially reduce the data submissions. Commenters, however, generally did not offer specific data items that they considered unnecessary or burdensome. Data collection is part of the NCUA's strategic initiative to enhance supervision and is used to inform qualitative and quantitative assessments and ratings of covered credit unions. The data currently collected for the NCUA to conduct supervisory stress tests will continue to be used by the agency to assess a covered credit union's capital adequacy through review of its capital plan and supervisory stress tests results. Also, the collected data can drive supervisory efficiencies that reduce regulatory burden for covered credit unions. For example, the data may lead to more targeted supervisory work resulting in less time on-site at covered credit unions. Therefore, the final rule retains the current data collection requirements.

E. Other Comments

A few commenters recommended amending the definition of ''covered credit union'' so that a credit union with total assets over $10 billion does not becomes a ''covered credit union'' until its most recent four-quarter average of consolidated total assets exceeds $10 billion. Based on our experience implementing the capital planning and stress testing rules, the NCUA has not found that many credit unions decrease under $10 billion after becoming covered credit unions. Therefore, the NCUA does not believe the added complexity required by determining a four-quarter average is warranted and is not making any such changes to the final rule.

A few commenters also stated that given the enterprise-wide nature of the capital planning and supervisory stress testing regime, the NCUA should consider whether certain generally applicable requirements that must be met for a credit union to be eligible for insurance coverage are unnecessarily redundant when applied to covered credit unions. The commenters specifically noted liquidity and risk-based capital standards. Capital planning and stress testing are distinctive supervisory tools that the NCUA uses in the supervision of risk at covered credit unions. They complement, but do not replace, other regulatory and supervisory tools used by the agency.

III. Final Rule

After carefully considering the public comments, the NCUA has made several changes to the final rule. The final rule reflects the NCUA's experiences in implementing the current rule's requirements, while also considering the systemic risk that covered credit unions pose to the NCUSIF. As explained in more detail below, the final rule is intended to reduce regulatory burden by removing some of the more onerous capital planning and stress testing requirements currently applicable to covered credit unions. The changes to the NCUA's capital planning and stress testing requirements will more closely align the agency's regulatory requirements with its current supervisory expectations for covered credit unions.

In the final rule, covered credit unions are subject to new tiered regulatory requirements that further ensure their capital plans and stress testing requirements are tailored to reflect their size, complexity, and financial condition. For example, under the final rule, tier I and II covered credit unions will continue to develop annual capital plans, but the capital plans will no longer be formally submitted to the NCUA by May 31st each year. In contrast, tier III covered credit unions will continue to submit capital plans to the NCUA by May 31st that must be formally accepted or rejected by the NCUA. Additionally, stress testing requirements under the final rule are also tiered. Under the final rule, tier I credit unions are not subject to any stress testing requirements. In contrast, tier II and III covered credit unions are required to conduct stress testing, although tier II covered credit unions are not subject to a 5 percent minimum stress test capital threshold. Further, under the final rule, the NCUA will no longer be required to conduct the annual supervisory stress tests on applicable covered credit unions. Rather, the covered credit unions will conduct the stress tests.

While the NCUA recognizes that all covered credit unions are of systemic importance to the NCUSIF, the NCUA believes it is appropriate to differentiate the capital planning and stress testing requirements applicable to such institutions based on their individual characteristics. Specifically, size is deemed to be the most significant determinant regarding each covered credit union's systemic risk to the NCUSIF. The Board's ability to recategorize a covered credit union into a higher tier, however, recognizes that the complexity and financial condition of the credit union are other important considerations for determining whether a credit union should be subject to additional capital planning and stress testing requirements. The final rule seeks to balance the higher risk that covered credit unions may pose to the NCUSIF, with the time and resources these institutions need to prepare themselves to meet capital planning and supervisory stress testing expectations. The NCUA also has sought to tailor the capital planning and stress testing requirements in such a manner as to reduce the regulatory burden imposed on those smaller covered credit unions that pose less risk to the NCUSIF. The final rule is discussed in greater detail below.

Tiers of Covered Credit Unions

The final rule retains the proposed use of tiers to differentiate the capital planning and stress testing requirements applicable to covered credit unions. The final rule identifies three tiers of covered credit unions and imposes varying levels of regulatory requirements based on those tiers. In brief, the tier comprised of the smallest covered credit unions is subject to the least regulatory requirements, with a concomitant increase in requirements for each tier as the size and complexity of those covered credit unions increases. In response to commenters, the final rule has partially revised the thresholds for tier I, II, and III covered credit unions as compared to the proposed rule. Under the final rule, the three tiers are as follows:

• A *tier I credit union* is a covered credit union that has less than $15 billion in total assets;

• A *tier II credit union* is a covered credit union that has $15 billion or more in total assets, but less than $20 billion in total assets, or is otherwise designated as a tier II credit union by the NCUA; and

• A *tier III credit union* is a covered credit union that has $20 billion or more in total assets, or is otherwise designated as a tier III credit union by the NCUA.

Amendments to the Capital Planning Requirements

In the final rule, the level of the capital planning requirements for tier I and II credit unions generally decreases from the current regulatory requirements, but generally remains the same for tier III credit unions. This approach reduces regulatory burdens on tier I and II credit unions while allowing them to focus on establishing sound capital planning and capital adequacy assessment processes. Tier III credit unions, on the other hand, which pose the greatest systemic risk to the NCUSIF and which are most capable of complying with the current requirements, remain subject to most of the current requirements.

In the final rule, tier I and II covered credit unions are required to develop and maintain an annual capital plan, but they are no longer required to formally submit their capital plans to the NCUA for approval by May 31st of each year. The removal of the requirement for tier I and II credit unions to formally submit capital plans to the NCUA is a change from the proposed rule. The NCUA believes this provides smaller covered credit unions with additional flexibility to incorporate their annual capital plan into their planning processes, such as development of their strategic plans.

Additionally, under the final rule, tier I and II credit unions are no longer required to have their capital plans formally approved by the NCUA. Instead, capital plan reviews for tier I and II credit unions will be conducted as part of the NCUA's supervisory process. This approach provides the NCUA greater latitude when reviewing capital plan submissions and provides the NCUA with additional flexibility to use the supervisory process to address plan deficiencies, especially for credit unions newly covered by the capital planning requirements. The NCUA believes that any increased risk to the NCUSIF that may occur as a result of providing regulatory relief can be addressed through the supervisory process.

For tier III credit unions, the final rule retains the current requirement that all such credit unions submit capital plans to the NCUA no later than May 31st of each year. In addition, for tier III credit unions, the NCUA will formally approve or reject its capital plan. Because the failure of a tier III credit union poses the most significant risk to the NCUSIF, the NCUA believes it is prudent to retain the current, more formal requirements for those credit unions. The NCUA's formal rejection of a capital plan is subject to the Supervisory Review Committee process.

TABLE 1—CAPITAL PLAN REQUIREMENTS

Tier	Description	Required	Financials "as of" date	Submission and due date	NCUA review
I	A credit union with $10 billion or more in total assets, but less than $15 billion in total assets.	Yes	Based on financial data within two quarters of plan completion.	Capital plan is not submitted to the NCUA, but is required to be done annually.	Review of the capital plan is part of the NCUA's supervisory oversight.
II	A credit union with $15 billion or more in total assets, but less than $20 billion in total assets.	Yes	Based on financial data within two quarters of plan completion.	Capital plan is not submitted to the NCUA, but is required to be done annually.	Review of the capital plan is part of the NCUA's supervisory oversight.
III	A credit union with $20 billion or more in total assets.	Yes	December 31st of the previous calendar year.	Capital plans are submitted to the NCUA by May 31st each year.	The NCUA accepts or rejects credit union capital plans—qualitative and quantitative assessment.

NCUA's Supervisory Stress Testing Requirements

Credit Union-Conducted Stress Tests. Under the current rule, the NCUA is required to conduct supervisory stress tests for all covered credit unions. When the NCUA approved the current regulation in 2014, it believed that the NCUA should initially conduct all stress tests to ensure that the NCUA had an independent assessment of risk for covered credit unions. The preamble to the 2014 final rule acknowledged, however, that it might be appropriate in the future for certain covered credit unions to conduct their own supervisory stress tests, and the NCUA adopted a provision in the 2014 final rule to allow for that.[8] In particular, current § 702.506(c) provides that after the NCUA has completed three consecutive supervisory stress tests of a covered credit union, the covered credit union may, with the NCUA's approval, conduct the tests described in subpart E of part 702 on its own. Having now completed three annual stress testing cycles, the NCUA believes that changing its regulation to have covered credit unions conduct their own supervisory stress tests, without needing to obtain approval from the NCUA, is appropriate. Accordingly, in this final rule, the requirement that the NCUA conduct supervisory stress tests is eliminated. Additionally, the NCUA retains the provision in the current rule that reserves the NCUA's right to conduct the stress tests on any covered credit union at any time, and to request qualitative and quantitative information from the covered credit unions that pertains to supervisory stress testing.

Incremental Approach. Running a supervisory stress test requires internal controls that enable the credit union to effectively challenge all material aspects of its capital planning and analysis. For a covered credit union to develop the ability to obtain, cleanse, and manage internal and external data, and perform adequate capital analyses, it must possess a level of experience and operational scale that is unlikely to be in place or quickly developed by a credit union when it first reaches the $10 billion threshold. Accordingly, the NCUA is adopting an incremental regulatory approach to supervisory stress testing that gradually increases regulatory requirements on a covered credit union as it increases in asset size without making the requirements too burdensome too soon.

TABLE 2—STRESS TEST INCREMENTAL APPROACH

Tier	Description	Required	Minimum stress-test ratio	Financials "as of" date	Due date
I	A credit union with $10 billion or more in total assets, but less than $15 billion in total assets.	No	N/A	N/A	N/A.
II	A credit union with $15 billion or more in total assets, but less than $20 billion in total assets.	Yes	N/A	December 31st	May 31st.
III	A credit union with $20 billion or more in total assets	Yes	5%	December 31st	May 31st.

Tier I. In the final rule, a tier I credit union is not subject to any supervisory stress testing requirements, nor is it required to incorporate the NCUA's stress test scenarios in its capital plan. This approach allows a tier I credit union time after it reaches the $10 billion threshold to obtain the policies and processes necessary to develop sound capital plans and analyses prior to incorporating supervisory stress testing. Once a covered credit union has $15 billion in total assets, it is required to meet all tier II requirements described below.

Tier II. In the final rule, a tier II credit union is subject to supervisory stress testing requirements. In addition, a tier II credit union must incorporate the NCUA's annual stress test scenarios into its capital plan, even though the capital plan is not required to be submitted to the NCUA on May 31st. The NCUA does not believe this particular requirement imposes additional regulatory burden on a tier II credit union because, as the NCUA has observed over the last three years of implementing the stress testing regulations, covered credit unions already incorporate the NCUA's supervisory stress test scenarios into their capital plans even though they are not required to do so under the current rule.

Tier III. In the final rule, a tier III credit union is subject to supervisory stress testing requirements and must meet a minimum stress-test ratio of 5 percent. The final rule also requires a tier III credit union to incorporate the NCUA's stress test scenarios into its capital plan submission. Because a tier III credit union poses the greatest level of systemic risk to the NCUSIF, it must also submit a plan to build capital or mitigate the risk if the credit union shows that its stress test capital ratio would fall below the 5 percent minimum stress test capital threshold. This is consistent with the supervisory stress testing requirements in current § 702.506(g).

The final rule applies the asset thresholds as of the March 31st measurement date of each year.[9] If a credit union crosses any of the tier I, II, or III asset thresholds by March 31st, then the credit union's new classification is effective at the beginning of the next year. Therefore, if a credit union has over $10 billion in total assets as of March 31, 2018, it must complete a capital plan in calendar year 2019. And, if a covered credit union has $15 billion in assets on March 31, 2018, it must also conduct a stress test in calendar year 2019.

Website Instructions. The NCUA will publish on its website instructions for tier II and III credit unions on how to administer their own supervisory stress tests. The NCUA believes that a covered credit union's ability to maintain independence and flexibility is essential to the overall success of the NCUA's supervisory stress testing program. Accordingly, tier II and III credit unions are required to conduct their own stress tests in accordance with the instructions provided by the NCUA.

Conforming and Clarifying Amendments. The final rule also makes some minor conforming and clarifying amendments to the current rule. These conforming and clarifying amendments include removing, changing, and adding certain definitions.

The changes outlined above are discussed in more detail in the Section-by-Section Analysis below.

IV. Section-by-Section Analysis

Section 702.502 Definitions

The final rule retains most of the definitions included in the proposed rule except that the proposed definition of capital planning cycle has been removed. The definition was necessary to distinguish between tier I and II credit unions in the proposed rule, but is not necessary in the final rule as the number of capital planning cycles completed is no longer a distinguishing factor between the tier I and II threshold classifications. The final rule also retains most of the definitions from current § 702.502, without change, with the following exceptions.

[8] 79 FR 24311 (Apr. 30, 2014).

[9] See the definition of "covered credit union." 12 CFR 702.502.

Adverse Scenario

The final rule removes the definition of ''adverse scenario'' from § 702.502 and replaces this term throughout subpart E with terms more commonly used in the financial services industry. This change is intended to reduce confusion for covered credit unions. No substantive changes to the requirements of subpart E are intended by this change and covered credit unions will continue to be subject to the baseline and one or more stressed scenarios.

Covered Credit Union

The final rule makes conforming amendments to the current definition of ''covered credit union'' in § 702.502. The amended definition provides that ''covered credit union'' means a federally insured credit union whose assets are $10 billion or more. The definition provides further that a credit union that crosses that asset threshold as of March 31st of a given calendar year is subject to the applicable requirements of subpart E in the following calendar year.

Scenarios

The revised definition provides that ''scenarios'' are those sets of conditions that affect the U.S. economy or the financial condition of a covered credit union that serve as the basis for stress testing, including, but not limited to, NCUA-established baseline scenarios, and stress scenarios. It is the NCUA's intention to continue to base the NCUA-established scenarios on the scenarios developed by the Federal Reserve Board. As currently is the practice, the NCUA may modify such scenarios to ensure they are appropriate for domestic banking operations.

Severely Adverse Scenario

The final rule deletes the definition of ''severely adverse scenario'' from § 702.502 and replaces this term throughout subpart E with terms more commonly used in the financial services industry. This change is intended to reduce confusion for covered credit unions. No substantive changes to the requirements of subpart E are intended by this change and covered credit unions will continue to be subject to the baseline and one or more stressed scenarios.

Stress Scenario

The final rule adds the definition ''stress scenario'' to § 702.502. The definition provides that ''stress scenario'' means a scenario that is more adverse than that associated with the baseline scenario.

Tier I Credit Union

The final rule adds the definition of ''tier I credit union'' to § 702.502. The definition provides that ''tier I credit union'' means a covered credit union that has less than $15 billion in total assets. The definition of a tier I credit union provides regulatory relief for qualifying covered credit unions. This definition allows the NCUA to better align regulatory expectations based on the size, complexity, and financial condition of each covered credit union.

Tier II Credit Union

The final rule adds the definition of ''tier II credit union'' to § 702.502. The definition provides that ''tier II credit union'' means a covered credit union that has $15 billion or more in total assets but less than $20 billion in total assets, or is otherwise designated as a tier II credit union by NCUA. This definition recognizes the iterative nature of the NCUA's capital planning and stress testing processes, and acknowledges that covered credit unions get better at developing and implementing their capital plans over time and through repetition. The NCUA believes these changes provide regulatory relief for tier II credit unions.

Tier III Credit Union

The final rule adds the definition of ''tier III credit union'' to § 702.502. The definition provides that ''tier III credit union'' means a covered credit union that has $20 billion or more in total assets, or is otherwise designated as a tier III credit union by NCUA. The final rule identifies credit unions with total assets of $20 billion or more as posing the highest degree of risk to the NCUSIF. While the NCUA considers qualitative and quantitative capital plan supervision and credit union-run stress test review to be appropriate for covered credit unions with less than $20 billion in total assets, it does not for larger covered credit unions. For covered credit unions with total assets of $20 billion or more, the NCUA believes it is prudent, given the size of the NCUSIF and the potential loss associated with the failure of a credit union that large, to establish formal triggers requiring the NCUA and credit union actions to further mitigate NCUSIF risk exposure.

The Board retains the authority to designate a covered credit union as a tier II credit union or tier III credit union.

Section 702.504 Capital Planning

The final rule retains most of current § 702.504 without change, with the following exceptions.

(a) Annual Capital Planning

(a)(1)

Section 702.504(a)(1) continues to provide that all covered credit unions must develop and maintain a capital plan. Under the final rule, however, only tier III credit unions are required to submit their capital plan and capital policy to the NCUA. Therefore, the final rule amends § 702.504(a)(1) to state that a tier I and II credit union must complete a capital plan by December 31st each year, but are not required to submit a plan to the NCUA. Additionally, the final rule has been amended to state that the capital plan must be based on financial data from either of the two preceding calendar quarters. For example, if a tier I or II credit union's board approves its capital plan in the fourth quarter, the plan financial data must be as of either September 30th or June 30th. Section 702.504(a)(1) is also amended to explicitly state that a tier III credit union must submit its plan and capital policy to the NCUA by May 31st each year, or such later date as directed by the NCUA. The final rule also continues to provide that for tier III covered credit unions, the plan must be based on the covered credit union's financial data as of December 31st of the preceding calendar year, or such other date as directed by the NCUA. Finally, § 702.504(a)(1) will no longer include the last sentence in current § 702.504(a)(1), which provides that the NCUA will assess whether the capital planning and analysis process is sufficiently robust in determining whether to accept a credit union's capital plan. Given the other changes in this final rule, this sentence is no longer necessary.

(a)(2)

The current rule states that a covered credit union's board of directors (or a designated committee of the board) must at least annually, and prior to the submission of the capital plan, review and approve the credit union's capital plan. The final rule clarifies that this requirement applies to all covered credit unions, even if the credit union is not required to submit the plan to the NCUA.

(b) Mandatory Elements

(b)(4)

The final rule deletes current § 702.504(b)(4) from the regulation. Current § 702.504(b)(4) provides that if a credit union conducts its own stress test under § 702.506(c), its capital plan must include a discussion of how the credit union will maintain a stress test capital ratio of 5 percent or more under baseline, adverse, and severely adverse conditions in each quarter of the 9-quarter horizon. This sentence is no longer necessary because it is fully addressed in § 702.506(f).

Section 702.505 NCUA Action on Capital Plans

(a) Timing

The final rule amends current § 702.505(a) by dividing paragraph (a) into two subparts. Under this final rule, § 702.505(a)(1) provides that the NCUA will address any deficiencies in the capital plans submitted by tier I and tier II credit unions through the supervisory process. The intent of this change is to provide regulatory relief to tier I and tier II credit unions by removing the regulatory review and regulatory ''accept or reject'' assessment of their capital plans. It also provides the NCUA with additional flexibility in addressing plan deficiencies.

Under this final rule, § 702.505(a)(2) continues to require that the NCUA accept or reject tier III credit unions' capital plans. The NCUA is not removing this requirement for tier III credit unions at this time for the reasons discussed above. Accordingly, § 702.505(a)(2) provides that the NCUA will notify tier III credit unions of the acceptance or rejection of their capital plans by August 31 of the year in which their plan is submitted.

The final rule also makes additional conforming changes throughout § 702.505 to clarify that only tier III credit unions are required to operate under a capital plan formally accepted by the NCUA. No substantive changes, other than those discussed above, are intended.

Section 702.506 Annual Supervisory Stress Testing

Much of the substance of current § 702.506 remains unchanged in the final rule. Each of the substantive amendments are discussed in detail below. The final rule also makes some non-substantive conforming amendments to address certain changes in terminology.

(a) General Requirements

The final rule amends current § 702.506(a) by adding a new clarifying sentence to the beginning of paragraph (a). The new sentence provides that only tier II and tier III credit unions are required to conduct supervisory stress tests. The NCUA believes that exempting tier I credit unions from supervisory stress testing provides prudent regulatory relief and enables tier I credit unions time to develop their own capital adequacy assessments. The NCUA considers the supervisory stress testing exemption for tier I credit unions, which allow credit unions to grow from $10 billion in total assets to $15 billion in total assets, to be sufficient time to develop internal capabilities to perform credit union-run supervisory stress tests.

NCUA-Run Tests

The final rule deletes current § 702.506(b) regarding NCUA conducted stress tests, which, because of the other changes being implemented to part 702, is overridden. The NCUA reserves, in amended § 702.506(b)(3), the right to conduct stress tests on covered credit unions if it deems such action necessary.

(b) Credit Union-Run Supervisory Stress Tests

The final rule makes significant revisions to current § 702.506(c) (which has been renumbered to § 702.506(b) in the final rule) to require tier II and tier III credit unions to conduct their own stress tests instead of first having to get approval from the NCUA. In the final rule, renumbered § 702.506(b) is split into three new subparagraphs, each of which is described in more detail below.

(b)(1) General

Section 702.506(b)(1) of the final rule provides that all supervisory stress tests must be conducted according to the NCUA's instructions. The NCUA is adding this requirement to ensure that supervisory stress tests performed by tier II and tier III credit unions are conducted in a manner that promotes consistency and comparability. Credit union-run stress tests must adhere to these principles in order for the NCUA to assess inherent risk in the portfolios of covered credit unions and establish supervisory benchmarks. The NCUA will publish credit union-run supervisory stress test instructions on its website.

(b)(2) Tier III Credit Unions

Section 702.506(b)(2) of the final rule provides that when conducting its stress test, a tier III credit union must apply the minimum stress test capital ratio to all time periods in the planning horizon. The NCUA believes that only tier III credit unions should be subject to a minimum stress test capital requirement. Therefore, tier II credit unions do not have to apply a minimum stress test capital ratio to each time period in the planning horizon.

(b)(3) NCUA Tests

Section 702.506(b)(3) of the final rule retains the last two sentences in current § 702.506(c), without change. Section 702.506(b)(3) of the final rule provides that the NCUA reserves the right to conduct the stress tests described in this section on any covered credit union at any time. Paragraph (b)(3) provides further that where both the NCUA and a covered credit union have conducted the tests, the results of the NCUA's tests will determine whether the covered credit union has met the requirements of part 702. The final rule includes no substantive changes to these two sentences as compared to the current rule.

(e) Stress Test Results

The final rule states that all stress test results are due to the NCUA by May 31st each year. The May 31st stress testing due date applies to both tier II and III credit unions, even though tier II covered credit unions are not required to submit a capital plan on May 31st.

(f) Supervisory Actions

The final rule retains much of the language in current § 702.506(g), but inserts some additional language. The section also is broken into three subsections, each of which is discussed in more detail below.

(f)(1)

Section 702.506(f)(1) of the final rule provides that if a credit union-run stress test shows a tier III credit union does not have the ability to maintain a stress test capital ratio of 5 percent or more under expected and stressed conditions in each quarter of the planning horizon, the credit union must incorporate into its capital plan a stress test capital enhancement plan showing how it will meet that target.

(f)(2)

Section 702.506(f)(2) provides that if an NCUA-run stress test shows that a tier III credit union does not have the ability to maintain a stress test capital ratio of 5 percent or more under expected and stressed conditions in each quarter of the planning horizon, the credit union must provide the NCUA, by November 30 of the calendar year in which the NCUA conducted the tests, a stress test capital enhancement plan showing how it will meet that target. As explained above, the NCUSIF risk exposure to a tier I and tier II credit union is sufficiently mitigated through qualitative and quantitative supervision of the credit union's capital planning and capital adequacy analysis. Accordingly, the final rule offers regulatory relief as tier I and tier II credit unions are no longer subject to the minimum stress test capital ratio.

(f)(3)

Section 702.506(f)(3) of the final rule provides that a tier III credit union operating without an NCUA-approved stress test capital enhancement plan required under this section may be subject to supervisory action. A tier III credit union operating without an accepted capital plan or an approved stress test capital enhancement plan will be considered poorly managed and/or operating with insufficient capital to support the credit union's risk profile. The NCUA believes it is prudent to subject a tier III credit union to heightened regulatory scrutiny under such circumstances.

V. Stress Testing and Capital Plan Requirements for 2018

The final rule is effective June 1, 2018, after the May 31, 2018 submission date for capital plans. Therefore, the current rule remains effective for covered credit unions' 2018 capital plans and all covered credit unions must complete their capital plans by May 31, 2018. Tier I and II credit unions, however, do not need to submit their capital plans to the NCUA by May 31, 2018, and the NCUA will review their capital plans through the supervisory process. With respect to stress testing, the NCUA will conduct stress tests in calendar year 2018 for supervisory purposes.

VI. Regulatory Procedures

1. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis of any significant economic impact any regulation may have on a substantial number of small entities (primarily those under $100 million in assets).[10] The final rule and its requirements apply to only the largest credit unions, those with $10 billion or more in total assets. Accordingly, the Board certifies that it will not have a significant economic impact on a substantial number of small entities.

2. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number.

In accordance with the PRA, the information collection requirements included in this final rule has been submitted to OMB for approval under control number 3133–0199, and includes the following program changes:

Section 702.504 requires FICUs with assets of at least $10 billion (covered credit unions) to develop and maintain capital plans; but only tier III to submit NCUA. The removal of the requirement for tier I and II credit unions to formally submit capital plans to NCUA is a change from the proposed rule and reflects a reduction of 30 burden hours annually. Also, an increase of 240 burden hours is due to an adjustment in the number of respondents from 3 to 4 falling under the recordkeeping requirements of § 702.504.

Section 702.506 requires tier II and III credit unions to conduct their own supervisory stress tests in a manner prescribed by NCUA, which had previously been conducted by NCUA. It is estimated this new information collection requirement impacts five credit unions for a total increase of 500 burden hours.

Estimated number of respondents: FICUs with assets of at least $10 billion.

Frequency: Annually.

Total Annual Burden Hours Requested: 2,960 under OMB control number 3133–0199; a total increase of 710 burden hours.

3. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board has, therefore, determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

4. Assessment of Federal Regulations and Policies on Families

The Board has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

5. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects in 12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, on April 19, 2018.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the National Credit Union Administration amends 12 CFR part 702 as follows:

PART 702—CAPITAL ADEQUACY

■ 1. Revise the authority citation for part 704 to read as follows:

Authority: 12 U.S.C. 1766(a), 1784(a), 1786(e), 1790d.

Subpart E—Capital Planning and Stress Testing

■ 2. Amend § 702.502 as follows:
■ a. Remove the definition of ''adverse scenario''.
■ b. Remove from the definition of ''covered credit union'' the words ''capital planning and stress testing'' and add in their place the word ''applicable''.
■ c. Remove from the definition of ''scenarios'' the words ''adverse, and severely adverse'' and add in their place the words ''scenarios and stress''.
■ d. Remove the definition of ''severely adverse scenario''.
■ e. Add in alphabetical order the definitions of ''stress scenario'', ''tier I credit union'', ''tier II credit union'', and ''tier III credit union'' to read as follows:

§ 702.502 Definitions.

* * * * *

Stress scenario means a scenario that is more adverse than that associated with the baseline scenario.

* * * * *

Tier I credit union means a covered credit union that has less than $15 billion in total assets.

Tier II credit union means a covered credit union that has $15 billion or more

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[10] 5 U.S.C. 603(a); 12 U.S.C. 1787(c)(1).

in total assets but less than $20 billion in total assets, or is otherwise designated as a tier II credit union by NCUA.

Tier III credit union means a covered credit union that has $20 billion or more in total assets, or is otherwise designated as a tier III credit union by NCUA.

■ 3. Amend § 702.504 as follows:
■ a. Revise paragraph (a)(1).
■ b. In paragraph (a)(2) introductory text, add the words ''for tier III credit unions,'' before the words ''prior to the submission of the capital plan''.
■ c. Remove paragraph (b)(4).
■ d. Redesignate paragraphs (b)(5) and (b)(6) as paragraphs (b)(4) and (b)(5).

The revision reads as follows:

§ 702.504 Capital planning.

(a) * * * (1) A covered credit union must develop and maintain a capital plan. Tier I and tier II credit unions must complete this plan and their capital policy by December 31 each year, but are not required to submit this plan to the NCUA. For tier I and tier II credit unions, the plan must be based on the credit union's financial data from either of the two calendar quarters preceding the quarter in which the plan is approved by the credit union's board of directors (or a designated committee of the board). A tier III credit union must submit this plan and its capital policy to NCUA by May 31 each year, or such later date as directed by NCUA. For tier III credit unions, the plan must be based on the credit union's financial data as of December 31 of the preceding calendar year, or such other date as directed by NCUA.

* * * * *

■ 4. Amend § 702.505 as follows:
■ a. Revise paragraph (a).
■ b. Add to the introductory text of paragraph (d) the words ''tier III'' before the words ''credit union's capital plan''.
■ c. In paragraph (e), remove the word ''covered'' and add in its place the words ''tier III''.

The revision reads as follows:

§ 702.505 NCUA action on capital plans.

(a) *Timing.* (1) *Tier I & tier II credit unions.* NCUA will address any deficiencies in the capital plans submitted by tier I and tier II credit unions through the supervisory process.

(2) *Tier III credit unions.* NCUA will notify tier III credit unions of the acceptance or rejection of their capital plans by August 31 of the year in which their plan is submitted.

* * * * *

■ 5. Section 702.506 is revised to read as follows:

§ 702.506 Annual supervisory stress testing.

(a) *General requirements.* Only tier II and tier III credit unions are required to conduct supervisory stress tests. The supervisory stress tests consist of a baseline scenario, and stress scenarios, which NCUA will provide by February 28 of each year. The tests will be based on the credit union's financial data as of December 31 of the preceding calendar year, or such other date as directed by NCUA. The tests will take into account all relevant exposures and activities of the credit union to evaluate its ability to absorb losses in specified scenarios over a planning horizon.

(b) *Credit union-run supervisory stress tests*—(1) *General.* All supervisory stress tests must be conducted according to NCUA's instructions.

(2) *Tier III credit unions.* When conducting its stress test, a tier III credit union must apply the minimum stress test capital ratio to all time periods in the planning horizon. The minimum stress test capital ratio is 5 percent.

(3) *NCUA tests.* NCUA reserves the right to conduct the tests described in this section on any covered credit union at any time. Where both NCUA and a covered credit union have conducted the tests, the results of NCUA's tests will determine whether the covered credit union has met the requirements of this subpart.

(c) *Potential impact on capital.* In conducting stress tests under this subpart, the credit union, or the NCUA if it elects to conduct the stress test under paragraph (b)(3) of this section, will estimate the following for each scenario during each quarter of the planning horizon:

(1) Losses, pre-provision net revenues, loan and lease loss provisions, and net income; and

(2) The potential impact on the stress test capital ratio, incorporating the effects of any capital action over the planning horizon and maintenance of an allowance for loan losses appropriate for credit exposures throughout the horizon. The credit union, or the NCUA if it elects to conduct the stress test under paragraph (b)(3) of this section, will conduct the stress tests without assuming any risk mitigation actions on the part of the credit union, except those existing and identified as part of the credit union's balance sheet, or off-balance sheet positions, such as derivative positions, on the date of the stress test.

(d) *Information collection.* Upon request, the credit union must provide NCUA with any relevant qualitative or quantitative information requested by NCUA pertinent to the stress tests under this subpart.

(e) *Stress test results.* A credit union required to conduct stress tests under this section must incorporate the results of its tests in its capital plan. A credit union required to conduct stress tests must submit its stress test results to NCUA by May 31 of each year.

(f) *Supervisory actions.* (1) If a credit union-run stress test shows a tier III credit union does not have the ability to maintain a stress test capital ratio of 5 percent or more under expected and stressed conditions in each quarter of the planning horizon, the credit union must incorporate, into its capital plan, a stress test capital enhancement plan that shows how it will meet that target.

(2) If an NCUA-run stress test shows that a tier III credit union does not have the ability to maintain a stress test capital ratio of 5 percent or more under expected and stressed conditions in each quarter of the planning horizon, the credit union must provide NCUA, by November 30 of the calendar year in which NCUA conducted the tests, a stress test capital enhancement plan showing how it will meet that target.

(3) A tier III credit union operating without an NCUA approved stress test capital enhancement plan required under this section may be subject to supervisory actions.

(g) *Consultation on proposed action.* Before taking any action under this section against a federally insured, state-chartered credit union, NCUA will consult and work cooperatively with the appropriate State official.

[FR Doc. 2018–08558 Filed 4–24–18; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133–AE78

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is revising provisions of the NCUA's advertising rule to provide regulatory relief to federally insured credit unions (FICUs). The advertising rule requires FICUs to use the NCUA's official advertisement statement when advertising, and it currently permits three versions of that statement. Under this final rule, the Board is allowing FICUs the option of using a fourth

version: ''Insured by NCUA.'' To provide additional regulatory relief, the Board is: Expanding a current exemption from the advertising statement requirement regarding radio and television advertisements; and eliminating the requirement to include the official advertising statement on statements of condition required to be published by law.

DATES: This final rule becomes effective May 25, 2018.

FOR FURTHER INFORMATION CONTACT: Marvin Shaw, Staff Attorney, Office of General Counsel, telephone (703) 518–6553.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Credit Union Act (Act) requires each FICU to display NCUA's ''official sign'' regarding National Credit Union Share Insurance Fund insurance of the FICU's share accounts. The sign includes language that the coverage is backed by the full faith and credit of the United States Government.[1] Part 740 of the NCUA's regulations implements this statutory requirement and includes requirements relating to the NCUA's official advertising statement, each as discussed in more detail below.[2]

A. Part 740 Requirements

Part 740 prohibits any FICU from using advertising [3] or making any representation which is inaccurate or deceptive or which misrepresents its services, contracts, financial condition, or the Truth in Savings requirements. It also prescribes requirements for both the NCUA's official advertisement statement that FICUs must make when advertising and the NCUA's official sign that FICUs must display.

Currently, there are two versions of the NCUA's official advertising statement: (1) The longer version, which reads ''This credit union is federally insured by the National Credit Union Administration''; and (2) the shorter version, which reads ''Federally insured by NCUA.'' In accordance with part 740, a FICU may, as a third option, display the official sign in advertisements in lieu of making the official advertising statement. With certain exemptions discussed below, a FICU must use the official advertising statement in all of its advertisements, although it is at the FICU's discretion to choose among the three options noted.

Section 740.5(c) of the NCUA's regulations enumerates several kinds of advertisements that, for practical reasons, are exempted from the general rule requiring the use of the official advertising statement.[4] With respect to these exempted advertisements, the Board is focusing on the exemptions relating to radio and television advertisements of a certain duration.[5]

B. Regulatory History

For many years, the NCUA's advertising and official sign regulations were essentially the same as those of the Federal Deposit Insurance Corporation (FDIC).[6] In 2011, however, the Board amended part 740 by making the NCUA's advertising rules more stringent than FDIC's rules. Specifically, in 2011, while banks needed only to include the FDIC's official advertising statement in radio and television advertisements that exceeded 30 seconds, the NCUA's regulatory amendments required FICUs to include the NCUA's official advertising statement in all radio and television advertisements except those that were less than 15 seconds.[7] This additional requirement, which the Board now believes is unnecessary, affected more FICU advertisements and disrupted the parity between bank and FICU regulatory burden. According to some FICUs, the 2011 amendments made it more difficult for FICUs to produce effective advertisements.

The NCUA's 2011 amendments also required FICUs to include the advertising statement on statements of condition required to be published by law, a requirement not imposed on banks.

C. October 2017 Proposal

On October 4, 2017 (2017 NPRM),[8] the Board published a proposal to: (1) expand the radio and television advertisements exemption from 15 seconds to 30 seconds; and (2) eliminate the requirement to include the official advertising statement on statements of condition required to be published by law. This proposal effectively reversed the 2011 amendments and returned parity between banks and FICUs in this context. To provide additional regulatory relief, the Board also proposed to permit FICUs to use a fourth version of the official advertising statement, namely ''Insured by NCUA.'' The Board believes that these changes will provide FICUs with more flexibility without diminishing the purpose of part 740. In the 2017 NPRM, the Board sought comment on the proposed amendments and specifically requested comment about whether part 740 should be modified to address advertising on social media and mobile banking.

II. Summary of Comments on 2017 NPRM

The NCUA received 36 comments from federal and state credit unions, trade associations, credit union leagues, credit union employees, and an individual. These commenters generally supported the proposed rule, although a few commenters opposed discreet aspects of the proposal.

In supporting the proposal, several commenters called the changes modest yet important. A few commenters emphasized that part 740's primary goal is to inform the public about share insurance.

Commenters stated that the proposed rule would: (1) Provide regulatory relief

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[1] 12 U.S.C. 1785.

[2] 12 CFR part 740.

[3] This includes print, electronic and broadcast media, displays, signs, and stationary and other promotional material.

[4] The following advertisements need not include the official advertising statement under the current rule: (1) Credit union supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, account passbooks, and noninsurable certificates; (2) Signs or plates in the credit union office or attached to the building or buildings in which the offices are located; (3) Listings in directories; (4) Advertisements not setting forth the name of the insured credit union; (5) Display advertisements in credit union directories, provided the name of the credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured; (6) Joint or group advertisements of credit union services where the names of insured credit unions and noninsured credit unions are listed and form a part of such advertisement; (7) Advertisements by radio that are less than fifteen (15) seconds in time; (8) Advertisements by television, other than display advertisements, that are less than fifteen (15) seconds in time; (9) Advertisements that because of their type or character would be impractical to include the official advertising statement, including but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains; (10) Advertisements that contain a statement to the effect that the credit union is insured by the National Credit Union Administration, or that its accounts and shares or members are insured by the Administration to the maximum insurance amount for each member or shareholder; (11) Advertisements that do not relate to member accounts, including but not limited to advertisements relating to loans by the credit union, safekeeping box business or services, traveler's checks on which the credit union is not primarily liable, and credit life or disability insurance.

[5] 12 CFR 740.5(c)(7) and (8).

[6] 12 CFR part 328.

[7] 76 FR 30521 (May 26, 2011). Prior to the 2011 amendments, the FDIC and the NCUA expressed the 30 second time frame in the same manner. Specifically, both agencies applied the exemption to radio and television advertisements that do not ''exceed'' thirty seconds. With the 2011 amendments, the NCUA lowered the exemption duration from 30 seconds to 15 seconds and changed the do not ''exceed'' language to advertisements that are ''less than'' the stated duration, both of which the Board now believes disadvantage FICUs compared to banks. For technical clarification, the purpose of this final rule and the 2017 proposal is to eliminate the unnecessary disadvantages imposed by the 2011 amendments.

[8] 82 FR 46173 (Oct. 4, 2017).

and flexibility, particularly allowing more efficient communications to members and potential members; (2) provide parity with banks regulated and insured by the FDIC; (3) allow credit unions to highlight more of their products and services; (4) decrease costs and obstacles; and (5) reduce burden and streamline advertising disclosures. Several commenters noted that the cumulative effect of the ''myriad federal and state regulations'' require credit unions to allocate significant resources to legal and compliance departments. They favored the proposal, even though they stated that the existing requirements are not overly burdensome.

Each proposed amendment and the corresponding public comments recommending alternatives or modifications are discussed in more detail below.

III. Final Rule

A. Adding a Fourth Alternative Version of the Official Advertising Statement

As noted, part 740 currently provides three options for the NCUA's official advertising statement: (1) ''This credit union is federally insured by the National Credit Union Administration''; (2) ''Federally insured by NCUA''; and (3) the official sign may be displayed in advertisements in lieu of the advertising statement.

Virtually all commenters supported the proposal to add an additional version of the official advertising statement. Commenters expressed appreciation for this proposed alternative, stating that it provides regulatory relief. One commenter noted that the proposed version consists of 13 characters as opposed to 22 or 71 characters. Commenters stated that the change is especially meaningful for new social media platforms because it enhances flexibility while still conveying the important message regarding federal share insurance. They further posited that providing a shorter alternative makes advertising more cost effective because print and electronic advertising prices are often based on length and duration.

One commenter recommended allowing an even shorter ten character message—''NCUA Insured'' or twelve character message ''Member NCUSIF.'' This commenter stated that this would provide parity with the FDIC advertising statement—''Member FDIC,'' thus enhancing flexibility.

The Board agrees the proposed alternative will add flexibility without any adverse effect on potential members. However, it does not believe it necessary to adopt the suggested ''NCUA Insured'' or ''Member NCUSIF.'' Therefore, the Board adopts this aspect of the proposal as proposed.

B. Expand Exemption for Radio and Television Advertisements

As noted above, the current advertising rule exempts from the requirements of part 740 radio and television advertisements that are less than 15 seconds in duration. In the 2017 NPRM, the Board proposed to expand the radio and television advertisements exemption from 15 seconds to 30 seconds. Virtually all commenters supported this aspect of the proposal. The commenters supported the Board's goal of restoring parity between FICUs and banks and noted this change would enhance a FICU's ability to communicate to members. The commenters stated that the previous reduction of the exemption in 2011 from 30 seconds to 15 seconds was unnecessary and increased regulatory burden.

The Board agrees and adopts this aspect of the proposal as proposed.

C. Eliminate Requirement Regarding Statements of Condition

The 2011 amendments, for the first time, required FICUs to include the advertising statement on statements of condition required to be published by law. In the 2017 NPRM, the Board proposed to relieve FICUs of this burden. Of the commenters who addressed this aspect of the proposal, all agreed with it. They stated that the requirement is unnecessary and that relief from it restores parity with banks.

The Board agrees with the commenters and adopts this aspect of the proposal as proposed.

D. Social Media, Mobile Banking, and Other Digital Communication

Current part 740 focuses primarily on traditional forms of advertising such as print, radio, and television. In the 2017 NPRM, the Board requested comment on whether to modify the regulations to more precisely address advertising on social media, mobile banking, text messaging, and other digital communication platforms, such as Twitter and Instagram. The Board requested specific recommendations that would balance the goal of informing the public regarding federal share insurance coverage with the practical constraints inherent in social media advertising.

Twelve commenters addressed this topic, noting that digital media typically are designed as extremely short forms of communication. Several commenters favored making no changes to part 740, stating that the proposal to permit the fourth version of the official advertising statement was sufficient to accommodate new forms of advertising. Other commenters recommended adding new exemptions to part 740 for various forms of digital advertisements provided the official advertising statement appears elsewhere in the FICU's advertisement. Others recommended modifying certain provisions of part 740 short of adding new exemptions. For example, one commenter recommended that, for text-based messaging, the regulations should allow the official advertising statement to be expressed by a hashtag for Twitter, *e.g.,* ''#NCUAInsured'' or ''InsNCUA.'' Another commenter suggested allowing the use of an emoji that would indicate insured status that could be included in tweets or text messages.

The Board has determined that, given the rapidly changing technological landscape, it is appropriate to delay taking action to amend part 740 regarding social media at this time. The Board believes that part 740 provides a sufficient framework to inform potential and current credit union members regarding federal share insurance coverage for advertisements made in traditional ways and on social media. Additionally, the NCUA's Office of General Counsel is authorized to provide guidance to any FICU with questions regarding part 740 in the context of advertising on social media.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[9] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets. The amendments provide regulatory relief without any costs to FICUs. Accordingly, the NCUA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[10] For

[9] 5 U.S.C. 603(a).

[10] 44 U.S.C. 3507(d); 5 CFR part 1320.

purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This rule does not constitute a ''collection of information'' within the meaning of section 3502(3) and would not increase paperwork requirements under the PRA or regulations of the Office of Management and Budget (OMB).

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The rule will not have substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this rule does not constitute a policy with federalism implications for purposes of the executive order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined in Section 551 of the Administrative Procedure Act. The NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA has filed the appropriate documentation with OMB for review.

The Treasury and General Government Appropriations Act of 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[11]

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions, Share insurance, Signs and symbols.

[11] Public Law 105–277, 112 Stat. 2681 (1998).

By the National Credit Union Administration Board on April 19, 2018.

Gerard S. Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR part 740 as follows:

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1785, and 1789.

■ 2. Amend § 740.5 by revising paragraphs (a), (b), (c)(7) and (c)(8) to read as follows:

§ 740.5 Requirements for the official advertising statement.

(a) Each insured credit union must include the official advertising statement, prescribed in paragraph (b) of this section, in all of its advertisements, including on its main internet page, except as provided in paragraph (c) of this section.

(b)(1) The official advertising statement is in substance one of the following:

(i) This credit union is federally insured by the National Credit Union Administration;

(ii) Federally insured by NCUA;

(iii) Insured by NCUA; or

(iv) A reproduction of the official sign as described in § 740.4(b) may be used in lieu of the other statements included in this section. If the official sign is used as the official advertising statement, an insured credit union may alter the font size to ensure its legibility as provided in § 740.4(b)(2).

(2) The official advertising statement must be in a size and print that is clearly legible and may be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer.

(c) * * *

(7) Advertisements by radio which do not exceed thirty (30) seconds in time;

(8) Advertisements by television, other than display advertisements, which do not exceed thirty (30) seconds in time;

* * * * *

[FR Doc. 2018–08557 Filed 4–24–18; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM17–11–000; Order No. 843]

Revised Critical Infrastructure Protection Reliability Standard CIP–003–7—Cyber Security—Security Management Controls

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) approves Critical Infrastructure Protection (CIP) Reliability Standard CIP–003–7 (Cyber Security—Security Management Controls), submitted by the North American Electric Reliability Corporation (NERC). Reliability Standard CIP–003–7 clarifies the obligations pertaining to electronic access control for low impact BES Cyber Systems; requires mandatory security controls for transient electronic devices (*e.g.,* thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from systems) used at low impact BES Cyber Systems; and requires responsible entities to have a policy for declaring and responding to CIP Exceptional Circumstances related to low impact BES Cyber Systems. In addition, the Commission directs NERC to develop modifications to the CIP Reliability Standards to mitigate the risk of malicious code that could result from third-party transient electronic devices.

DATES: This rule will become effective June 25, 2018.

FOR FURTHER INFORMATION CONTACT:
Matthew Dale (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6826, *matthew.dale@ferc.gov*
Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6840 *kevin.ryan@ferc.gov*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Kevin J. McIntyre, Chairman; Cheryl A. LaFleur, Neil Chatterjee, Robert F. Powelson, and Richard Glick.

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the

[1] 16 U.S.C. 824o (2012).

Commission approves Reliability Standard CIP–003–7 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. Reliability Standard CIP–003–7 addresses the Commission's directives from Order No. 822 and is an improvement over the current Commission-approved CIP Reliability Standards.[2] Specifically, Reliability Standard CIP–003–7 improves upon the existing Reliability Standards by: (1) Clarifying the obligations pertaining to electronic access control for low impact BES Cyber Systems; [3] (2) adopting mandatory security controls for transient electronic devices (*e.g.,* thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from systems) used at low impact BES Cyber Systems; and (3) requiring responsible entities to have a policy for declaring and responding to CIP Exceptional Circumstances related to low impact BES Cyber Systems. We also approve NERC's proposed implementation plan and violation risk factor and violation severity level assignments. Finally, we approve NERC's proposed revised definitions for inclusion in the NERC Glossary.

2. In the NOPR, the Commission proposed to direct that NERC modify Reliability Standard CIP–003–7 to: (1) Provide clear, objective criteria for electronic access controls for low impact BES Cyber Systems; and (2) address the need to mitigate the risk of malicious code that could result from third-party transient electronic devices.[4] The Commission adopts the NOPR proposal regarding third-party transient electronic devices but does not adopt the proposal regarding criteria for electronic access controls for low impact BES Cyber Systems.

3. As discussed below, in view of the comments from NERC and others, we are persuaded that Reliability Standard CIP–003–7 provides a clear security objective that establishes compliance expectations. Accordingly, we do not adopt the proposed directive relating to electronic access controls for low impact BES Cyber Systems. Instead, as suggested in the comments, we direct NERC to conduct a study to assess the implementation of Reliability Standard CIP–003–7 to determine whether the electronic access controls adopted by responsible entities provide adequate security. NERC must submit the directed study within eighteen months of the effective date of Reliability Standard CIP–003–7.

4. With regard to the second issue discussed in the NOPR, we remain concerned that the proposed Reliability Standard lacks a clear requirement to mitigate the risk of malicious code that could result from third-party transient electronic devices. Accordingly, we direct NERC to develop a modification to the Reliability Standard to provide the needed clarity. Such modification will better ensure that registered entities clearly understand their mitigation obligations and, thus, improve individual entity mitigation plans and collectively improve the cybersecurity posture of the electric grid.

I. Background

A. Section 215 and Mandatory Reliability Standards

5. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[5] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[6] and subsequently certified NERC.[7]

B. Order No. 822

6. The Commission approved the ''Version 1'' CIP Reliability Standards in January 2008, and subsequently acted on revised versions of the CIP Reliability Standards.[8] On January 21, 2016, in Order No. 822, the Commission approved seven CIP Reliability Standards: CIP–003–6 (Security Management Controls), CIP–004–6 (Personnel and Training), CIP–006–6 (Physical Security of BES Cyber Systems), CIP–007–6 (Systems Security Management), CIP–009–6 (Recovery Plans for BES Cyber Systems), CIP–010–2 (Configuration Change Management and Vulnerability Assessments), and CIP–011–2 (Information Protection). The Commission determined that the Reliability Standards under consideration at that time were an improvement over the prior iteration of the CIP Reliability Standards and addressed the directives in Order No. 791 by, among other things, addressing in an equally effective and efficient manner the need for a NERC Glossary definition for the term ''communication networks'' and providing controls to address the risks posed by transient electronic devices (*e.g.,* thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from systems) used at high and medium impact BES Cyber Systems.[9]

7. In addition, in Order No. 822, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC, *inter alia,* to: (1) Develop modifications to the Low Impact External Routable Connectivity (LERC) definition to eliminate ambiguity surrounding the term ''direct'' as it is used in the LERC definition; and (2) develop modifications to the CIP Reliability Standards to provide mandatory protection for transient electronic devices used at low impact BES Cyber Systems.[10]

C. NERC Petition

8. On March 3, 2017, NERC submitted a petition seeking approval of Reliability Standard CIP–003–7 and the associated violation risk factors and violation severity levels, implementation plan and effective date. NERC states that Reliability Standard CIP–003–7 satisfies the criteria set forth in Order No. 672 that the Commission applies when reviewing a proposed Reliability Standard.[11] NERC also sought approval of revisions to NERC Glossary definitions for the terms Removable

[2] *Revised Critical Infrastructure Protection Reliability Standards,* Order No. 822, 154 FERC ¶ 61,037, *reh'g denied,* Order No. 822–A, 156 FERC ¶ 61,052 (2016).

[3] BES Cyber System is defined by NERC as ''[o]ne or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity.'' Glossary of Terms Used in NERC Reliability Standards (NERC Glossary). The acronym BES refers to the bulk electric system. Reliability Standard CIP–002–5.1a (Cyber Security System Categorization) provides a ''tiered'' approach to cybersecurity requirements, based on classifications of high, medium and low impact BES Cyber Systems.

[4] *Revised Critical Infrastructure Protection Reliability Standard CIP–003–7—Cyber Security—Security Management Controls,* Notice of Proposed Rulemaking, 82 FR 49541 (Oct. 26, 2017), 161 FERC ¶ 61,047 (2017) (NOPR).

[5] 16 U.S.C. 824o(e).

[6] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[7] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

[8] *Mandatory Reliability Standards for Critical Infrastructure Protection,* Order No. 706, 122 FERC ¶ 61,040, *order on reh'g,* Order No. 706–A, 123 FERC ¶ 61,174 (2008), *order on clarification,* Order No. 706–B, 126 FERC ¶ 61,229 (2009), *order on clarification,* Order No. 706–C, 127 FERC ¶ 61,273 (2009)*; Version 5 Critical Infrastructure Protection Reliability Standards,* Order No. 791, 145 FERC ¶ 61,160 (2013), *order on clarification and reh'g,* Order No. 791–A, 146 FERC ¶ 61,188 (2014).

[9] Order No. 822, 154 FERC ¶ 61,037 at P 17.

[10] *Id.* P 18.

[11] *See* NERC Petition at 2 (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at PP 262, 321–337); *id.,* Exhibit D (Order No. 672 Criteria).

Media and Transient Cyber Asset, as well as the retirement of the NERC Glossary definitions of LERC and Low Impact BES Cyber System Access Point (LEAP). In addition, NERC proposed the retirement of Commission-approved Reliability Standard CIP–003–6.[12]

9. NERC states that Reliability Standard CIP–003–7 improves upon the existing protections that apply to low impact BES Cyber Systems. NERC avers that the proposed modifications address the Commission's directives from Order No. 822 by: (1) Clarifying electronic access control requirements applicable to low impact BES Cyber Systems; and (2) adding requirements for the protection of transient electronic devices used for low impact BES Cyber Systems. In addition, while not required by Order No. 822, NERC proposes a CIP Exceptional Circumstances policy for low impact BES Cyber Systems.

10. In response to the Commission's directive to develop modifications to eliminate ambiguity surrounding the term ''direct'' as it is used in the LERC definition, NERC proposes to: (1) Retire the terms LERC and LEAP from the NERC Glossary; and (2) modify Section 3 of Attachment 1 to Reliability Standard CIP–003–7 ''to more clearly delineate the circumstances under which Responsible Entities must establish access controls for low impact BES Cyber Systems.''[13] NERC states that the proposed revisions are designed to simplify the electronic access control requirements associated with low impact BES Cyber Systems to avoid ambiguities associated with the term ''direct.'' NERC explains that it recognized the ''added layer of unnecessary complexity'' introduced by distinguishing between ''direct'' and ''indirect'' access within the LERC definition and asserts that the proposed revisions will ''help ensure that Responsible Entities implement the required security controls effectively.''[14]

11. With regard to the Commission's directive that NERC develop modifications to the CIP Reliability Standards to provide mandatory protection for transient electronic devices used at low impact BES Cyber Systems, NERC proposes to add a new section to Attachment 1 of Reliability Standard CIP–003–7 that requires responsible entities to include controls in their cyber security plans to mitigate the risk of the introduction of malicious code to low impact BES Cyber Systems that could result from the use of ''Transient Cyber Assets or Removable Media.'' Specifically, proposed Section 5 of Attachment 1 lists controls to be applied to Transient Cyber Assets and Removable Media that NERC contends ''will provide enhanced protections against the propagation of malware from transient devices.''[15]

12. NERC also proposes a modification that was not directed by the Commission in Order No. 822. Namely, NERC proposes revisions in Requirement R1 of Reliability Standard CIP–003–7 to require responsible entities to have a policy for declaring and responding to CIP Exceptional Circumstances related to low impact BES Cyber Systems.[16] NERC states that a number of requirements in the existing CIP Reliability Standards specify that responsible entities do not have to implement or continue implementing these requirements to avoid hindering the entities' ability to timely and effectively respond to the CIP Exceptional Circumstance. NERC proposes to add a requirement for responsible entities to have a CIP Exceptional Circumstances policy that applies to low impact BES Cyber Systems since the proposed requirements relating to transient electronic devices used at low impact BES Cyber Systems include an exception for CIP Exceptional Circumstances.[17]

13. NERC requests that Reliability Standard CIP–003–7 and the revised definitions of Transient Cyber Asset and Removable Media become effective the first day of the first calendar quarter that is eighteen months after the effective date of the Commission's order approving the Reliability Standard.

D. Notice of Proposed Rulemaking

14. On October 19, 2017, the Commission issued a NOPR that proposed to approve Reliability Standard CIP–003–7. The NOPR proposed to determine that Reliability Standard CIP–003–7 is just, reasonable, not unduly discriminatory or preferential, and in the public interest and addresses the directives in Order No. 822 by: (1) Clarifying the obligations pertaining to electronic access control for low impact BES Cyber Systems; and (2) adopting mandatory security controls for transient electronic devices used at low impact BES Cyber Systems. In addition, the NOPR observed that, by requiring responsible entities to have a policy for declaring and responding to CIP Exceptional Circumstances for low impact BES Cyber Systems, Reliability Standard CIP–003–7 would align the treatment of low impact BES Cyber Systems with that of high and medium impact BES Cyber Systems, which currently include a requirement for declaring and responding to CIP Exceptional Circumstances. Therefore, the Commission proposed to approve Reliability Standard CIP–003–7 because the proposed modifications improve the base-line cybersecurity posture of responsible entities compared to the current Commission-approved CIP Reliability Standards.

15. In addition, the Commission proposed to direct that NERC develop modifications to Reliability Standard CIP–003–7 to addressed two issues: (1) Provide clear, objective criteria for electronic access controls for low impact BES Cyber Systems; and (2) address the need to mitigate the risk of malicious code that could result from third-party transient electronic devices. The Commission explained that modifications directed at these two concerns will address potential gaps and improve the cyber security posture of responsible entities that must comply with the CIP Reliability Standards.

16. The Commission received comments in response to the NOPR from Jonathan Appelbaum (Appelbaum), Electric Consumers Resource Council (ELCON), North American Electric Reliability Corporation (NERC), Transmission Access Policy Study Group (TAPS), and Trade Associations.[18] We address below the issues raised in the NOPR and comments.

II. Discussion

17. Pursuant to section 215(d)(2) of the FPA, we approve Reliability Standard CIP–003–7 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. Reliability Standard CIP–003–7 addresses the directives in Order No. 822 and is an improvement over the currently-effective, Commission-

[12] Reliability Standard CIP–003–7 is not attached to this Final Rule. The Reliability Standard is available on the Commission's eLibrary document retrieval system in Docket No. RM17–11–000 and is posted on the NERC website, *http://www.nerc.com.*

[13] NERC Petition at 16.

[14] *Id.* at 16.

[15] *Id.* at 26–27.

[16] A CIP Exceptional Circumstance is defined in the NERC Glossary as a situation that involves or threatens to involve one or more of the following, or similar, conditions that impact safety or bulk electric system reliability: A risk of injury or death; a natural disaster; civil unrest; an imminent or existing hardware, software, or equipment failure; A Cyber Security Incident requiring emergency assistance; a response by emergency services; the enactment of a mutual assistance agreement; or an impediment of large scale workforce availability.

[17] NERC Petition at 31–32.

[18] Trade Associations represent American Public Power Association, Edison Electric Institute, and National Rural Electric Cooperative Association.

approved CIP Reliability Standards. Specifically, Reliability Standard CIP–003–7 improves upon the existing CIP Reliability Standards by: (1) Clarifying the obligations pertaining to electronic access control for low impact BES Cyber Systems; (2) adopting mandatory security controls for transient electronic devices (*e.g.,* thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from systems) used at low impact BES Cyber Systems; and (3) requiring responsible entities to have a policy for declaring and responding to CIP Exceptional Circumstances related to low impact BES Cyber Systems. We also approve NERC's proposed implementation plan and violation risk factor and violation severity level assignments. Finally, we approve NERC's proposed revised definitions for inclusion in the NERC Glossary.

18. In addition, as discussed below, pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to develop modifications to the CIP Reliability Standards to mitigate the risk of malicious code that could result from third-party transient electronic devices. However, for the reasons discussed below, we determine not to adopt the NOPR proposal to direct NERC to develop criteria for electronic access controls for low impact BES Cyber Systems at this time.

19. Below, we discuss the following matters: (A) Criteria for electronic access controls for low impact BES Cyber Systems; (B) mitigation of the risk of malicious code associated with third-party transient electronic devices; and (C) implementation plan and effective date.

A. Criteria for Electronic Access Controls for Low Impact BES Cyber Systems

1. NOPR

20. In the NOPR, the Commission proposed to direct NERC to develop modifications to Section 3 of Attachment 1 to Reliability Standard CIP–003–7 to provide clear, objective criteria for electronic access controls for low impact BES Cyber Systems.[19] Specifically, the proposed directive addressed the concern that Reliability Standard CIP–003–7 may not provide adequate electronic access controls for low impact BES Cyber Systems because Reliability Standard CIP–003–7 does not provide clear, objective criteria or measures to assess compliance by independently confirming that the access control strategy adopted by a responsible entity would reasonably meet the security objective of permitting only ''necessary inbound and outbound electronic access'' to its low impact BES Cyber Systems.[20] The Commission stated that, in order to ensure an objective and consistently-applied requirement, the electronic access control plan required in Attachment 1 should require the responsible entity to articulate its access control strategy for a particular set of low impact BES Cyber Systems and provide a technical rationale rooted in security principles explaining how that strategy will reasonably restrict electronic access. In addition, the Commission stated that Attachment 1 should outline basic security principles in order to provide clear, objective criteria or measures to assist in assessing compliance.[21]

21. The Commission observed that without clear, objective criteria or measures, auditors will not necessarily have adequate information to assess the reasonableness of the responsible entity's decision with respect to how the responsible entity identified necessary communications or restricted electronic access to specific low impact BES Cyber Systems. The Commission posited that absent such information, it is possible that an auditor could assess a violation where an entity adequately protected its low impact BES Cyber Systems or fail to recognize a situation where additional protections are necessary to meet the security objective of the Reliability Standard.[22]

2. Comments

22. NERC acknowledges the NOPR concerns but comments that a directive ''may not be necessary.'' [23] Specifically, NERC asserts that ''Responsible Entities must provide auditors sufficient information to allow the auditors to properly assess compliance with section 3.1'' of Reliability Standard CIP–003–7.[24] NERC contends that Section 3.1 ''articulates a clear security objective: permit only necessary inbound and outbound access to low impact BES Cyber Systems.'' [25] NERC explains that Section 3.1 is not prescriptive due to the wide array of low impact BES Cyber Systems and their lower risk to bulk electric system reliability, but, while Section 3.1 grants responsible entities flexibility, ''a Responsible Entity must demonstrate that its electronic access permissions and controls are consistent with the security objective.'' [26] Specifically, NERC maintains that a responsible entity ''must document the necessity of its inbound and outbound electronic access permissions and provide justification of the need for such access.'' [27] NERC states further that ''[i]f a Responsible Entity fails to articulate a reasonable business or operational need for the electronic access permission, the ERO Enterprise would find that the Responsible Entity did not comply with Section 3.1.'' [28] NERC continues that ''[c]onsistent with the intent of the Commission's proposed directive, the Responsible Entity would have to articulate its access control strategy for the low impact BES Cyber System and provide a technical rationale rooted in security principles, explaining how that strategy will reasonably restrict electronic access.'' [29] NERC states that if a responsible entity ''fails to demonstrate that its chosen electronic access controls are properly designed and implemented to meet the security objective, the ERO Enterprise would find that the Responsible Entity did not comply with Section 3.1'' of Reliability Standard CIP–003–7.[30]

23. NERC concludes that while the Commission's proposed directive may not be necessary and could potentially be an inefficient use of NERC and industry resources, ''[a]rticulating objective criteria for electronic access controls for low impact BES Cyber Systems may improve clarity and auditability, and help ensure that entities implement effective electronic access controls.'' [31]

24. Trade Associations, TAPS and ELCON do not support the proposed directive, claiming that the proposal would impose additional burdens on registered entities without a corresponding reliability benefit. Trade Associations and TAPS contend that Section 3 of Attachment 1 to Reliability Standard CIP–003–7 gives responsible entities needed flexibility to develop and implement effective electronic access controls for low impact BES Cyber Systems. TAPS adds that Reliability Standard CIP–003–7 reflects what NERC, through the standard development process, ''determined was a technically appropriate tailoring of electronic access controls requirements to low impact BES cyber systems.'' [32] Trade Associations recommend, as an

[19] NOPR, 161 FERC ¶ 61,047 at P 32.

[20] *Id.* P 28.

[21] *Id.* P 29.

[22] *Id.*

[23] NERC Comments at 3.

[24] *Id.* (citing NERC Petition at 21–24).

[25] *Id.*

[26] *Id.* at 3–4.

[27] *Id.* at 4 (citing NERC Petition at 22).

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.* at 5.

[32] TAPS Comments at 7 (*citing* 16 U.S.C. 824o(d)).

alternative to the proposed directive, that the Commission approve the proposed Reliability Standard without modification and monitor its concerns, for example, by directing NERC to conduct a study to assess the implementation by responsible entities of Reliability Standard CIP–003–7 electronic access controls to determine whether there are in fact inadequate controls. According to Trade Associations, a fact-driven assessment would help to inform and demonstrate a reliability and security need for future Commission actions related to the CIP Reliability Standards.[33]

25. Further, Trade Associations assert that a risk-based approach is essential to allow responsible entities to focus their resources on assets that have a higher impact on bulk electric system reliability. ELCON adds that while it ''appreciates the value establishing more tangible criteria for adequate Low-Impact BES Cyber System controls, . . . the additional requirements that the Commission proposes would do nothing to harden a Low-Impact facility against the rapid evolution in cyber warfare.'' [34]

26. Appelbaum supports the proposed directive regarding Section 3 of Attachment 1 to Reliability Standard CIP–003–7. Appelbaum notes that Reliability Standard CIP–003–7 ''leaves the choice of controls to the [responsible entity] and leaves an Auditor with no requirement basis to perform an audit.'' [35] Appelbaum states that under ''NERC's proposal that each entity establishes their own security plan and only needs to demonstrate compliance and adherence to its plan then . . . the implementation of security controls will be implemented to various levels of security and differentiated . . . across the NERC Regions.'' [36] Appelbaum states further that Reliability Standard CIP–003–7 ''will result in different auditor conclusions for similarly situated entities implementing similar protections.'' [37] Appelbaum concludes that ''[c]lear requirements are needed to establish a common understanding of the necessary security to be achieved.'' [38]

3. Commission Determination

27. We do not to adopt the proposed directive, but rather adopt the Trade Associations' recommendation for a study and report to be filed with the Commission. We are satisfied with the explanation of NERC and other commenters that Section 3 of Attachment 1 to Reliability Standard CIP–003–7 provides a clear security objective that establishes compliance expectations. Specifically, we are persuaded by commenters that Section 3 of Attachment 1 requires responsible entities to adopt security controls to permit only necessary inbound and outbound electronic access to Cyber Assets connected using a routable protocol to low impact BES Cyber Systems.

28. The concern raised in the NOPR focused on the lack of clear, objective criteria or measures to assess compliance with Reliability Standard CIP–003–7. As noted above, however, NERC states in its comments that responsible entities will be required to demonstrate that electronic access permissions and controls associated with low impact BES Cyber Systems are consistent with the stated security objective. NERC also clarifies that responsible entities will be required to ''document the [business or operational] necessity of its inbound and outbound electronic access permissions and provide justification of the need for such access.'' [39] Given NERC's statements, we believe that there will be adequate measures to assess compliance with Reliability Standard CIP–003–7. We expect responsible entities to be able to provide a technically sound explanation as to how their electronic access controls meet the security objective.

29. In response to Appelbaum's comment that auditors will not have a common understanding on which to judge compliance across the ERO enterprise, in view of NERC's comments, we believe that NERC and the Regional Entities will have the ability to assess the effectiveness of a responsible entity's electronic access control plan as well as a responsible entity's adherence to its electronic access control plan.

30. Moreover, to ensure that the security controls are implemented and that Section 3 accomplishes its intended purpose, we adopt Trade Associations' proposal and direct NERC to conduct a study to assess the implementation of Reliability Standard CIP–003–7.[40] The study should address what electronic access controls entities choose to implement and under what circumstances, and whether the electronic access controls adopted by responsible entities provide adequate security, as well as other relevant information found by NERC as a result of the study. NERC must file the study within eighteen months of the effective date of Reliability Standard CIP–003–7. We may revisit the need for modifications to Section 3 of Attachment 1 to Reliability Standard CIP–003–7 if warranted by the study determination, or the results of audits or other compliance procedures.

B. Mitigation of the Risk of Malicious Code Associated With Third-Party Transient Electronic Devices

1. NOPR

31. In the NOPR, the Commission proposed to direct NERC to develop modifications to proposed Section 5 of Attachment 1 to Reliability Standard CIP–003–7 to mitigate the risk of malicious code that could result from third-party transient electronic devices.[41] Specifically, the Commission raised a concern that Reliability Standard CIP–003–7 does not explicitly require mitigation of the introduction of malicious code from third-party managed transient electronic devices, even if the responsible entity determines that the third-party's policies and procedures are inadequate. The Commission noted NERC's statement in its petition that a responsible entity's failure to mitigate this risk ''may not constitute compliance.'' [42] The Commission stated that NERC's explanation suggests that, with regard to low impact BES Cyber Systems, the requirement lacks an obligation for a responsible entity to correct any deficiencies that are discovered during a review of third-party transient electronic device management practices.

32. The Commission expressed concern that Reliability Standard CIP–003–7 may contain a reliability gap where a responsible entity contracts with a third-party but fails to mitigate potential deficiencies discovered in the third-party's malicious code detection and prevention practices prior to a transient electronic device being connected to a low impact BES Cyber System. The Commission explained that the reliability gap would result from the fact that Reliability Standard CIP–003–7 does not contain: (1) A requirement for the responsible entity to mitigate any malicious code found during the third-party review(s); or (2) a requirement that the responsible entity take reasonable steps to mitigate the risks of third party malicious code on its systems, if an arrangement cannot be made for the

[33] Trade Associations Comments at 9.

[34] ELCON Comments at 4.

[35] Applebaum Comments at 5.

[36] *Id.* at 6.

[37] *Id.* at 7.

[38] *Id.*

[39] NERC Comments at 4.

[40] Trade Associations Comments at 9.

[41] *Id.* P 41.

[42] *Id.* P 39 (*citing* NERC Petition at 30).

third-party to do so. The Commission observed that without such obligations responsible entities could, without compliance consequences, simply accept the risk of deficient third-party transient electronic device management practices.[43]

33. Therefore, pursuant to section 215(d)(5) of the FPA, the Commission proposed to direct NERC to modify Reliability Standard CIP–003–7 to require responsible entities to implement controls to address the need to mitigate the risk of malicious code that could result from third-party transient electronic devices.

2. Comments

34. NERC states that it ''agrees with the Commission that, should a Responsible Entity find that a third party's processes and practices for protecting its transient electronic devices inadequate, the Responsible Entity must be required to take mitigating action prior to connecting third-party transient electronic devices to a low impact BES Cyber System.'' [44] According to NERC, ''failure to take mitigating action in this circumstance[ ] could result in a finding of noncompliance with Section 5 of Attachment 1.'' [45] NERC, therefore, asserts that ''the proposed directive may not be necessary and may be an inefficient use of NERC and industry resources.'' [46] NERC observes, however, that ''[m]odifying proposed Section 5 to explicitly include a mitigation requirement for third-part[y] devices may remove any doubt about compliance expectations.'' [47]

35. Trade Associations and ELCON do not support the proposed directive. Trade Associations contend that ''[a]lthough Section 5.2 [of Attachment 1 to CIP–003–7] does not explicitly require the responsible entity to mitigate the introduction of malicious code, risk mitigation is an explicit obligation under Section 5.'' [48] Trade Associations state that if a responsible entity's plan does not ''achieve the objective of mitigating the risk of the introduction of malicious code to low impact BES Cyber Systems through the use of Transient Cyber Assets . . . then the plan will not comply with Section 5.'' [49] Trade Associations maintains that the ''intent of the requirement is made clear in the Supplemental Material for Section 5 and 5.2, which both require the responsible entities to document how they will mitigate the introduction of malicious code.'' [50] Trade Associations note in a footnote that:

> Although the Supplemental Material does not create binding obligations on responsible entities, the text of the Supplemental Material in the Proposed Standard further clarifies and reinforces that the binding requirements found in CIP–003–7, Attachment 1, Section 5 include the obligation to take additional steps if a third-party's practices do not meet the security objective.[51]

Trade Associations conclude that the Commission should approve Reliability Standard CIP–003–7 without modification.

36. ELCON states that ''the requirement for a Low-Impact BES Cyber System owner or operator to actively mitigate deficiencies in third party's anti-virus security programs *does* exist in [Section 5 of Attachment 1 to Reliability Standard CIP–003–7].'' [52] ELCON states that the opening paragraph of Section 5, which requires responsible entities to implement one or more plans to ''achieve the objective of mitigating the risk of the introduction of malicious code to low impact BES Cyber Systems through the use of Transient Cyber Assets or Removable Media,'' establishes an obligation to mitigate any identified deficiencies. ELCON contends that the objective of mitigating the risk ''cannot be reached if the Responsible Entity allows a third party to connect an insufficiently evaluated [Transient Cyber Asset] to a Low-Impact BES Cyber System.'' [53] ELCON argues that the ''positioning of the requirement in the opening paragraph of Section 5 assures that mitigating actions must be taken to address deficiencies detected'' with responsible entity-owned Transient Cyber Assets, vendor-owned Transient Cyber Assets, and Removable Media.[54]

3. Commission Determination

37. We adopt the NOPR proposal and, pursuant to section 215(d)(5) of the FPA, direct that NERC develop modifications to Reliability Standard CIP–003–7 to address our concern and ensure that responsible entities implement controls to mitigate the risk of malicious code that could result from third-party transient electronic devices. NERC could satisfactorily address the identified concern, for example, by modifying Section 5 of Attachment 1 to CIP–003–7 to clarify that responsible entities must implement controls to mitigate the risk of malicious code that could result from the use of third-party transient electronic devices.

38. The directed modification will improve the security posture of responsible entities by clarifying compliance expectations. While commenters claim that the provision is sufficiently clear and ask the Commission not to adopt the proposal, all commenters agree that there is not an explicit requirement to mitigate the threat of malicious code that could result from third-party transient electronic devices. While Trade Associations state that Section 5.2 of Attachment 1 does not explicitly require the mitigation of malicious code, Trade Associations and ELCON suggest that Section 5 generally requires risk mitigation. While commenters agree that, at least implicitly, the mitigation of malicious code is an obligation, the lack of a clear requirement could lead to confusion in both the development of a compliance plan and in the implementation of a compliance plan. In addition, although NERC contends that the proposed directive may not be necessary, NERC agrees that modifying Reliability Standard CIP–003–7 to address the mitigation of malicious code explicitly could clarify compliance obligations.

39. Therefore, pursuant to FPA section 215(d)(5), we direct NERC to develop and submit modifications to Reliability Standard CIP–003–7 to include an explicit requirement that responsible entities implement controls to mitigate the risk of malicious code that could result from third-party transient electronic devices.

C. Implementation Plan and Effective Date

NERC Petition

40. In its petition, NERC requests an effective date for Reliability Standard CIP–003–7 and the revised definitions of Transient Cyber Asset and Removable Media on the first day of the first calendar quarter that is eighteen months after the effective date of the Commission's order approving the Reliability Standard. NERC explains that the implementation plan does not alter the previously-approved compliance dates for Reliability Standard CIP–003–6 other than the compliance date for Reliability Standard CIP–003–6, Requirement R2, Attachment 1, Sections 2 and 3, which

[43] *Id.* P 40 (*citing* Order No. 706, 122 FERC ¶ 61,040 at P 150 (rejecting the concept of acceptance of risk in the CIP Reliability Standards)).

[44] NERC Comments at 6 (citing NERC Petition at 29).

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] Trade Associations Comments at 10.

[49] *Id.* at 11.

[50] *Id.*

[51] *Id.*

[52] ELCON Comments at 4 (emphasis in original).

[53] *Id.* at 4–5.

[54] *Id.* at 5.

would be replaced with the effective date for Reliability Standard CIP–003–7. NERC also proposes that the retirement of Reliability Standard CIP–003–6 and the associated definitions become effective on the effective date of Reliability Standard CIP–003–7.[55]

41. The NOPR proposed to approve NERC's implementation plan and effective date for Reliability Standard CIP–003–7. The Commission did not receive any comments regarding this aspect of the NOPR. Accordingly, we approve NERC's proposed implementation plan and effective date.

III. Information Collection Statement

42. The FERC–725B information collection requirements contained in this Final Rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[56] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[57] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

43. The Commission bases its paperwork burden estimates on the changes in paperwork burden presented by the proposed revision to CIP Reliability Standard CIP–003–7 as compared to the current Commission-approved Reliability Standard CIP–003–6. The Commission has already addressed the burden of implementing Reliability Standard CIP–003–6.[58] As discussed above, the immediate rulemaking addresses three areas of modification to the CIP Reliability Standards: (1) Clarifying the obligations pertaining to electronic access control for low impact BES Cyber Systems; (2) adopting mandatory security controls for transient electronic devices (*e.g.,* thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from systems) used at low impact BES Cyber Systems; and (3) requiring responsible entities to have a policy for declaring and responding to CIP Exceptional Circumstances related to low impact BES Cyber Systems.

44. The NERC Compliance Registry, as of September 2017, identifies approximately 1,320 U.S. entities that are subject to mandatory compliance with Reliability Standards. Of this total, we estimate that 1,100 entities will face an increased paperwork burden under Reliability Standard CIP–003–7, estimating that a majority of these entities will have one or more low impact BES Cyber Systems. Based on these assumptions, we estimate the following reporting burden:

RM17–11–000 FINAL RULE

[Mandatory Reliability Standards for critical infrastructure protection Reliability Standards]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response [59] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Create low impact TCA assets plan (one-time). [60]	1,100	1	1,100	20 hrs.; $1,680	6,875 hrs.; $1,848,000	$1,680
Updates and reviews of low impact TCA assets (ongoing). [61]	1,100	[62] 300	330,000	[63] 1.5 hrs.; $126	495,000 hrs.; $41,580,000	37,800
Update/modify documentation to remove LERC and LEAP (one-time). [60]	1,100	1	1,100	20 hrs.; $1,680	6,875 hrs.; $1,848,000	1,680
Update paperwork for access control implementation in Section 2 [64] and Section 3 [65] (ongoing). [61]	1,100	1	1,100	20 hrs.; $1,680	6,875 hrs.; $1,848,000	1,680
Total (one-time) [60]			2,200		13,750 hrs.; $3,696,000	
Total (ongoing) [61]			331,100		501,875 hrs.; $43,428,000	

45. The following shows the annual cost burden for each group, based on the burden hours in the table above:

- *Year 1:* $3,696,000.
- *Years 2 and 3:* $43,428,000.
- The paperwork burden estimate includes costs associated with the initial development of a policy to address requirements relating to: (1) Clarifying the obligations pertaining to electronic access control for low impact BES Cyber Systems; (2) adopting mandatory security controls for transient electronic devices (*e.g.,* thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from systems) used at low

[55] *Id.,* Exhibit C (Implementation Plan).

[56] 44 U.S.C. 3507(d) (2012).

[57] 5 CFR 1320.11 (2017).

[58] *See* Order No. 822, 154 FERC ¶ 61,037 at PP 84–88.

[59] The loaded hourly wage figure (includes benefits) is based on the average of three occupational categories for 2016 found on the Bureau of Labor Statistics website (*http://www.bls.gov/oes/current/naics2_22.htm*):

Legal (Occupation Code: 23–0000): $143.68

Electrical Engineer (Occupation Code: 17–2071): $68.12

Office and Administrative Support (Occupation Code: 43–0000): $40.89

($143.68 + $68.12 + $40.89) ÷ 3 = $84.23. The figure is rounded to $84.00 for use in calculating wage figures in this NOPR.

[60] This one-time burden applies in Year One only.

[61] This ongoing burden applies in Year 2 and beyond.

[62] We estimate that each entity will perform 25 updates per month. 25 updates *12 months = 300 updates (*i.e.* responses) per year.

[63] The 1.5 hours of burden per response is comprised of three sub-categories:

Updates to managed low TCA assets: 15 minutes (0.25 hours) per response

Updates to unmanaged low TCA assets: 60 minutes (1 hour) per response

Reviews of low TCA applicable controls: 15 minutes (0.25 hours) per response.

[64] Physical Security Controls.

[65] Electronic Access Controls.

impact BES Cyber Systems; and (3) requiring responsible entities to have a policy for declaring and responding to CIP Exceptional Circumstances related to low impact BES Cyber Systems. Further, the estimate reflects the assumption that costs incurred in year 1 will pertain to policy development, while costs in years 2 and 3 will reflect the burden associated with maintaining logs and other records to demonstrate ongoing compliance.

46. *Title:* Mandatory Reliability Standards, Revised Critical Infrastructure Protection Reliability Standards.

Action: Revision to FERC–725B information collection.

OMB Control No.: 1902–0248.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This Final Rule approves the requested modifications to Reliability Standards pertaining to critical infrastructure protection. As discussed above, the Commission approves NERC's revised CIP Reliability Standard CIP–003–7 pursuant to section 215(d)(2) of the FPA because it improves upon the currently-effective suite of cyber security CIP Reliability Standards.

Internal Review: The Commission has reviewed the Reliability Standard and made a determination that its action is necessary to implement section 215 of the FPA.

47. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

48. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM17–11–000 and OMB Control Number 1902–0248.

IV. Regulatory Flexibility Act Analysis

49. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of Final Rules that will have significant economic impact on a substantial number of small entities.[66] The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[67] The SBA revised its size standard for electric utilities (effective January 22, 2014) to a standard based on the number of employees, including affiliates (from the prior standard based on megawatt hour sales).[68] Reliability Standard CIP–003–7 is expected to impose an additional burden on 1,100 entities [69] (reliability coordinators, generator operators, generator owners, interchange coordinators or authorities, transmission operators, balancing authorities, transmission owners, and certain distribution providers).

50. Of the 1,100 affected entities discussed above, we estimate that approximately 857 or 78 percent [70] of the affected entities are small. As discussed above, Reliability Standard CIP–003–7 enhances reliability by providing criteria against which NERC and the Commission can evaluate the sufficiency of an entity's electronic access controls for low impact BES Cyber systems, as well as improved security controls for transient electronic devices (*e.g.,* thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from systems). We estimate that each of the 857 small entities to whom the modifications to Reliability Standard CIP–003–7 applies will incur one-time costs of approximately $3,360 per entity to implement this standard, as well as the ongoing paperwork burden reflected in the Information Collection Statement (approximately $39,480 per year per entity). We do not consider the estimated costs for these 857 small entities to be a significant economic impact.

51. Based on the above analysis, we certify that the approved Reliability Standard will not have a significant economic impact on a substantial number of small entities.

V. Environmental Analysis

52. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[71] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[72] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

VI. Document Availability

53. 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*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

54. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

55. The Final Rule is effective June 25, 2018. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small

[66] 5 U.S.C. 601–12 (2012).

[67] 13 CFR 121.101 (2017).

[68] SBA Final Rule on ''Small Business Size Standards: Utilities,'' 78 FR 77343 (Dec. 23, 2013).

[69] Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this Final Rule, we are using a 500 employee threshold due to each affected entity falling within the role of Electric Bulk Power Transmission and Control (NAISC Code: 221121).

[70] 77.95 percent.

[71] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[72] 18 CFR 380.4(a)(2)(ii) (2017).

Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

By the Commission.

Issued: April 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–08610 Filed 4–24–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 285

[Docket ID: DOD–2017–OS–0028]

RIN 0790–AI51

DoD Freedom of Information Act (FOIA) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes one of the Department's two DoD-level regulations concerning the implementation of and assignment of responsibilities for the DoD Freedom of Information Act (FOIA) program. Any content required to be in an agency's FOIA rule from this part was incorporated into the Department's other DoD-level regulation concerning the DoD FOIA program, which was recently revised and for which a final rule published on February 6, 2018. Therefore, this part can now be removed from the CFR.

Additionally, the revised DoD-level FOIA rule now includes DoD component FOIA program information, which eliminated the requirement for component supplementary rules. Accordingly, all of the department's necessary FOIA public guidance has been incorporated into a single part.

DATES: This rule is effective on April 25, 2018.

FOR FURTHER INFORMATION CONTACT: James Hogan at 571–372–0462.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest because any public-facing guidance from this part was incorporated into another CFR part for which public comment has already been taken. Any internal guidance from this part will continue to be published in DoD Directive 5400.07 available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/540007p.pdf.*

With the finalization of the DoD-level FOIA rule at 32 CFR part 286, the Department is eliminating the need for this separate DoD-level FOIA rule and reducing costs to the public as explained in the preamble of the revised DoD-level FOIA rule at 32 CFR part 286 published at 83 FR 5196–5197.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 285

Freedom of information.

PART 285—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 285 is removed.

Dated: April 20, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–08663 Filed 4–24–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0325]

Drawbridge Operation Regulation; Upper Mississippi River, Rock Island, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois. The deviation is necessary to facilitate the Quad City Heart Walk. This deviation allows the bridge to remain in the closed-to-navigation position for approximately two and a half (2.5) hours on one day until the race is completed.

DATES: This deviation is effective from 8:30 a.m. through 11 a.m. on May 19, 2018.

ADDRESSES: The docket for this deviation, [USCG–2018–0325] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Army Rock Island Arsenal, owner and operator of the Rock Island Railroad and Highway Drawbridge, across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois, requested a temporary deviation from the current operating schedule to accommodate the Quad City Heart Walk. The bridge has a vertical clearance of 23.8 feet above normal pool in the closed-to-navigation position. This bridge is governed by 33 CFR 117.5.

This deviation allows the bridge to remain in the closed-to-navigation position from 8:30 a.m. through 11 a.m. on May 19, 2018. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies and there are no alternate routes for vessels transiting this section of the Upper Mississippi River. The Coast Guard will inform users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so the vessel operators can arrange their transits to minimize any impact caused by this temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 19, 2018.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2018–08625 Filed 4–24–18; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, International Mail Manual* (IMM®) dated March 5, 2018, and its incorporation by reference in the *Code of Federal Regulations.*

DATES: This final rule is effective on April 25, 2018. The incorporation by reference of the IMM is approved by the Director of the Federal Register as of April 25, 2018.

FOR FURTHER INFORMATION CONTACT: Lizbeth Dobbins, (202) 268–3789.

SUPPLEMENTARY INFORMATION: The *International Mail Manual* was issued on March 5, 2018, and was updated with *Postal Bulletin* revisions through February 2, 2018. It replaced all previous editions. The IMM continues to enable the Postal Service to fulfill its long-standing mission of providing affordable, universal mail service. It continues to: (1) Increase the user's ability to find information; (2) increase the user's confidence that they have found the information they need; and (3) reduce the need to consult multiple sources to locate necessary information. The provisions throughout this issue support the standards and mail preparation changes implemented since the version of January 22, 2017. The *International Mail Manual* is available to the public on the Postal Explorer® internet site at *http://pe.usps.com.*

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 20 as follows:

PART 20—INTERNATIONAL POSTAL SERVICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Amend § 20.1 by revising paragraph (a), and adding a new entry at the end of table 1 to paragraph (b), to read as follows:

§ 20.1 International Mail Manual; incorporation by reference.

(a) Section 552(a) of title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register. In conformity with that provision and 39 U.S.C. 410(b)(1), and as provided in this part, the Postal Service hereby incorporates by reference its *International Mail Manual* (IMM), issued March 5, 2018. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) * * *

TABLE 1 TO PARAGRAPH (b)

International mail manual	Date of issuance
* * *	* *
IMM	March 5, 2018.

■ 3. Revise § 20.2 to read as follows:

§ 20.2 Effective date of the International Mail Manual.

The provisions of the *International Mail Manual* issued March 5, 2018, are applicable with respect to the international mail services of the Postal Service.

Ruth Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2018–08687 Filed 4–24–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM®) dated March 5, 2018, and its incorporation by reference in the *Code of Federal Regulations.*

DATES: This final rule is effective on April 25, 2018.

The incorporation by reference of the DMM dated March 5, 2018, is approved by the Director of the Federal Register as of April 25, 2018.

FOR FURTHER INFORMATION CONTACT: Lizbeth Dobbins (202) 268–3789.

SUPPLEMENTARY INFORMATION: The most recent issue of the *Domestic Mail Manual* (DMM) is dated March 5, 2018. This issue of the DMM contains all Postal Service domestic mailing standards, and continues to: (1) Increase the user's ability to find information; (2) increase confidence that users have found all the information they need; and (3) reduce the need to consult multiple chapters of the Manual to locate necessary information. The issue dated March 5, 2018, sets forth specific changes, including new standards throughout the DMM to support the standards and mail preparation changes implemented since the version issued on January 22, 2017.

Changes to mailing standards will continue to be published through **Federal Register** notices and the *Postal Bulletin,* and will appear in the next online version available via the Postal Explorer® website at: *http://pe.usps.com.*

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 111 as follows:

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. In § 111.3 amend paragraph (f) by adding a new entry at the end of the table to read as follows:

§ 111.3 Amendment to the Mailing Standards of the United States Postal Service, Domestic Mail Manual.

* * * * *

(f) * * *

Transmittal letter for issue	Dated	**Federal Register** publication
* *	* *	* * *
DMM	March 5, 2018	[Insert **Federal Register** Citation for this Rule].

§ 111.4 [Amended]

■ 3. Amend § 111.4 by removing ''June 23, 2017'' and adding ''April 25, 2018'' in its place.

Ruth Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2018–08686 Filed 4–24–18; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R08–OAR–2017–0698; FRL–9976–58-Region 8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revised state plan (the ''plan'') submitted by the North Dakota Department of Health (the ''Department'') for the regulation of existing commercial and industrial solid waste incineration (CISWI) units within the jurisdiction of the State of North Dakota. The Department submitted the plan to the EPA for approval following the promulgation of federal new source performance standards (NSPS) and emission guidelines (EG) for CISWI units on March 21, 2011, and the subsequent, limited revisions to that final rule published on February 7, 2013, and June 23, 2016. This plan approval final rulemaking action is being taken in accordance with sections 111(d) and 129 of the Clean Air Act (CAA, or the ''Act'').

DATES: This final rule is effective on May 25, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2017–0698. 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: Gregory Lohrke, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6396, *lohrke.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

Sections 111 and 129 of the CAA outline the EPA's statutory authority for regulating new and existing solid waste incineration units. Section 111(b) directs the EPA Administrator (the ''Administrator'') to publish and periodically revise a list of source categories which significantly cause or contribute to air pollution. This subsection also directs the Administrator to establish federal standards of performance for new sources within these categories. Section 111(d) grants the EPA statutory authority to require states to submit to the agency implementation plans for establishing performance standards applicable to existing sources belonging to those categories established in section 111(b). Section 129 of the CAA specifically addresses solid waste combustion and requires that the EPA regulate new and existing waste incineration units pursuant to section 111 of the Act, including the requirement that a state in which existing designated facilities operate, submit for approval, a state plan for each category of regulated waste incineration units. Section 129(b)(3) requires the EPA to promulgate a federal plan for existing waste incineration units of any designated category located in any state which has not submitted an approvable 111(d)/129 state plan for said category of waste incineration units. Such federal plans remain in effect until the state in question submits a new or revised state plan and subsequently receives approval and promulgation of the plan under 40 CFR part 62.

State plan submittals under CAA sections 111(d) and 129 must be consistent with the relevant new or revised EG. Section 129(a)(1)(D) of the Act requires the EPA to develop and periodically revise operating standards for new and existing CISWI units. The original NSPS and EG for CISWI units were promulgated on December 1, 2000, at 40 CFR part 60, subparts CCCC and DDDD, respectively. Revisions to the CISWI NSPS and EG were subsequently promulgated by the EPA on March 21, 2011 (76 FR 15704), with final actions on reconsideration of the rule published on February 7, 2013 (78 FR 9112), and June 23, 2016 (81 FR 40956). State plan requirements specific to CISWI units, along with a model rule to ease adoption of the EG, are found in subpart DDDD, while more general state plan requirements are found in 40 CFR part 60, subpart B, and part 62, subpart A. The guidelines found in subpart DDDD require that states impose emission limits on designated facilities for those pollutants regulated under section 129, including: dioxins/furans, carbon monoxide, metals (cadmium, lead and mercury), hydrogen chloride, sulfur dioxide, oxides of nitrogen, opacity and particulate matter. The EG also requires that state plans include essential elements pursuant to section 129 requirements, including monitoring, operator training and facility permitting requirements.

On June 12, 2014, the Department submitted to the EPA a revised section 111(d)/129 state plan for existing CISWI units in the State of North Dakota. The current state plan received final approval and was promulgated on September 17, 2003 (68 FR 54374), at 40 CFR part 62, subpart JJ. Pursuant to each state's obligations following the revision of the CISWI rule, the State of North Dakota has revised their state rulemaking, and has submitted a revised state plan document as well as a demonstration of legal and enforcement authority to comply with CAA section 111/129 requirements.

II. Summary of North Dakota's Revised Section 111(d)/129 Plan for Existing CISWI Units

The EPA has completed a review of the revised North Dakota section 111(d)/129 state plan for existing CISWI units. The EPA has determined that the plan submittal meets the requirements found in 40 CFR part 60, subparts B and DDDD, and those of part 62, subpart A of that title. Accordingly, the EPA is approving the submitted revised plan as proposed. *See* 83 FR 3656 (January 26, 2018). The EPA's final approval action is limited to the revised North Dakota CISWI state plan document, submitted to the EPA on June 12, 2014, and the subpart DDDD ''Model Rule'' as it was incorporated by the State in the North Dakota Administrative Code (NDAC) at Chapter 33–15–12–02, subpart DDDD. A detailed summary of the submittal's compliance with the EG and other federal regulatory requirements is available in the technical support document (TSD) associated with this rulemaking action. The TSD is available in the docket for this rulemaking action and may be found at the *http://www.regulations.gov* website.

III. Response to Public Comments

This rule will be finalized as proposed without revisions. The EPA received five anonymous public comments on the proposed approval of the revised North Dakota CISWI state plan. After reviewing the comments, the EPA has determined that the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response. All public comments received on this rulemaking action are available for review by the public and may be viewed by following the instructions for access to docket materials as outlined in the **ADDRESSES** section of the preamble.

IV. Final Action

The EPA is approving North Dakota's amended section 111(d)/129 state plan for existing CISWI units. The North Dakota state plan requirements being approved today are at least as stringent as the requirements for existing CISWI units found in 40 CFR part 60, subpart DDDD. Therefore, the EPA is amending 40 CFR part 62, subpart JJ to reflect the approved revisions to North Dakota's previously approved, current CISWI state plan. The EPA is limiting the scope of the plan approval to the provisions of 40 CFR parts 60 and 62 for existing CISWI units, as found in the EG at 40 CFR part 60, subpart DDDD. The Administrator retains the authorities as listed under 40 CFR 60.2542 and 60.2030(c).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a section 111(d)/129 plan submission that complies with the provisions of the Act and applicable federal regulations. Thus, in reviewing section 111(d)/129 plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA and are not specifically disapproved. Accordingly, this action merely finalizes approval of 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);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

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

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. The 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 25, 2018.* 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* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Commercial and industrial solid waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 13, 2018.

Douglas Benevento,

Regional Administrator, Region 8.

For the reasons stated in the preamble, the EPA amends 40 CFR part 62 as set forth below:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart JJ—North Dakota

■ 2. Subpart JJ is amended by revising §§ 62.8630, 62.8631 and 62.8632 to read as follows:

§ 62.8630 Identification of plan.

North Dakota ''Amended Section 111(d)/129 Plan for Commercial and Industrial Solid Waste Incineration Units,'' and the associated State regulation as it is incorporated in the North Dakota Administrative Code under the State's Standards of Performance for New Stationary Sources, Chapter 33–15–12–02, subpart DDDD. The plan and associated regulation were submitted by the State on June 12, 2014.

§ 62.8631 Identification of sources.

The amended plan applies to each existing commercial and industrial solid waste incinerator unit and air curtain incinerator in the State of North Dakota that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after

June 4, 2010, but no later than August 7, 2013, as such incinerator units are defined in § 60.2875 of 40 CFR part 60. The plan applies only to units not exempt under the conditions of § 60.2555 of that part.

§ 62.8632 Effective date.

The federally enforceable effective date of the amended section 111(d)/129 plan for commercial and industrial solid waste incineration units is May 25, 2018.

[FR Doc. 2018–08621 Filed 4–24–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0661; FRL–9974–42]

Chlormequat Chloride; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of chlormequat chloride in or on multiple commodities which are identified and discussed later in this document. Taminco US LLC, a subsidiary of Eastman Chemical Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 25, 2018. Objections and requests for hearings must be received on or before June 25, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0661, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0661 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 25, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0661, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 7, 2017 (82 FR 9555) (FRL–9956–86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E8495) by Taminco US LLC, a subsidiary of Eastman Chemical Company, Two Windsor Plaza, Suite 400, 7540 Windsor Dr., Allentown, PA 18195. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the plant regulator chlormequat chloride in or on barley grain at 3 parts per million (ppm); bovine, sheep, goat-fat at 0.06 ppm; bovine, sheep, goat-kidney at 0.5 ppm; bovine, sheep, goat-liver at 0.15 ppm; bovine, sheep, goat-muscle at 0.2 ppm; cattle-milk at 0.5 ppm; eggs at 0.1 ppm; oat grain at 15 ppm; poultry-fat at 0.03 ppm; poultry-liver at 0.1 ppm; poultry-muscle at 0.04 ppm; swine-fat at 0.02 ppm; swine-kidney at 0.5 ppm; swine-liver at 0.15 ppm; swine-muscle at 0.2 ppm; and wheat grain at 4 ppm. That document referenced a summary of the petition prepared by Taminco US LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the levels at which some of the tolerances are being established as well as the commodities for which tolerances are being established. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Decreases in body weight and signs of neurotoxicity (*e.g.* ataxia, salivation, decreased body temperature) were consistently observed in the available oral repeat dosing studies in rats, mice, and dogs. Dogs appear to be the most sensitive species with clinical signs of toxicity (salivation, vomiting, and diarrhea) at 10 mg/kg/day in the chronic dog study. Decreased body weights and/or decreased food consumption were the only effects observed in the 90-day dietary rat study (190 mg/kg/day), and in the chronic toxicity and carcinogenicity studies in rats (125 mg/kg/day) and mice (363 mg/kg/day). The prenatal developmental rat study (gavage), however, produced clinical signs such as salivation and chromorhinorrhea, as well as decreased food consumption at 90 mg/kg/day. One or more of these clinical signs were observed in the dams typically within one hour after the single oral dose on gestational day six (GD6). In the prenatal developmental toxicity study in rabbits, there were no adverse effects noted up to the highest dose tested (12 mg/kg/day). In the rat two-generation reproduction study, reproductive and offspring effects occurred at doses higher than those causing parental toxicity.

There was no quantitative or qualitative susceptibility observed in the offspring compared to the adult animals in the rat and rabbit developmental studies and the rat two-generation reproduction study.

No systemic toxicity was observed in the 21-day dermal study in rabbits when tested up to the limit dose. Dermal irritation and histopathological lesions of the treated skin (acanthosis, subacute inflammation and edema) was observed at 345 mg/kg/day in female rabbits only. No immunotoxicity study was available; however, no evidence of immunotoxicity was observed in the chlormequat chloride database.

Carcinogenicity studies in mice and rats did not demonstrate potential signs of carcinogenicity and chlormequat chloride was non-mutagenic in four genotoxicity studies. Therefore, chlormequat chloride is classified as ''Not Likely to be a Carcinogen to Human'' based on the lack of evidence of carcinogenicity.

Specific information on the studies received and the nature of the adverse effects caused by chlormequat chloride as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''*Chlormequat Chloride. Human-Health Risk Assessment to Support Establishment of a Tolerance Without U.S. Registration on Wheat, Barley, and Oats*'' on pages 20–22 in docket ID number EPA–HQ–OPP–2016–0661.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for chlormequat chloride used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CHLORMEQUAT CHLORIDE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (all populations)	NOAEL = 100 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	Acute RfD = 1 mg/kg/day. aPAD = 1 mg/kg/day	Prenatal Developmental-Rat and acute neurotoxicity-rat. 1-Day oral LOAEL 180 mg/kg/day, based on overt toxicity signs (tremors, ataxia) within an hour after a single oral dose in dams (GD 6).
Chronic dietary (All populations)	NOAEL= 5 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.05 mg/kg/day. cPAD = 0.05 mg/kg/day	Chronic Toxicity—Dog. LOAEL (mg/kg/day): 10 mg/kg/day, based on salivation (1-week post-dosing, both sexes), vomiting (females), diarrhea (males), and decreased body weight gain (males).
Cancer (Oral, dermal, inhalation).	Classification: "Not Likely to be Carcinogenic to Humans" based on the lack of carcinogenic potential in the available studies.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to chlormequat chloride, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from chlormequat chloride in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for chlormequat chloride. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's NHANES/WWEIA. As to residue levels in food, EPA assumed tolerance-level residues and 100 PCT.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that chlormequat chloride does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for chlormequat chloride. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for chlormequat chloride in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of chlormequat chloride. A total toxic residue approach that assumes all uncharacterized extractable residues are of equal toxicity to chlormequat chloride was used to estimate exposure. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of chlormequat chloride for acute exposures are estimated to be 2574 parts per billion (ppb) for surface water and 24 ppb for ground water and for chronic exposures are estimated to be 91 ppb for surface water and 24 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 2574 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 91 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Chlormequat chloride is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found chlormequat chloride to share a common mechanism of toxicity with any other substances, and chlormequat chloride does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that chlormequat chloride does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different

margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no quantitative or qualitative susceptibility observed in the offspring compared to the adult animals in the rat and rabbit developmental studies and the rat two-generation reproduction study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for chlormequat chloride is complete.

ii. Although a subchronic neurotoxicity study is not available, evidence of neurotoxicity was observed in the acute neurotoxicity, developmental rat, two-generation reproduction and chronic dog studies. However, there is a low degree of concern for the potential neurotoxic effects of chlormequat chloride because clear no observed adverse effect levels (NOAELs) were identified for the neurotoxic effects, and the endpoints chosen for risk assessment are protective of any potential neurotoxicity.

iii. There is no evidence that chlormequat chloride results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to chlormequat chloride in drinking water. These assessments will not underestimate the exposure and risks posed by chlormequat chloride.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to chlormequat chloride will occupy 49% of the aPAD for all infants less than 1-year-old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to chlormequat chloride from food and water will utilize 86% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for chlormequat chloride.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Short- and intermediate-term adverse effects were identified; however, chlormequat chloride is not registered for any use patterns that would result in either short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for chlormequat chloride.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, chlormequat chloride is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to chlormequat chloride residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Plant: An adequate high performance liquid chromatography method with tandem mass spectrometry detection (HPLC/MS/MS), BASF Method No. 530/0, is available for the determination of residues of chlormequat chloride in/on plant commodities. The HPLC/MS/MS method determines residues as the chlormequat cation. The limit of quantitation (LOQ) is 0.05 ppm for plant commodities other than straw and 0.1 ppm for straw.

Animal: An adequate LC/MS/MS method, BASF Method No. 397/0 is available for the determination of residues of chlormequat chloride in livestock commodities for enforcement purposes. The LOQ is 0.01 ppm for meat, kidney, fat, milk, and egg, and 0.05 ppm for liver. A method description, method validation data, and an independent laboratory validation have been submitted to support the proposed enforcement method.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for chlormequat chloride in or on the commodities referenced in this document at the same levels as the tolerances established for chlormequat chloride in this rule.

C. Response to Comments

Two comments were received in response to the notice of filing. One noted that ''these are of a highly technical nature and should be written in a format that the layperson can understand.'' The other comment stated that ''there should not be ANY residue of chlormequat chloride on ANY commodity, ever.''

The first comment does not materially impact this establishment of these tolerances. Concerning the second comment, although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that these chlormequat chloride tolerances are safe. The commenter has provided no information supporting a contrary conclusion.

D. Revisions to Petitioned-For Tolerances

The petitioner requested tolerances for several animal commodities in addition to the barley, oat, and wheat grain tolerances. The Agency has determined that tolerances are only needed on meat and meat byproducts to cover the liver and kidney tissues. In addition, based on residue data and using the Organisation for Economic Cooperation and Development calculator, the Agency is establishing tolerances for the barley, oat, and wheat grain commodities at levels that harmonize with Codex MRLs. In addition, EPA is revising the commodity terminology used by the petitioner to be consistent with the commodity vocabulary EPA uses for establishing tolerances.

V. Conclusion

Therefore, tolerances are established for residues of chlormequat chloride, in or on barley, grain at 2.0 ppm; cattle, meat byproduct at 0.50 ppm; cattle, meat at 0.20 ppm; egg at 0.10 ppm; goat, meat byproduct at 0.50 ppm; goat, meat at 0.20 ppm; hog, meat byproduct at 0.50 ppm; hog, meat at 0.20 ppm; milk at 0.50 ppm; oat, grain at 10 ppm; poultry, meat byproduct at 0.10 ppm; poultry, meat at 0.04 ppm; sheep, meat byproduct at 0.50 ppm; sheep, meat at 0.20 ppm; and wheat, grain at 3.0 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 6, 2018,

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.698 to subpart C to read as follows:

§ 180.698 Chlormequat chloride; tolerances for residues.

(a) *General.* Tolerances are established for the residues of the plant regulator chlormequat chloride, including its metabolites and degradates in or on food commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only chlormequat chloride [(2-chloroethyl) trimethylammonium chloride in or on the following commodities:

Commodity	Parts per million
Barley, grain [1]	2.0
Cattle, meat byproduct [1]	0.50
Cattle, meat [1]	0.20
Egg [1]	0.10

Commodity	Parts per million
Goat, meat byproduct [1]	0.50
Goat, meat [1]	0.20
Hog, meat byproduct [1]	0.50
Hog, meat [1]	0.20
Milk [1]	0.50
Oat, grain [1]	10
Poultry, meat byproduct [1]	0.10
Poultry, meat [1]	0.04
Sheep, meat byproduct [1]	0.50
Sheep, meat [1]	0.20
Wheat, grain [1]	3.0

[1] There are no U.S. registrations for this commodity as of April 25, 2018.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2018–08695 Filed 4–24–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2018–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Dated: April 3, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD)# Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Leelanau County, Michigan (All Jurisdictions) Docket Nos.: FEMA–B–1210			
Lake Leelanau	Entire shoreline within community	+590	Township of Bingham, Township of Centerville, Township of Leland, Township of Solon, Township of Suttons Bay.
Lake Michigan	Entire shoreline within community	+584	Township of Bingham, Township of Centerville, Township of Cleveland, Township of Empire, Township of Glen Arbor, Township of Leelanau, Township of Leland, Township of Suttons Bay, Village of Empire.
Lake Michigan	Entire shoreline within community	+584	Village of Suttons Bay.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Township of Bingham
Maps are available for inspection at 7171 South Center Highway, Traverse City, MI 49684.

Township of Centerville
Maps are available for inspection at 5419 South French Road, Cedar, MI 49621.

Township of Cleveland
Maps are available for inspection at 955 West Harbor Highway, Cedar, MI 49621.

Township of Empire
Maps are available for inspection at 10098 West Front Street, Empire, MI 49630.

Township of Glen Arbor
Maps are available for inspection at 6394 West Western Avenue, Glen Arbor, MI 49636.

Township of Leelanau
Maps are available for inspection at 119 East Nagonaba Street, Northport, MI 49670.

Township of Leland
Maps are available for inspection at 201 East Oak Street, Leland, MI 49654.

Township of Solon
Maps are available for inspection at 2305 19 Mile Road Northeast, Cedar Springs, MI 49319.

Township of Suttons Bay
Maps are available for inspection at 321 Saint Joseph Street, Suite C, Suttons Bay, MI 49682.

Village of Empire
Maps are available for inspection at 11518 South LaCore Street, Empire, MI 49630.

Village of Suttons Bay
Maps are available for inspection at 420 Front Street, Suttons Bay, MI 49682.

[FR Doc. 2018–08592 Filed 4–24–18; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 43, and 63

[IB Docket Nos. 17–56; 16–131, FCC 17–136]

Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations

AGENCY: Federal Communications Commission.

ACTION: Announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved the information collection requirements associated with the Commission's Report and Order, Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations, FCC 17–136. This document is consistent with the Report

and Order, which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of changes of the rules.

DATES: Sections 0.457(d)(1)(xi), 1.767(g)(13) through (16), 43.62, 43.82, 63.10(c)(2), 63.21(d), and 63.22(e), (h), and (i), published at 82 FR 55323, November 21, 2017, are effective on April 25, 2018.

FOR FURTHER INFORMATION CONTACT: Cathy Williams by email at *Cathy.Williams@fcc.gov* and telephone at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that on March 28, 2018 and April 3, 2018, OMB approved the information collection requirements contained in the Commission's Report and Order, FCC 17–136, published at 82 FR 55323. The OMB Control Numbers are 3060–0686 and 3060–1156. The Commission publishes this document as an announcement of the effective date of those information collection requirements.

Synopsis: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on March 28, 2018 and April 3, 2018, for the information collection requirements contained in 47 CFR 43.62, 43.82 and 63.22(h), as amended, in the Commission's Report and Order, FCC 17–136. (The effective date for the amendments to 47 CFR 0.457(d)(1)(xi), 1.767(g)(13) through (16), 63.10(c)(2), 63.21(d), 63.22(e) and (i), are the same as the amendments to 47 CFR 43.62, 43.82 and 63.22(h), because those amendments are directly related to each other.) Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Numbers are 3060–0686 and 3060–1156.

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

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

OMB Control Number: 3060–0686.

OMB Approval Date: March 28, 2018.

OMB Expiration Date: March 31, 2021.

Title: International Section 214 Process and Tariff Requirements—47 CFR 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.22, 63.24, 63.25 and 1.1311.

Form No.: International Section 214—New Authorization; International Section 214 Authorization—Transfer of Control/Assignment; International Section 214—Special Temporary Authority and International Section 214—Foreign Carrier Affiliation Notification.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 528 respondents; 792 responses.

Estimated Time per Response: 1–20 hours.

Frequency of Response: On occasion reporting requirement, Quarterly reporting requirement, Recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission's statutory authority for this information collection under sections 1, 4(i), 4(j), 10, 11, 201–205, 208, 211, 214, 218, 219, 220, 303(r), 309, 310, 403 and 571 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(j), 160, 161, 201–205, 208, 211, 214, 218, 219, 220, 303(r), 309, 310, 403 and 571.

Total Annual Burden: 3,152 hours.

Annual Cost Burden: $752,400.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission has not granted assurances of confidentiality to those parties submitting the information, except for the list or routes required under 47 CFR 63.22(h) which the Commission will treat as not routinely available for public inspection. In all the other cases where a respondent believes information requires confidentiality, the respondent can request confidential treatment under Section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: The information will be used by the Commission staff in carrying out its duties under the Communications Act. The information collections pertaining to part 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service under section 214 of the Communications Act, 47 U.S.C. 214, including applicants that are, or are affiliated with, foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are also necessary to maintain effective oversight of U.S. international carriers generally.

The frequency of filing applications pursuant to Sections 214 will be determined largely by the applicant seeking to provide U.S. international common carrier service under section 214 of the Communications Act, 47 U.S.C. 214. Carriers will also determine largely the frequency of filing under the other rules included in this collection, with the exception of the quarterly reports required of certain carriers under 47 CFR 63.10(c) and the list of routes for which a facilities-based international service provider must make a one-time filing and update as necessary under 47 CFR 63.22(h). If the collections are not conducted or are conducted less frequently, applicants will not obtain the authorizations necessary to provide telecommunications services, and the Commission will be unable to carry out its mandate under the Communications Act of 1934. In addition, without the information collections, the United States would jeopardize its ability to fulfill the U.S. obligations as negotiated under the World Telecommunications Organization (WTO) Basic Telecom Agreement because these collections are imperative to detecting and deterring anticompetitive conduct. They are also necessary to preserve the Executive Branch agencies' and the Commission's ability to review foreign investments for national security, law enforcement, foreign policy, and trade concerns. Regarding 47 CFR 63.11, carriers determine largely when to notify the Commission of planned investments by or in foreign carriers. If the information is not collected by the Commission, we will not be able to prevent carriers that control bottleneck facilities in foreign countries from using those bottlenecks to discriminate against unaffiliated U.S. carriers.

OMB Control No.: 3060–1156.

OMB Approval Date: April 3, 2018.

OMB Expiration Date: April 30, 2021.

Title: 47 CFR 43.82, Annual International Circuit Capacity Reports.

Form No.: N/A.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for profit.

Number of Respondents: 65 respondents; 185 responses.

Estimated Time per Response: 1–14 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The

Commission's statutory authority for this information collection under Sections 1, 4(i), 4(j), 11, 201–205, 214, 219–220, 303(r), 309, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 214, 219–220, 303(r), 309, and 403, the Cable Landing License Act of 1921, 47 U.S.C. 34–39, and 3 U.S.C. 301.

Total Annual Burden: 1,085 hours.

Annual Cost Burden: $2,400.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information. The Commission, however, will allow filing entities to seek confidential treatment of their data.

Needs and Uses: The uses to which the Commission puts the information from the annual circuit capacity report, and the Registration Form are as follows:

(a) Annual Circuit Capacity Reports [Section 43.82(a)]

The circuit capacity reports are comprised of two parts. First, licensees of a submarine cable extending between the United States and a foreign point as of December 31 of the reporting period report the available capacity and planned capacity of the cable—the cable operators report. Second, each cable landing licensee and common carrier that holds capacity on the U.S. end of a submarine cable extending between the United States and a foreign point as of December 31 of the reporting period (''capacity holders'') reports its available capacity on the U.S. end of every submarine cable between the United States and any foreign point on which it holds capacity as of that date—the capacity holders report. A holding of capacity is an interest in the U.S. end of an international submarine cable through cable ownership, an indefeasible right of use (IRU), or an inter-carrier lease (ICL).

The Commission uses the circuit capacity data for such purposes as analyzing international transport markets in merger reviews. More importantly, these data are essential for our national security and public safety responsibilities in regulating communications, an important linchpin of the Commission's statutory authority. Submarine cables are critical infrastructure and the circuit capacity data are important for the Commission's contributions to the national security and defense of the United States. The Commission uses the data, for example, to have a complete understanding of the ownership and use of submarine cable capacity and to assist in the protection, restoration, and resiliency of the infrastructure during national security or public safety emergencies, such as hurricanes. The Department of Homeland Security (DHS) filed comments stating that it also finds this information to be critical to its national and homeland security functions, and states that this information, when combined with other data sources, is used to protect and preserve national security and for its emergency response purposes.

There are no alternative reliable third party commercial sources for the reported data. Although some sources collect general capacity information from cable owners, neither the FCC nor DHS has found any alternative sources for capacity holder data. Commercial source data may include capacity information, but the data are not verified by company officials and do not include capacity holder data. Although the Commission obtains the ownership and location of individual cables through the licensing process, distribution of a cable's capacity among providers is not required to be reported under our current submarine cable licensing rules and is provided only annually through the Circuit Capacity Reports. Further, the Commission's licensing rules do not require an applicant to include the entities that have acquired capacity on the cable through an IRU or ICL.

(b) Registration Form [Section 43.82(b)]

The Registration Form provides basic information about the filing and about the entity itself—such as address, phone number, email address, and the international Section 214 authorizations and cable landing licenses held by the filer. This information will assist in keeping track of who holds international circuit capacity and how to contact them. The Registration Form also includes a certification by the filing entity to certify the accuracy and completeness of its report. The Registration Form provides the means by which the filing entity may request confidential treatment of the data filed in the report.

(c) Filing Manual [Section 43.82(c)]

The Filing Manual sets forth instructions on how to file the reports.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–08570 Filed 4–24–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[WC Docket No. 08–171, FCC 08–249]

Implementation of the NET 911 Improvement ACT of 2008: Location Information From Owners and Controllers of 911 and E911 Capabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection requirement associated with the Implementation of the NET 911 Improvement Act of 2008: Location Information from Owners and Controllers of 911 and E911 Capabilities Report and Order (*NET 911 Improvement Act of 2008 Report and Order*), FCC 08–249. This document is consistent with the *NET 911 Improvement Act of 2008 Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the rule.

DATES: 47 CFR 9.7(a), published at 74 FR 31860, July 6, 2009, is effective April 25, 2018.

FOR FURTHER INFORMATION CONTACT: Brenda Boykin, Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418–2062 or *brenda.boykin@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements, contact Nicole Ongele at (202) 418–2991 or *nicole.ongele@fcc.gov*.

SUPPLEMENTARY INFORMATION: A summary of the *NET 911 Improvement Act of 2008 Report and Order* was published in the **Federal Register** on July 6, 2009, 74 FR 31860. The summary stated that with the exception of Section 9.7(a), which required OMB approval, the rules adopted in the Report and Order would become effective on October 5, 2009. With regard to Section 9.7(a), the Commission stated that it will publish a document in the **Federal Register** announcing the effective date of the rule. The information collection requirement in Section 9.7(a) was approved by OMB under OMB Control No. 3060–1131. Most recently, OMB renewed its approval of the information collection on June 17, 2016. With publication of the instant document in the **Federal Register**, the rule at 47 CFR 9.7(a) is now effective. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control No. 3060–1131 in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on December 3, 2009, for the information collection requirement contained in the Commission's rule at 47 CFR 9.7(a).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1131.

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

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

OMB Control Number: 3060–1131.

OMB Approval Date: December 3, 2009.

OMB Expiration Date: December 31, 2012.

Title: Implementation of the NET 911 Improvement ACT of 2008: Location Information from Owners and Controllers of 911 and E911 Capabilities.

Form Number: N/A.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 60 respondents; 60 responses.

Estimated Time per Response: 0.0833 hours (5 minutes).

Frequency of Response: On occasion reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act), Public Law 110–283, Stat. 2620 (2008) (to be codified at 47 CFR Section 615a–1), and section 222 of the Communications Act of 1934, as amended.

Total Annual Burden: 5 hours.

Total Annual Cost: No Cost.

Nature and Extent of Confidentiality: To implement section 222 of the Communications Act of 1934, as amended, the Commission's rules impose a general duty on carriers to protect the privacy of customer proprietary network information and carrier proprietary information from unauthorized disclosure. See 47 CFR 64.2001 *et seq.* In the Order, the Commission additionally has clarified that the Commission's rules contemplate that incumbent LECs and other owners or controllers of 911 or E911 infrastructure will acquire information regarding interconnected VoIP providers and their customers for use in the provision of emergency services. The Commission fully expects that these entities will use the information only for the provision of E911 services. No entity may use customer information obtained as a result of the provision of 911 or E911 services for marketing purposes.

Privacy Act: No impact(s).

Needs and Uses: On October 21, 2008, the Commission released a Report and Order, FCC 08–249, WC Docket No. 08–171, that implements certain provisions of the NET 911 Act, New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 122 Stat. 2620 (2008). The Report and Order requires an owner or controller of a capability that can be used for 911 or E911 service to make that capability available to a requesting interconnected Voice over internet Protocol (VoIP) provider under certain circumstances. In particular, an owner or controller of such capability must make it available to a requesting interconnected VoIP provider if that owner or controller either offers that capability to any commercial mobile radio service (CMRS) provider or if that capability is necessary to enable the interconnected VoIP provider to provide 911 or E911 service in compliance with the Commission's rules. 47 CFR 9.7(a). This requirement, in turn, involves the collection and disclosure to emergency services personnel of customers' location information.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–08568 Filed 4–24–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90, WT Docket No. 10–208; FCC 18–19]

Connect America Fund; Universal Service Reform—Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) resolves the remaining petitions for reconsideration regarding the requirements for Mobility Fund Phase II (MF–II). The Commission revises the language of its rule for collocation, and reduces the value of the letter of credit that a Mobility Fund Phase II support recipient is required to hold after the Universal Service Administration Company (USAC), together with the Commission, has verified that the MF–II support recipient has achieved significant progress toward completing their buildout and service provision requirements. The Commission affirms its Mobility Fund Phase II rules in all other respects.

DATES: Effective May 25, 2018, except for the amendment to § 54.1016 (a)(1)(ii), which contains information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auction and Spectrum Access Division, Audra Hale-Maddox, at (202) 418–0660. For further information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918 or via the internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration (*MF–II Second Order on Reconsideration*), WC Docket No. 10–90, WT Docket No. 10–208; FCC 18–19, adopted on February 22, 2018 and released on February 27, 2018. The complete text of this document is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's website at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0804/FCC-17-102A1.pdf.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules adopted in this document. The Supplemental FRFA is set forth in an appendix to the *MF–II Second Order on Reconsideration,* and is summarized below. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *MF–II Second Order on Reconsideration,* including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Paperwork Reduction Act

The *MF–II Second Order on Reconsideration* contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new and modified information collection requirements contained in this proceeding.

Congressional Review Act

The Commission will send a copy of this *MF–II Second Order on Reconsideration* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. 801(a)(1)(A).

I. Introduction

1. In the *MF–II Second Order on Reconsideration,* the Commission addresses the remaining issues raised in petitions for reconsideration filed in response to the *MF–II Report & Order,* 82 FR 15422, March 28, 2017. Resolving these petitions is a significant step toward holding an auction in which service providers will compete for Mobility Fund Phase II (MF–II) support to offer 4G Long Term Evolution (LTE) service in primarily rural areas that lack qualified unsubsidized 4G LTE service.

II. Background

2. In February 2017, the Commission adopted rules to move forward expeditiously to an MF–II auction. The Commission established a budget of $4.53 billion to be disbursed monthly over a term of ten years to provide ongoing support for the provision of service in areas that lack adequate mobile voice and broadband coverage absent subsidies. The Commission further decided that geographic areas lacking unsubsidized, qualified 4G LTE service would be deemed ''eligible areas'' for MF–II support, and that it would use a competitive bidding process (specifically, a reverse auction) to distribute funding to providers to serve those areas. The Commission also decided that, prior to an MF–II auction, it would compile a list of areas that were presumptively eligible for MF–II support and it would provide a limited timeframe for challenges to areas that were found to be ineligible for support during the pre-auction process.

3. Seven petitions were filed seeking reconsideration of the *MF–II Report & Order,* and petitions for reconsideration of issues related to the MF–II challenge process were addressed in the *MF–II Challenge Process Order on Reconsideration and Second Report and Order* (*MF–II Challenge Process Order* or *MF–II Order on Reconsideration*), adopted on August 3, 2017, released on August 4, 2017, 82 FR 42473, September 8, 2017. The Commission deferred addressing the petitions, or portions thereof, requesting reconsideration of aspects of the *MF–II Report & Order* outside of the challenge process.

III. Second Order on Reconsideration

4. We now resolve the remaining issues raised by petitioners. We grant the requests of petitioners, insofar as we amend the rules to apply the collocation requirement for MF–II recipients to ''all newly constructed'' towers. We affirm our decision to require that MF–II recipients obtain a letter of credit (LOC), but grant the petitions insofar as we modify the LOC requirements to align our MF–II rules with recent changes made in the Connect America Fund Phase II (CAF–II) proceeding. These modifications should provide MF–II support recipients with some additional relief from the costs of maintaining an LOC and alleviate some of the concerns raised by petitioners and commenters. Additionally, for the reasons explained below, we deny the petitions seeking reconsideration of the Commission's decisions to: (i) Establish an MF–II budget of $4.53 billion over a term of ten years; (ii) disburse annual support on a monthly basis; (iii) adopt performance metrics for supported networks requiring a median data speed of 10/1 megabits per second (Mbps) and data latency of 100 milliseconds (ms) round trip; (iv) not adopt bidding credits for the auction; and (v) not prevent MF–II support recipients from entering into equipment exclusivity arrangements. We also decline to clarify or limit the role of the Universal Service Administrative Company (USAC) in testing winning bidders' compliance with MF–II performance metrics, public interest obligations, or other program requirements.

A. Tower Collocation

5. First, we clarify that the MF–II collocation rule, 47 CFR 54.1015(f), should require a recipient of MF–II funds to allow for reasonable collocation by other providers of services that meet the technological requirements of MF–II on all towers that the MF–II recipient owns or manages that it ''newly constructed'' to satisfy MF–II performance obligations in the areas for which it receives support. The Commission stated its intent to adopt the same collocation and voice and data roaming obligations for MF–II winning bidders as it had adopted for MF–I. However, the rule in MF–I required reasonable collocation by other providers of services that met the technological requirements of MF–I on ''all newly constructed towers that the recipient owns or manages in the area for which it receives support,'' while the language of the rule adopted in the *MF–II Report & Order* applies to ''all towers.'' We make this clarification in order to promote our goal of ensuring that publicly funded investments can be leveraged by other service providers. Accordingly, we amend the language of section 54.1015(f) to provide that the MF–II collocation requirement applies to ''all newly constructed'' towers that the MF–II recipient owns or manages in the areas for which it receives support.

B. Letters of Credit

6. We affirm the Commission's decision to require an MF–II recipient to obtain an LOC before it begins receiving support disbursements, but we modify the Commission's rules to provide some additional relief from the burden

associated with maintaining an LOC. Specifically, we will permit an MF–II recipient to reduce the value of an LOC to 60 percent of the total support already disbursed plus the amount of support that will be disbursed in the coming year once it has been verified that the MF–II recipient has met the 80 percent service milestone for the area(s) covered by the LOC. This modification should alleviate some of the concerns raised by petitioners and commenters and aligns our MF–II requirements with recent changes made to the CAF–II requirements. We also clarify, consistent with the Commission's stated intent in the *MF–II Report & Order,* that an MF–II recipient may further reduce its costs by canceling the LOC as soon as USAC, in coordination with the Commission, verifies that the recipient has met the final performance milestone (*i.e.,* we do not require that the LOC be maintained after its purpose is no longer served). We deny the petitions for reconsideration to the extent they seek other changes to our LOC requirements.

7. In the *MF–II Report & Order,* the Commission adopted an LOC requirement for all winning bidders. Specifically, before a winning bidder can be authorized to receive MF–II support, it must obtain an irrevocable stand-by LOC(s) from an eligible bank that covers the first year of support for all of the winning bids in the state. Before a recipient can receive its MF–II support for the coming year, the recipient must modify, renew, or obtain a new LOC to ensure that it is valued at a minimum at the total amount of support that has already been disbursed plus the amount of support that is going to be provided in the next year. Once the MF–II recipient has met its 60 percent service milestone, its LOC may be valued at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. Once the MF–II recipient has met its 80 percent service milestone, it may reduce the value of the LOC to 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. The LOC must remain open until USAC, in coordination with the Commission, has verified that the MF–II recipient has met its final benchmark: Deployment to a minimum of 85 percent of the required coverage area by state and at least 75 percent by each census block group or census tract in a state. If an MF–II recipient fails to meet a required service milestone after it begins receiving support, then fails to cure within the requisite time period, and is unable to repay the support that USAC seeks to recover, either the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter evidencing the failure and declaring a default. USAC will then draw on the LOC(s) to recover 100% of the support that has been disbursed to the ETC for that state. The *MF–II Report & Order* provides that if service ceases after the final deployment milestone has been reached and the LOC has been terminated, the Commission will cease payment of ongoing support until service resumes. At the time these MF–II rules were adopted, they were consistent with the requirements for CAF–II recipients.

8. We are convinced by claims of petitioners and commenters that the Commission's existing MF–II LOC requirements may warrant additional relief on reconsideration. We continue to conclude that MF–II bidders will take into account the costs associated with program requirements, including an LOC, as they formulate their bids, and that many bidders can do so without the consequences alleged by some petitioners and commenters. We nonetheless recognize that the costs associated with maintaining an LOC may pose a greater financial burden on those bidders that lack the resources of larger, more established companies. Such bidders may have to factor relatively higher LOC-related costs into their bids. One purpose of using competitive bidding to select support recipients is that it promotes providing support to those parties that can accomplish the MF–II program goals in the most cost-effective manner. However, we recognize that the exact cost of any requirement, including obtaining and maintaining an LOC, will affect each prospective bidder in the MF–II auction differently. A bidder's LOC-related costs will likely vary based on the amount of support that it is authorized to receive, and the impact of those costs on the bidder will also vary based on its size and creditworthiness. Thus, we cannot reasonably predict the costs of our LOC requirements for each potential winning bidder and weigh them relative to the benefit to the public of protecting the funds from default. The fees associated with maintaining an LOC can range by several percentage points and, when applied to the sizable amounts of support that may be awarded to bidders here, the costs may become substantial over time, particularly for winning bidders that are small businesses and new entrants.

9. Accordingly, consistent with the rule modifications we recently adopted in the *Connect America Fund Phase II Auction Order on Reconsideration,* WC Docket No. 10–90 *et al.,* FCC 18–5, we modify our LOC requirements to permit an MF–II recipient to reduce the value of an LOC to 60 percent of the total support already disbursed plus the amount of support that will be disbursed in the coming year once it has been verified that the MF–II recipient has met the 80 percent service milestone for the area(s) covered by the LOC. In the *MF–II Report & Order,* the Commission indicated that it would require MF–II recipients to demonstrate compliance with our coverage requirements by submitting data consistent with the evidence we determined to be necessary in the MF–II challenge process. Once USAC is able to verify that a recipient's 80 percent service milestone has been met, the recipient will be able to reduce the value of its LOC.

10. By increasing the amount by which an LOC may be reduced after verification that an MF–II recipient has met a significant portion of its performance obligations, we can provide MF–II recipients with a measure of relief from the costs of maintaining an LOC without posing undue risks to the Universal Service Fund. As the Commission stated in the *MF–II Report & Order,* we expect that the risk of default will decrease as an MF–II recipient meets its deployment milestones. We therefore conclude that the benefits of providing additional relief from some of the costs associated with maintaining an LOC outweigh the risk that we will not be able to recover an additional portion of the support if the recipient is unable to repay the Commission in the event of a default. Moreover, as we discuss below, an MF–II recipient that is affected by high LOC-related costs may also choose to build out its network more quickly so that its LOC can be terminated sooner. We therefore find it reasonable to grant the petitions for reconsideration, in part, to reduce the burden associated with maintaining an LOC until the final performance benchmark has been met and verified by USAC.

11. We are not, however, persuaded by arguments that we should eliminate the requirement for an MF–II recipient to obtain an LOC because they are unnecessary to protect the public interest. Our obligation to safeguard the disbursement of universal service support justifies requiring an LOC and outweighs the limited burden incurred by winning bidders. For this same reason, we are not convinced by the contentions that an MF–II LOC requirement is unnecessary for rural telephone companies based on their history of providing service and using

universal service support without default. Our responsibility to protect universal service funds does not diminish based on a support recipient's past performance, the nature of its business, or its size. We are equally unpersuaded by a petitioner's suggestion that because the Commission has not yet had to draw on any LOC in MF–I, it is unnecessary for us to require one for MF–II. To the contrary, we find that premise supports our conclusion that an LOC requirement deters defaults and fulfills its intended purpose of protecting the public funds.

12. Similarly, we disagree with the assertion that the Commission should eliminate the LOC requirement and instead ensure the security of program funds by imposing a monetary forfeiture on the defaulting MF–II recipient or using the threat of revocation or non-renewal of its licenses as leverage to demand repayment of the funds. The exercise of our forfeiture, revocation, and licensing authority requires additional procedures and standards that are not well suited to the prompt action required in enforcing our milestones because, among other reasons, such authority does not effectively address the regulatory purpose behind our adoption of the LOC—making the Universal Service Fund whole if a support recipient failed to fulfill its MF–II performance requirements. Without an LOC, the Commission has no security to protect itself against the risks of default. Accordingly, we affirm the Commission's prior conclusion that the LOC requirement is necessary to ensure the recovery of a significant amount of MF–II support should such a need arise, and we find that, on balance, our commitment to fiscal responsibility supports the limited burden faced by support recipients.

13. We also decline to grant requests in the petitions for reconsideration to take further steps to modify our LOC requirements. In the *MF–II Report & Order,* the Commission already took a number of steps to help lessen LOC costs, including expanding the number and types of banks eligible to issue LOCs so that winning bidders can obtain LOCs from banks with which they have existing relationships. Although some entities may still find that participating in the MF–II auction is cost-prohibitive or that they are less likely to place winning bids, we are not convinced that we should jeopardize our ability to recover a significant amount of support if such entities were to participate and later become unable to meet the MF–II performance milestone obligations and to repay the Commission for their compliance gap. While we have not implemented any of the specific proposals of these petitioners, we conclude that, on balance, the relief provided above should adequately address the nature of the concerns they raise. The approaches suggested by petitioners would add greater complexity and testing expenses for support recipients and would impose increased verification burdens on USAC without the corresponding benefit of significantly speeding the completion of MF–II performance requirements. Finally, we decline to adopt the request by a mobile provider to accelerate the service milestones, eliminate the LOC requirement, and pay a recipient only after compliance with a milestone has been verified. Such an approach, like the other suggestions we reject above, would require us to disburse universal service funds without being able to recoup support from a recipient if the recipient subsequently defaulted on its remaining performance requirements.

14. In reviewing arguments regarding the costs of maintaining an LOC, we also emphasize that the Commission's LOC requirements already include an incentive for a recipient to meet its final performance milestone as soon as possible, because once it has been verified that a support recipient has met its final performance milestone, the recipient can further reduce costs by no longer maintaining that LOC. In this regard, we note that the Commission provided in the *MF–II Report & Order* that the LOC must remain in place until it has been verified that an MF–II participant has met its minimum coverage and service requirements at the end of the six-year milestone. We interpret this language to allow the MF–II recipient to further reduce its costs by no longer maintaining the LOC as soon as USAC, in coordination with the Commission, verifies that the recipient has met the final performance milestone (*i.e.,* we do not require that the LOC be maintained after its purpose is no longer served). We anticipate that this clarification, together with the rule modification we adopt above, should provide MF–II recipients with additional relief from the burden of maintaining an LOC.

C. Mobility Fund Phase II Budget

15. We affirm the MF–II total budget amount of $4.53 billion that the Commission adopted in the *MF–II Report & Order,* and we deny the petition seeking to increase it. Petitioners addressing the budget contend that this amount is insufficient to achieve ubiquitous availability of mobile services and reasonable comparability of service between urban and rural areas. They also argue that the budget was not supported by actual carrier cost data related to coverage needs. The Commission established the amount of the MF–II budget by starting with the $483 million of current annual legacy high-cost support received by wireless providers, excluding Alaska. It multiplied that amount over the ten-year term of MF–II and then subtracted $300 million, representing the estimated amount needed for the phase-down of competitive eligible telecommunications carrier (CETC) support in areas already fully covered with unsubsidized 4G LTE, for a total budget of $4.53 billion over ten years. The Commission reasoned that basing its budget upon this amount best balanced its goal of preserving and advancing mobile broadband service with its obligation to be fiscally responsible with limited universal service funds.

16. We are not persuaded that we should reconsider that decision and base the MF–II budget on carriers' projected costs for deployment as some parties advocate. Phase II of the Mobility Fund is a considerable departure from the prior method of distributing CETC funding, and we anticipate that a $4.53 billion budget, distributed in a more efficient and targeted manner, will lead to significant expansion and improvement in the provision of mobile voice and broadband services to areas that would otherwise be underserved or unserved without support. After the Commission has the opportunity to evaluate the impact of the MF–II auction, it can determine whether additional funding (and if so, how much) is needed. Furthermore, while we believe that the total budget of $4.53 billion will be sufficient to address a more targeted set of eligible areas, we reiterate that MF–II is only one component of our broader universal service reform efforts, and we need not wait until the end of the MF–II support term to determine if additional funding is necessary.

17. Moreover, the proposal to base the MF–II budget on carriers' projected costs for providing service to all census blocks throughout the U.S. unserved by 4G LTE fails to address the Commission's long-standing commitment to fiscal responsibility and would be inconsistent with extensive 4G LTE deployment through private investment in recent years. As a responsible steward of the Universal Service Fund, the Commission adopted a budget that reflected its priorities in allocating finite funds to areas of

greatest need to maintain and expand critical mobile voice and broadband services. To increase the size of the MF–II budget significantly above the amount of legacy support currently provided to mobile CETCs would improperly ignore the burden on those paying for the fund, thereby abandoning one of the main concerns the Commission sought to address through universal service reform. Indeed, if the Commission were to adopt this proposal, consumers and businesses would shoulder the burden of potentially increasing the MF–II budget by tens of billions of dollars. This increase would not be consistent with the Commission's stated intention to limit universal service expenditures in light of extensive 4G LTE deployment in recent years.

18. Recognizing that the Universal Service Fund is limited, the Commission has consistently determined the amount of the MF–II budget by starting with the amount of existing CETC support, subtracting the support going to areas where support is not needed, and redirecting that amount to the areas in need. By weighing the need to distribute support to areas that would otherwise be unserved against the burden that consumers and businesses must bear by contributing to the Universal Service Fund, the Commission has demonstrated a commitment to fiscal responsibility while acknowledging that its efforts are needed to supplement private investment. Taking this type of balanced approach has been previously upheld by the Tenth Circuit Court of Appeals, which noted that, in challenging the sufficiency of the MF–II budget, the petitioners in *In re FCC 11–161,* 753 F.3d 1015, 1098–100 (10th Cir. 2014), had failed to discredit (i) the Commission's reliance on its finding that then-current CETC funding was being misallocated or (ii) the Commission's predictive judgment that redirecting those funds would be sufficient to sustain and expand mobile broadband service. In the *MF–II Report & Order,* the Commission similarly relied on staff analysis of data that continued to reveal that current mobile CETC funds remain misallocated, and it again exercised its predictive judgment in determining that an MF–II budget of $4.53 billion, when distributed cost effectively, should make meaningful progress in eliminating lingering coverage gaps. The petitioners have failed to convince us that this decision to apply a balanced approach in setting the MF–II budget is in error. We continue to maintain that using the current level of mobile CETC support, minus the phase-down amount needed for areas where support is not needed, and redirecting funding to areas unserved by qualified 4G LTE will provide a significant improvement in mobile coverage while not increasing the burden on those contributing to universal service funding.

19. For similar reasons, we further conclude that the claim that the amount of the MF–II budget is not supported by data related to coverage needs is equally flawed. While it is true that, for the reasons explained above, the Commission did not base the amount of its MF–II budget upon carrier cost deployment data, it did use data regarding the provision of service to eligible areas when establishing the budget. Specifically, the Commission relied on a 2016 analysis by the Wireless Telecommunications Bureau (Wireless Bureau) of mobile broadband providers, which revealed that, conservatively, three quarters of support currently distributed to mobile providers is being directed to areas where it is not needed. Moreover, the Wireless Bureau's analysis showed that, as of 2016, 1.4 million people in the U.S. have no LTE coverage and another 1.7 million live in areas where LTE coverage is provided only on a subsidized basis, so that 3.1 million people (or approximately 1 percent of the U.S. population) live in areas with no LTE or only subsidized LTE. Thus, staff analysis of data regarding the provision of service revealed that, despite extensive private investment spurring 4G LTE deployment generally, certain areas remain unserved without government subsidies, which the Commission took into consideration when it chose to reallocate current CETC support and derive greater coverage from the limited amount of funding.

20. In addition, to ensure that the MF–II support is directed specifically to areas that lack unsubsidized qualifying 4G LTE coverage, we have adopted a challenge process that is administratively efficient and fiscally responsible, and will enable us to resolve eligible area disputes quickly and expeditiously, so that limited funds are focused on the areas that need it the most. As part of the challenge process, we have also undertaken a new, one-time collection of standardized, up-to-date 4G LTE coverage data from mobile wireless providers. These actions, taken together with the use of competitive bidding to distribute support, will focus MF–II funds on areas that lack unsubsidized qualified 4G LTE service, thereby providing additional funds for those targeted areas that warrant such funding. These actions also will ensure the budget is used to minimize service disparities between rural and urban areas, while continuing our obligation to be a fiscally responsible steward of universal service funding. Therefore, we decline to revise the MF–II budget at this time.

D. Monthly Disbursement Schedule

21. We decline to alter the Commission's monthly disbursement schedule for MF–II. The Commission, in deciding to provide support in monthly disbursements as it had adopted for the CAF program, including CAF–II, reasoned that such an approach would provide MF–II recipients with reliable and predictable support payments that conform to a variety of business cycles. We are not persuaded that, instead of monthly disbursements of MF–II support to winning bidders, the program should provide larger installment payments early in the construction process that are more closely matched to some providers' expected outlays. Although the Commission recognized that some MF–II support recipients might incur higher up-front project costs, it also observed that the timing of project expenses varies. Thus, it is administratively burdensome, if not impossible, for the Commission, USAC, and the winning bidders to try to match payments to expenses in a manner that would synchronize precisely with the budgetary needs of all bidders. Further, the Commission observed that, in Mobility Fund Phase I (MF–I), even with support payments based on deployment milestones, disbursements were not tied to the timing of expenditures, as petitioners request. A shift to a front-loaded disbursement mechanism or a cost reimbursement process, as requested by petitioners, would place undue strains on the universal service budget, and would thereby undermine the ability of the Commission to ensure continued program compliance over the entire 10-year term. We note that the Commission also purposefully aligned its disbursement schedule with the schedule adopted for CAF–II, which established regular and predictable monthly payments that would not exceed the budget in any one year of the term. We believe that this approach best balances the burdens on the Commission and USAC with the budgetary needs of recipients.

E. Minimum Baseline Performance Requirements for Data Speeds and Latency

22. We also decline to reconsider the minimum baseline performance requirements for recipients of MF–II funding. In the *MF–II Report & Order,* the Commission decided that a recipient of MF–II support must provide a minimum level of service with a median data speed of 10 Mbps download speed or greater and 1 Mbps upload speed or greater, with at least 90 percent of the required download speed measurements being not less than a certain threshold speed to be specified as part of the pre-auction process. In addition, an MF–II support recipient must provide reports of speed and latency demonstrating that at least 90 percent of the required measurements have a data latency of 100 milliseconds (ms) or less round trip. The Commission determined that recipients of MF–II support must provide service that meets the minimum baseline performance requirements of 4G LTE or better, and concluded that these requirements will ensure that finite universal service funds are used efficiently to provide rural consumers access to robust mobile broadband service at speeds reasonably comparable to the 4G LTE service being offered in urban areas.

23. We are not persuaded that the minimum baseline performance requirement for median data speeds should be reduced to 5/1 Mbps, as one provider urges. The Commission seeks to ensure that the performance of broadband service in rural and high-cost areas is reasonably comparable to that in urban areas, and the Commission's own analysis at the time the *MF–II Report & Order* was adopted indicated that customers of nationwide carriers were receiving data at median speeds of around 10/1 Mbps or faster. Furthermore, in our more recent *MF–II Order on Reconsideration,* we explained that, in contrast to the 5 Mbps eligibility benchmark in the challenge process, which serves to target support where it is currently needed most, the 10 Mbps minimum baseline performance requirement makes sure that service in eligible areas is reasonably comparable to future urban offerings.'' This forward-looking approach is consistent with past Commission decisions in the universal service context and recognizes that consumer demand for faster mobile wireless services is growing. Moreover, MF–II funding provides on-going, long-term support over a 10-year period, and reducing the performance requirement to a 5 Mbps download speed increases the risk of directing funds to areas that are already receiving download speeds just below the 5 Mbps eligibility threshold because such areas could require very little investment to meet the lowered performance requirement and would, accordingly, be more competitive at auction. Awarding funds to such areas increases the risk of only marginally benefiting consumers in those areas by not significantly improving the status quo download speeds for a decade. Further, a lowered performance requirement would reduce the final performance milestone for median data speeds in all areas, thereby increasing the likelihood that those areas will not receive service that is reasonably comparable to urban areas by the end of the support term, despite the distribution of potentially significant MF–II support. We therefore conclude that reducing the performance benchmark to a median data speed of only 5/1 Mbps would risk relegating rural areas with the greatest need to a lower standard of service that is not comparable to urban 4G LTE service.

24. Similarly, with respect to latency, the Commission has noted that latency is important for a variety of real-time, interactive applications, including Voice over internet Protocol (VoIP), video calling, and distance learning, which ''may be effectively unusable over high latency connections, regardless of the download/upload speeds being offered.'' Contrary to petitioner's assertion that the Commission failed to account for the inherent differences between wireless and wireline technologies in adopting the 100 ms latency standard, the Commission established the performance metrics, including latency, to ensure reasonably comparable service. According to petitioner's own data analysis, the majority (approximately 75 percent) of existing networks already meet the 100 ms standard with 90 percent probability in Metropolitan Statistical Areas (MSAs). Further, technological improvements, including newly available 600 MHz spectrum, will likely enable more carriers to exceed this performance requirement in the near future. Thus, reducing the performance benchmark for data latency to 220 ms would risk relegating rural areas to a lower standard of service that is not comparable to urban 4G LTE service, which includes support for advanced mobile applications. Accordingly, in light of the statutory mandate with respect to reasonably comparable service, we affirm that the minimum baseline performance requirement for data latency is that at least 90 percent of all required measurements must be at or below 100 ms round trip.

F. Bidding Credits

25. We decline to reconsider the Commission's decision not to adopt bidding preferences for the MF–II auction. In the *MF–II Report & Order,* the Commission rejected the notion that small and rural carriers needed targeted assistance to secure MF–II support based, in part, on its observation that numerous smaller carriers had placed winning bids in the Mobility Fund Phase I (MF–I) auction without the aid of bidding credits. Contrary to petitioners' assertions, the Commission specifically noted that commenters had advocated for bidding preferences for other entities, including rural carriers, for the MF–II auction. The Commission also reasoned that small business bidding credits would potentially decrease the reach of MF–II funding, and thereby decrease additional coverage expansion or preservation. This rationale is equally applicable to any type of bidding preference, including those for rural service providers.

26. We reject petitioners' claims that the Commission has a statutory obligation under section 309(j) of the Act to promote small business and rural carrier participation in the universal service context. The Commission's authority to award universal service support through competitive bidding is not derived from section 309(j), which authorizes the use of competitive bidding for granting spectrum licenses or construction permits, not for reverse auctions to award universal service funding. Moreover, even in spectrum auctions, where section 309(j) does apply, the Commission does not always provide bidding credits, and courts have held that the statutorily prescribed objectives in section 309(j)(3) are not mandatory. Additionally, the Commission's primary goal in using competitive bidding in MF–II is to maximize the impact of the funding to increase and preserve mobile coverage. Since bidding preferences for any entities (be they small businesses or rural service providers) would hamper that goal by effectively decreasing the number of eligible areas covered by the finite level of funding, the Commission chose not to award bidding preferences in lieu of greater coverage. Accordingly, we are not persuaded that section 309(j) obligates us to overlook this concern and adopt bidding preferences for the MF–II auction.

27. Likewise, we reject petitioner's assertion that the Commission should not have factored into its decision for

MF–II the fact that numerous small and rural carriers participated successfully in the MF–I auction without bidding credits. We find it reasonable, and certainly useful, to consider past auction participation in formulating our policy concerning bidding preferences in future auctions. Moreover, even if we were to accept petitioner's claim that MF–II is fundamentally different from MF–I because it involves ongoing support provided for more significant projects, the petitioner has failed to demonstrate that small and rural carriers would be less inclined, or able, to compete effectively in the auction absent bidding preferences. In the absence of such a demonstration, and in light of our concerns about the most efficient use of limited universal service funds, we affirm the decision in the *MF–II Report & Order* not to provide bidding credits in the MF–II auction.

G. Equipment Exclusivity Arrangements

28. We dismiss a provider's request to impose a new certification requirement on all MF–II support recipients that they do not and will not participate in equipment exclusivity arrangements. The petition relies on comments that the provider filed in this proceeding in 2014; however, those 2014 comments make no reference to exclusivity arrangements. Thus, to the extent that the provider raises this argument for the first time in its Petition, we dismiss it as untimely. Further, in its 2012 *Fourth Order on Reconsideration* in the MF–I proceeding, adopted and released July 18, 2012, 77 FR 48453, August 14, 2012, the Commission previously considered and rejected this provider's request for adoption of a bar on equipment exclusivity arrangements. In the *MF–II Report & Order,* the Commission again rejected proposals to restrict participation in an MF–II auction through additional eligibility requirements and confirmed its intention to encourage participation by the widest range of applicants. Petitioner has identified no substantive basis upon which to reconsider the Commission's prior decisions not to restrict participation in the Mobility Fund by adopting additional requirements, including a bar on equipment exclusivity arrangements.

H. USAC's Role in Testing Winning Bidder Buildout Performance

29. We decline to limit USAC's role in testing winning bidders' compliance with MF–II performance metrics, public interest obligations, or other program requirements as requested by a provider. We find no merit in contentions that we should limit USAC's responsibility for conducting compliance reviews in order to ensure a cost-efficient process.

30. In the *MF–II Report & Order,* the Commission determined that it would require MF–II support recipients to submit data sufficient to demonstrate compliance with the MF–II coverage requirements. Specifically, section 54.1015 of our rules requires an MF–II support recipient to provide the data necessary to support its certifications, and that the submitted data must be in compliance with the standards set forth in the applicable public notice. In our role as a responsible steward of public funds, we are obligated to ensure that the funds disbursed through universal service programs are used for the purposes for which they were intended and that the recipients of support have met the terms and conditions under which the funds were awarded. Accordingly, in the *USF/ICC Transformation Order or FNPRM,* adopted October 27, 2011, released November 18, 2011, 76 FR 78384, December 16, 2011, the Commission directed USAC to test the accuracy of certifications made pursuant to the new reporting requirements, noting that any oversight program to assess compliance should be designed to ensure that support recipients are reporting accurately to the Commission. The Commission specifically stated that such oversight should be designed to test some of the underlying data that form the basis for a recipient's certification of compliance with various requirements.

31. In the case of MF–I, USAC's compliance reviews did not entail duplication of a recipient's drive tests as the petitioner contends, but rather verification of data transmission rates and transmission latency for a statistically valid random sample of a small portion of the total road miles for which a recipient claimed it was entitled to a support payment. Although the petitioner argues that USAC's role was redundant because USAC's drive tests ultimately validated the data the provider had already submitted for MF–I, we are not persuaded by the petitioner's claim that the benefits of USAC compliance review testing in the context of MF–I were outweighed by the time and expense spent conducting such testing. We decline to draw a conclusion about the overall value of USAC's compliance testing based only on the experience of one MF–I participant. Further, we find it lacking in logic to argue that it serves no purpose to attempt to verify, even by sampling, recipients' compliance with program requirements, merely because some recipients have been found, through such testing, to be in compliance. Compliance reviews, like audits, are an essential tool for the Commission and USAC to ensure program integrity and to detect and deter waste, fraud, and abuse. Therefore, we will not limit USAC's role in verifying the data that recipients submit to demonstrate compliance with our MF–II coverage requirements.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

32. This *Second Order on Reconsideration* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

33. In this present document, we have assessed the effects of the modifications that the Commission is making to the letter of credit rule and the collocation rule adopted by the Commission in the *MF–II Report & Order* regarding the information collection burdens on small business concerns. The Commission describes impacts that might affect small businesses, which include most businesses with fewer than 25 employees, in the Supplemental Final Regulatory Flexibility Analysis (FRFA) in Appendix B of the *Second Order on Reconsideration.*

B. Congressional Review Act

34. The Commission will send a copy of the *Second Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

C. Supplemental Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *USF/ICC Transformation FNPRM,* the *CAF Further Notice,* adopted April 23, 2014, released June 10, 2014, 79 FR 39195,

July 9, 2014, and the *MF–II FNPRM* (collectively, *MF–II FNPRMs*). The Commission sought written public comment on the proposals in the *MF–II FNPRMs* including comments on the IRFAs and Supplemental IRFA. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the *CAF Report & Order,* adopted April 23, 2014, released June 10, 2014, 79 FR 39163, July 9, 2014, the *MF–II Report & Order,* and the *MF–II Challenge Process Order* (collectively, the *MF–II Orders*). This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *MF–II Orders* to reflect the actions taken in the *Second Order on Reconsideration* and conforms to the RFA.

1. Need for, and Objectives of, the Second Order on Reconsideration

36. The *Second Order on Reconsideration* addresses the remaining issues raised by parties in petitions for reconsideration of the Commission's *MF–II Report & Order* that adopted the framework for the Mobility Fund Phase II (MF–II) and the Tribal Mobility Fund Phase II. These universal service funding mechanisms will provide on-going high-cost support to extend mobile voice and broadband coverage to unserved and underserved areas. In the *Second Order on Reconsideration,* the Commission amends the collocation rules adopted in the *MF–II Report & Order* to apply the collocation requirement for MF–II recipients to ''all newly constructed'' towers and modifies the letter of credit (LOC) requirements to align our MF–II rules with recent changes made in the *CAF–II Order on Reconsideration.* These LOC modifications should provide MF–II support recipients with some additional relief from the costs of maintaining an LOC. Moreover, by resolving these petitions, the Commission takes another significant step toward holding an MF–II auction in which service providers will compete for support to offer service meeting the minimum baseline performance requirements of 4G LTE or better in primarily rural areas of the country that lack qualified unsubsidized 4G LTE service.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFAs

37. There were no comments filed that specifically addressed the IRFAs that are relevant to the issues discussed here.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

38. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

39. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

4. Description and Estimate of the Number of Small Entities to Which the Procedures Will Apply

40. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.'' A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

41. As noted above, FRFAs were incorporated into the *MF–II Orders.* In those analyses, we described in detail the small entities that might be significantly affected. Accordingly, in this Supplemental FRFA we hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous FRFAs in the *MF–II Orders.*

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

42. We expect the amended rules in the Second Order on Reconsideration will not impose any new or additional reporting or recordkeeping or other compliance obligations on small entities and, as described below, will reduce their costs.

6. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

43. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.''

44. The Commission has taken steps which will minimize the economic impact on small entity MF–II recipients because we recognize that the costs associated with maintaining an LOC may pose a greater financial burden on those bidders that lack the resources of larger, more established companies. Such bidders may have to factor relatively higher LOC-related costs into their bids. One purpose of using competitive bidding to select support recipients however is that it promotes providing support to those parties that can accomplish the MF–II program goals in the most cost-effective manner. Therefore, in the *Second Order on Reconsideration* we have made a modest reduction in the required value of the letter of credit for MF–II recipients that have met the 80 percent service milestone for the area(s) covered by the LOC. Moreover, we clarify that small entity and other MF–II recipients may further reduce their costs by no longer maintaining the LOC as soon as USAC, in coordination with the Commission, verifies that the recipient has met the final performance milestone (*i.e.,* we do not require that the LOC be maintained after its purpose is no longer served). These steps should alleviate some of the economic impact for small entity MF–II recipients and aligns our MF–II requirements with recent changes made to the CAF–II requirements.

7. Report to Congress

45. The Commission will send a copy of the *Second Order on Reconsideration,* including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Order on Reconsideration,* including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA.

VI. Ordering Clauses

46. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 503 of the Communications Act of 1934, as amended, and section 706 of the

Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 160, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 503, 1302, and §§ 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.427, and 1.429, that the *Second Order on Reconsideration is adopted*.

- The parameters set forth in the *Second Order on Reconsideration,* along with all associated requirements also set forth therein, go into effect May 25, 2018, except for the new or modified information collection requirements that require approval by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the approval of those information collection requirements and the date they will become operative.
- The Petition for Reconsideration and/or Clarification filed by Rural Wireless Association, Inc. on April 12, 2017, is granted in part and denied in part to the extent described herein.
- The Petition for Reconsideration filed by Blooston Rural Carriers on April 27, 2017, is granted in part and denied in part to the extent described herein.
- The Petition for Reconsideration filed by Rural Wireless Carriers on April 27, 2017, is granted in part and denied in part to the extent described herein.
- The Petition for Reconsideration filed by T-Mobile USA, Inc. on April 27, 2017, is denied to the extent described herein.
- The Petition for Reconsideration filed by Buffalo-Lake Erie Wireless Systems L.L.C. dba Blue Wireless on April 27, 2017, is granted in part and denied in part to the extent described herein.
- The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Second Order on Reconsideration,* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, internet, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Amend § 54.1015 by revising paragraph (f) to read as follows:

§ 54.1015 Public interest obligations.

* * * * *

(f) *Collocation obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase II on all newly constructed towers it owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

* * * * *

■ 3. Amend § 54.1016 by revising paragraph (a)(1)(ii) to read as follows:

§ 54.1016 Letter of credit.

(a) * * *

(1) * * *

(ii) Once the recipient has met its 80 percent service milestone as described in § 54.1015(c) of this chapter, it may, subject to the consent of the Universal Service Administrative Company, obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 60 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

* * * * *

[FR Doc. 2018–08689 Filed 4–24–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130312235–3658–02]

RIN 0648–XG173

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Resources of the South Atlantic; 2018 Commercial Trip Limit Reduction

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

ACTION: Temporary rule; commercial trip limit reduction.

SUMMARY: NMFS issues this temporary rule to reduce the commercial trip limit for vermilion snapper in or from the exclusive economic zone (EEZ) of the South Atlantic to 500 lb (227 kg), gutted weight, 555 lb (252 kg), round weight. This trip limit reduction is necessary to protect the South Atlantic vermilion snapper resource.

DATES: This rule is effective 12:01 a.m., local time, April 26, 2018, until 12:01 a.m., local time, July 1, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic includes vermilion snapper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council prepared the FMP. The FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for vermilion snapper in the South Atlantic is divided among two 6-month fishing seasons, January through June and July through December. For the January 1 through June 30, 2018, fishing season, the commercial quota is 388,703 lb (176,313 kg), gutted weight, 431,460 lb (195,707 kg), round weight (50 CFR 622.190(a)(4)(i)(D)).

Under 50 CFR 622.191(a)(6)(ii), NMFS is required to reduce the commercial trip limit for vermilion snapper from 1,000 lb (454 kg), gutted weight, 1,110 lb (503 kg), round weight, to 500 lb (227 kg), gutted weight, 555 lb (252 kg), round weight, when 75 percent of the applicable commercial quota is reached or projected to be reached, by filing a notification to that effect with the Office of the Federal Register, as established by Regulatory Amendment 18 to the FMP (78 FR 47574; August 6, 2013). Based on current information, NMFS has determined that 75 percent of the available commercial quota for the January 1 through June 30, 2018, fishing season for vermilion snapper will be reached by April 26, 2018. Accordingly, NMFS is reducing the commercial trip limit for vermilion snapper to 500 lb (227 kg), gutted weight, 555 lb (252 kg), round weight, in or from the South Atlantic EEZ at 12:01 a.m., local time, on April 26, 2018. This reduced commercial trip limit will remain in effect until the start of the next fishing season on July 1, 2018, or until the applicable commercial quota is reached and the commercial sector closes, whichever occurs first.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic vermilion snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.191(a)(6)(ii) 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 responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this commercial trip limit reduction constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary rule is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule establishing and providing for a reduction in the commercial trip limit has already been subject to notice and comment, and all that remains is to notify the public of the commercial trip limit reduction. Providing prior notice and opportunity for public comment is contrary to the public interest because any delay in reducing the commercial trip limit could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the vermilion snapper resource, since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Providing prior notice and opportunity for public comment on this action would require time and increase the likelihood that the commercial sector could exceed its quota.

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

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

Dated: April 20, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–08677 Filed 4–20–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 80
Wednesday, April 25, 2018

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Cooking Products, Notification of Petition for Rulemaking

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

ACTION: Notification of petition for rulemaking; request for comment.

SUMMARY: On March 26, 2018, the Department of Energy (DOE) received a petition from the Association of Home Appliance Manufacturers (AHAM) to withdraw, and immediately stay the effectiveness of, the conventional cooking top test procedure. Through this notification, DOE seeks comment on the petition, as well as any data or information that could be used in DOE's determination whether to proceed with the petition.

DATES: Written comments and information are requested on or before June 25, 2018.

ADDRESSES: Interested persons are encouraged to submit comments, identified by ''Test Procedure Cooking Products Petition,'' by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: CookProducts2018TP0004@ee.doe.gov. Include the docket number and/or RIN in the subject line of the message.

Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 586–6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Celia Sher, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW, Washington, DC 20585. E-mail: *Celia.Sher@hq.doe.gov;* (202) 287–6122.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., provides among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) DOE received a petition from AHAM, as described in this document and set forth verbatim below,[1] requesting that DOE reconsider its final rule on Test Procedures for Cooking Products, Docket No. EERE–2012–BT–TP–0013, RIN 1904–AC71, 81 FR 91418 (Dec. 16, 2016) (Final Rule). In promulgating this petition for public comment, DOE is seeking views on whether it should grant the petition and undertake a rulemaking to consider the proposal contained in the petition. By seeking comment on whether to grant this petition, DOE takes no position at this time regarding the merits of the suggested rulemaking or the assertions in AHAM's petition.

In its petition, AHAM requests that DOE undertake rulemaking to withdraw the cooking top test procedure, while maintaining the repeal of the oven test procedure that was part of the Final Rule. And, in the interim, AHAM seeks an immediate stay of the effectiveness of the Final Rule, including the requirement that manufacturers use the final test procedure to make energy related claims. Should DOE continue to pursue a revised cooking top test procedure, AHAM asserts that DOE should address repeatability and reproducibility and demonstrate, through round robin testing, that the test is repeatable and reproducible and, for gas cooking tops, accurate. AHAM claims that its analyses show that the test procedure is not representative for gas cooking tops and, for gas and electric cooking tops, has such a high level of variation it will not produce accurate results for certification or enforcement purposes and will not assist consumers in making purchasing decisions based on energy efficiency.

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

(1) The repeatability and reproducibility of the test procedure for conventional electric and gas cooking tops. DOE previously presented results from round robin testing completed by the Department and by IEC in the docket of the test procedure rulemaking. DOE seeks comments on that data as well as the new data AHAM has supplied supporting its petition;

(2) The accuracy of determining the simmer setting and turndown temperature;

(3) The impact of heating element cycling during the initial heat-up phase of testing on the overall measured energy consumption of electric cooking tops, and the prevalence of such cycling in units available on the market.

(4) The extent of any warpage which may have been observed at the bottom surface of test vessels during cooking top testing;

(5) The impact of varying gas burner and grate systems on the representativeness of the water-heating test method for gas cooking tops;

(6) The type of control system, heating element, and other product redesigns necessitated by changes in safety standards for electric cooking tops, and the impact of these new product designs on the repeatability, reproducibility, and representativeness of the electric cooking product test procedure;

(7) Characteristics of a representative test sample for electric and gas cooking tops for use in any additional round robin testing to evaluate the applicability of the test procedure to the conventional cooking top market as a whole;

(8) Information on how consumers cook differently on gas cooktops versus electric cooktops;

(9) Information on how consumers use the simmer setting on a gas cooktop; and,

[1] Attachments and data submitted by AHAM with its petition for rulemaking are available in the docket at *http://www.regulations.gov/docket?D=EERE-2018-BT-TP-0004.*

(10) The test burden associated with the test procedure for conventional electric and gas cooking tops, including the ability of testing laboratories to meet the required ambient test conditions.

Submission of Comments

DOE invites all interested parties to submit in writing by June 25, 2018 comments and information regarding this petition.

Submitting comments via *http://www.regulations.gov.* The *http://www.regulations.gov* web page will require you to provide your name and contact information prior to submitting comments. 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 *http://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 *http://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 *http://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 *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via hand delivery, or mail. Comments and documents via hand delivery or mail will also be posted to *http://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 in your cover letter each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted 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 include any 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. According 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, postal mail, or hand delivery 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. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lost its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

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).

DOE considers public participation to be a very important part of its process for considering rulemaking petitions. DOE actively encourages the participation and interaction of the public during the comment period. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in determining how to proceed with a petition. Anyone who wishes to be added to DOE mailing list to receive future notifications and information about this petition should contact Appliance and Equipment Standards Program staff at (202) 586–6636 or via email at *CookProducts2018TP0004@ee.doe.gov.*

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of petition for rulemaking.

Signed in Washington, DC, on April 18, 2018.

Daniel Simmons,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

Before the

UNITED STATES DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

In the Matter of: Energy Conservation Program: Test Procedures for Cooking Products

Docket No. EERE–2012–BT–TP–0013

RIN 1904–AC71

PETITION FOR RECONSIDERATION

The Association of Home Appliance Manufacturers (AHAM) respectfully petitions the Department of Energy (DOE) for reconsideration of its final rule on Test Procedures for Cooking Products, Docket No. EERE–2012–BT–TP–0013 RIN 1904–AC71, 81 Fed. Reg. 91418 (Dec. 16, 2016) (Final Rule).

AHAM believes that, overall, the adoption of a water-boil test procedure for cooking products is the appropriate procedure. And we thank DOE for making changes to its earlier proposed test procedure which would have used a hybrid block after AHAM demonstrated the practical difficulties associated with that test. But DOE adopted a final cooktop test procedure too hastily, especially in light of comments AHAM submitted that demonstrated the test's lack of repeatability and reproducibility and questioned the use of a test procedure meant for electric cooktops for gas cooktops. AHAM has evaluated the Final Rule and conducted additional testing on gas cooktops. Our analyses show that the test procedure is not representative for gas cooktops and, for gas and electric cooktops, has such a high level of variation *it will not produce accurate results for certification or enforcement purposes and will not assist consumers in making purchasing decisions based on energy efficiency.*

AHAM thus requests that DOE withdraw the cooktop test procedure. And, in the interim, we seek an immediate stay of the effectiveness, including the requirement that manufacturers use the final test procedure to make energy related claims, of the cooktop test procedure. Should DOE continue to pursue an improved cooktop test procedure, DOE should address repeatability and reproducibility and demonstrate, through round robin testing, that the test is repeatable and reproducible and, for gas cooktops, representative.

FACTS

DOE began revisions to the cooktop test procedure with a notice of proposed rulemaking on January 30, 2013 (January 2013 NOPR) in which DOE proposed amendments to Appendix I to subpart B of 10 C.F.R. part 430 (Appendix I) that would allow for the measuring of active mode energy consumption of induction cooking products. Specifically, DOE proposed to require the use of test equipment—hybrid test blocks comprised of an aluminum body and a stainless steel base—compatible with induction technology.

AHAM objected to DOE's proposed amendments to the test procedure because the amendments did not enhance the accuracy and/or representativeness of the test procedure. *See* AHAM Comments on DOE's Notice of Proposed Rulemaking on Test Procedures for Conventional Cooking Products With Induction Heating Technology (April 15, 2013). AHAM commented that any test procedure DOE adopts to measure induction heating technology must be both repeatable and reproducible. *Id.* AHAM cautioned that significant further study was necessary before DOE could adopt a test procedure that accurately measures induction cooktop energy efficiency. *Id.* More specifically, AHAM opposed the proposed test procedure because the proposal had a number of technical problems and ambiguities (e.g., ambiguous construction of hybrid test block); DOE's data did not clearly identify one method (test block versus water heating) as being preferable to the other for induction units; and the proposed procedure would treat induction technology differently than other technologies, thereby penalizing it. *Id.* AHAM also questioned whether the test block method in general was representative of actual consumer use. *Id.*

In response to stakeholder comments, DOE published a supplemental notice of proposed rulemaking modifying its proposal. 79 Fed. Reg. 71894 (Dec. 3, 2014) (December 2014 SNOPR). DOE's modified proposal maintained a hybrid test block approach despite AHAM's comments. DOE proposed to add a layer of thermal grease between the stainless steel base and aluminum body of the hybrid test block to facilitate heat transfer between the two pieces, and DOE proposed additional test equipment for electric surface units with large diameters and gas cooking top burners with high input rates.

AHAM's comments on the December 2014 SNOPR raised serious concerns about the hybrid test blocks and the thermal grease. *See* AHAM Comments on DOE's Supplemental Notice of Proposed Rulemaking on Test Procedures for Conventional Cooking Products (Feb. 2, 2015). AHAM also raised questions about the testing of flexible cooking zone areas, testing units with flexible concentric burner sizes, and the use of the smallest dimension of a noncircular electric surface unit to determine block size. *Id.*

Based on comments it received in response to the December 2014 SNOPR and a series of manufacturer interviews DOE conducted in February and March 2015, DOE subsequently withdrew its proposal for testing conventional cooktops with a hybrid test block in yet another supplemental notice of proposed rulemaking. 81 Fed. Reg. 57374 (Aug. 22, 2016) (August 2016 SNOPR). In the August 2016 SNOPR, DOE instead proposed to modify its procedure to incorporate by reference the relevant sections of EN 60350–2:2013 ''Household electric cooking appliances Part 2: Hobs—Methods for measuring performance,'' which uses a water-heating test method to measure energy consumption of electric cooktops. Despite the fact that the EN test procedure DOE cited applies only to electric cooktops, DOE also proposed to extend that method to gas cooktops.

AHAM generally agreed and continues to agree with DOE that the best test method for cooktops is a water boil test and supported DOE's abandoning of the hybrid test block method. *See* AHAM Comments on DOE's SNOPR on Test Procedures for Cooking Products (Sept. 21, 2016). Nevertheless, AHAM commented extensively on potential sources of variation with DOE's proposed procedure that needed to be resolved before DOE finalized a cooktop test procedure. *Id.*

Prior to DOE proposing a water-heating test, AHAM conducted a round robin based on the Second Edition of IEC 60350–2 (2015), Household Electric Cooking Appliances—Part 2: Hobs—Methods for Measuring Performance. *Id.* The AHAM round robin consisted of four units encompassing a different combination of controls and heating elements. *Id.* AHAM assessed radiant, coil, and induction heating elements as well as infinite and step controls. Participating labs performed at least three full tests on the three electric technologies. The results demonstrated that the procedure was not reproducible from lab to lab. AHAM data demonstrated significant variation in the proposed test procedure—coefficients of variation of *9.2* percent for electric radiant cooktops, 7.1 percent for electric coil cooktops, and 8.4 percent for induction cooktops. *Id.*

Based on that testing, AHAM commented that a significant amount of work remained to be done to finalize a test and to demonstrate that the final test is repeatable and reproducible. *Id.* Specifically, AHAM listed a number of items that needed to be resolved, including several potential sources of test procedure variation, before DOE could finalize the test procedure, and requested that DOE issue a notice of data availability or supplemental notice of proposed rulemaking to provide stakeholders with an opportunity to comment:

- Lack of a tolerance on staying ''as close as possible'' to 90° C;

- Variability in energy consumption during the simmering phase;
- Variability in determining the turn down temperature;
- Variability in determining the turn down setting;
- Unit cycling;
- Specifying a temperature sensor for measuring the water temperature;
- A proposal to use a moving average for calculating the final result;
- Limited suppliers of test pots;
- No tool or tolerance specified for cooktop diameter measurement;
- Test pots do not accommodate all grate designs;
- Difficulty with placement of pots on gas cooktops;
- Impact of gas burner system, geometry, spacing, and grates on repeatability and reproducibility;
- Impact of using the electric test pots on gas cooktops; and
- Overshoot temperature of the water can reach beyond 90° C for some gas cooktops. *Id.*

AHAM also requested that DOE indicate how the changes to the test procedure would impact the proposed standards and allow stakeholders additional time to comment on those proposed standards based on the test procedure changes. *Id.*

In response to AHAM's comments, DOE sent AHAM a request for data on September 27, 2016. That data request was voluminous and overlapped with the comment period on the proposed standards for cooking products—which ended on November 2, 2016—and DOE proposed in parallel with the August 2016 SNOPR. *See* Energy Conservation Program: Energy Conservation Standards for Residential Conventional Cooking Products, Supplemental Notice of Proposed Rulemaking; 81 Fed Reg. 60784 (Sept. 2, 2016). Nevertheless, AHAM worked to answer DOE's questions and, on November 23, 2016, filed a detailed response, including a significant amount of raw data DOE requested which AHAM submitted to Navigant Consulting under a confidentiality agreement. *See* AHAM Comments on DOE's SNOPR on Test Procedures for Cooking Products (dated Nov. 22, 2016).[1] AHAM informed DOE in advance that it would be submitting the response. *Despite having asked for that data and having been informed AHAM would be providing it, DOE issued a final test procedure on that same day, November 23, 2016, which it published on December 16, 2016.*

The Final Rule adopted DOE's proposed test procedure with some changes DOE believed would improve repeatability and reproducibility. In support of the final test procedure, DOE conducted additional testing. DOE conducted testing of five electric cooktops incorporating different heating technologies and control types. For each unit, DOE conducted testing on surface units capturing a range of heating element sizes. DOE conducted two to three tests per surface unit. For each individual test, DOE performed the full surface unit test method, including the preliminary test required to determine the turndown temperature and simmering setting for a given surface unit. DOE varied test operators for surface unit tests, but did not conduct testing in different laboratories. In addition, DOE included test results from previous tests of these units conducted in support of the August 2016 SNOPR. DOE relied on that minimal data to determine that the final test procedure, finalized only two months after DOE received voluminous comments from AHAM concerning a lack of repeatability and reproducibility as demonstrated through 27 tests on three units at three different laboratories.

ARGUMENT

The Energy Policy and Conservation Act of 1975, as amended (EPCA) requires that test procedures 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 and shall not be unduly burdensome to conduct. 42 U.S.C. § 6293(b)(3). This requirement is meaningless if the test procedure is not repeatable and reproducible—only a repeatable and reproducible test procedure can produce accurate results that DOE can rely on for certification and verification purposes and that consumers can rely on to compare energy use or efficiency across products.

AHAM appreciates that DOE made changes from the August 2016 SNOPR to the Final Rule in an attempt to address AHAM's September 21, 2016 comments. AHAM also appreciates that DOE conducted additional testing to further assess the proposed and final test procedure. But DOE did not take the time or do the work necessary to finalize a test procedure that fully or satisfactorily addresses the significant issues AHAM raised in its comments or the data AHAM provided in response to DOE's request. This is further demonstrated based on additional testing and analysis AHAM conducted after the Final Rule was published.

DOE did not support the Final Rule with sufficient data to demonstrate that it is accurate, repeatable, and reproducible. More specifically, as discussed more fully below:

☐ DOE has not demonstrated that the test procedure is representative for gas products. DOE did not demonstrate that its deviation from the international approach—testing gas cooktops using a different procedure than is used for testing electric cooktops—was warranted or would produce accurate, representative results. And DOE tested only a small sample that cannot be representative of the many different types of gas models on the market and the result is that the test may not adequately address the different systems available to consumers. Thus, DOE has not demonstrated that the test procedure is representative or accurate for gas products.

☐ DOE's testing of electric and gas cooktops was insufficient to evaluate repeatability and reproducibility and, thus, DOE's conclusions are based on results with a low confidence level which is highlighted by AHAM's conflicting results. Accordingly, DOE did not produce sufficient evidence to demonstrate that its test procedure is supported by data.

☐ Although DOE tried to address variation by requiring recording of the simmering setting selection, AHAM's testing demonstrates that that requirement does not in fact reduce variation.

☐ Although DOE attempted to clarify when the simmering period starts, DOE's clarification does not adequately reduce variation.

☐ DOE improperly dismissed unit cycling's contribution to variation.

☐ DOE did not account for the fact that electric coil cooktops are currently undergoing significant redesign to comply with voluntary safety standards. It is possible that the new products will not respond the same way to the test.

☐ DOE did not investigate the impact of pan warpage on test results. Initial data from a study done for AHAM shows pan warpage will contribute to variation.

☐ Based on data from a round robin AHAM conducted with gas cooktops, the test procedure is not repeatable or reproducible for gas cooktops. Within unit and between unit variation also contributes to the total variation and DOE has not accounted for it.

In addition, the test procedure is unduly burdensome to conduct. Based on AHAM's experience to date, it takes on average 20 hours to conduct a single test on a four burner cooktop and requires the testing of every single

[1] We hereby incorporate into this petition by reference all data AHAM submitted to DOE and Navigant as part of the test procedure rulemaking.

burner or element individually. And, because the test requires the technician to determine the turn-down temperature before every test and the ambient conditions are quite tight, several runs are often required before a valid run can be achieved. Our testing, which is described more fully below, found that some tests took upward of five days for a single cooktop. Moreover, the test cost is much higher than DOE concluded in its Final Rule on both an up-front and ongoing basis.

Because the final test procedure may not be representative for gas products and is not repeatable or reproducible for either gas or electric cooktops, it does not accurately measure cooktop energy efficiency and will not allow consumers to compare products on that basis. Thus, because the test is also unduly burdensome to conduct, the cooktop test procedure as a whole does not meet EPCA's statutory requirement that test procedures be reasonably designed to produce representative results and are not unduly burdensome to conduct. Moreover, because DOE did not support the conclusions in the Final Rule with sufficient data, DOE's Final Rule could be determined to be arbitrary and capricious. Accordingly, AHAM respectfully requests that DOE withdraw the Final Rule amending the cooktop test procedure. And, in the interim, we seek an immediate stay of the effectiveness, including the requirement that manufacturers use the final test procedure to make energy related claims, of the Final Rule. *To be clear, AHAM is not seeking reconsideration regarding DOE's decision to repeal the oven test procedure.*

I. DOE Has Not Demonstrated That The Test Procedure Is Representative for Gas Cooktops.

In the August 2016 SNOPR, DOE proposed to extend the electric test procedure in EN 60350–2:2013 ''Household electric cooking appliances Part 2: Hobs—Methods for measuring performance'' to gas cooktops. AHAM commented in its September 21, 2016 comments that there is no consumer data on the consumer representativeness of that method for gas cooktops. AHAM noted that DOE's proposal, and now Final Rule, is not harmonized with the European approach, which uses a different test procedure and different test pots to test gas cooktops. DOE's methodology is also different than ASTM F152, ''Standard Test Methods for Performance of Range Tops,'' which DOE reviewed during the test procedure rulemaking and is used by the commercial range industry. DOE dismissed ASTM F1521 because of the BTU range for commercial range tops, and AHAM is not arguing that it is the appropriate procedure for residential products. But the science behind the test setup in ASTM is similar to the EN gas test procedure which demonstrates that *the basic methodology for testing gas products is well established.*

Accordingly, no manufacturer or third party test laboratory—in the U.S., Europe, or elsewhere in the world—had experience with DOE's proposed test procedure for gas cooktops other than DOE's minimal testing in one laboratory prior to the publishing of the Final Rule. Thus, neither DOE nor manufacturers have knowledge of whether this test will be representative for gas products. Accordingly, DOE does not have the necessary data to justify the use of this method on gas cooktops in the United States, especially in light of the fact that Europe uses a different approach.

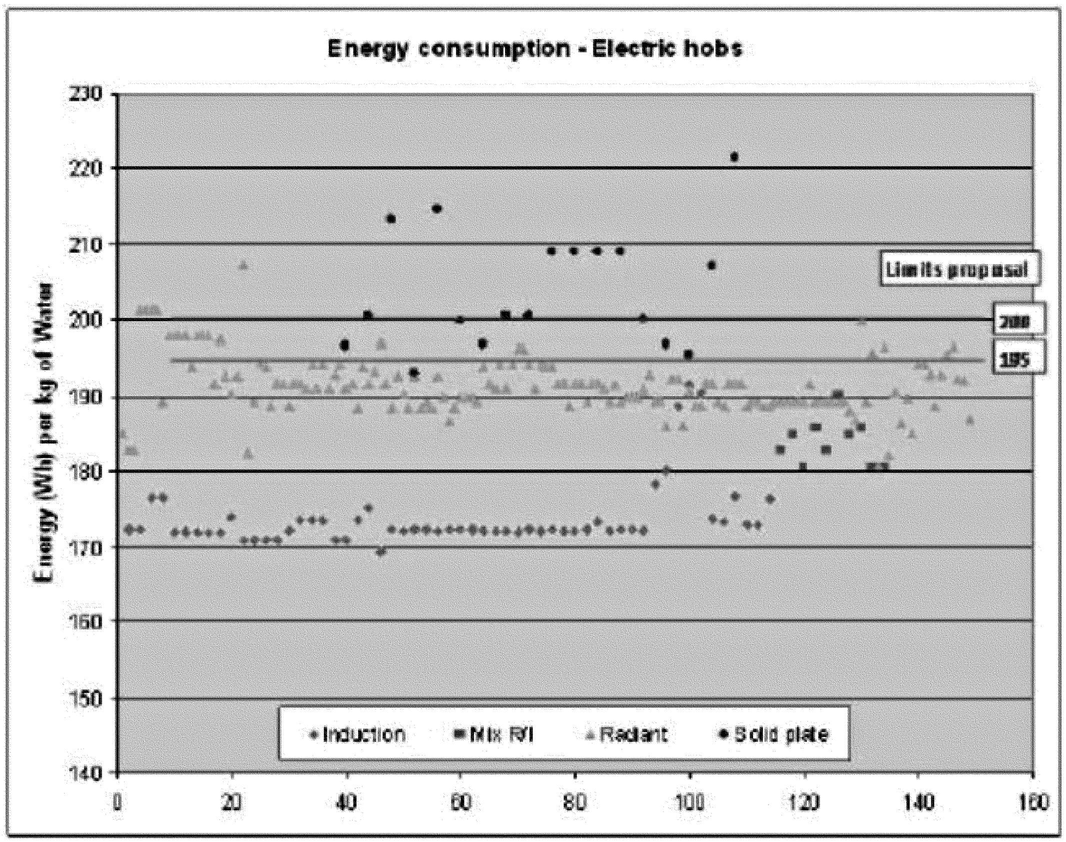
In fact, AHAM believes that the evidence supports the opposite conclusion—i.e., that the cooktop test procedure is not representative for gas cooktops. The EN and ASTM standards use a different test procedure for gas cooktops and do so for good reason. Unlike electric cooktops, gas cooktops utilize a system approach—every component and design choice is connected to other components and design choices and they work together. The cooking heat out to the pot depends on the design of the burner, flow of gas, mass of the grate, and height of the grate from the burner.

Gas testing is a science, and DOE did not do sufficient study to determine whether the electric test procedure it adopted would measure representative results for gas cooktops:

1. First, the purpose behind EN 60350–2:2013 was to establish a test to determine *minimum* energy for electric cooktops. The reason that the working group that developed the test decided to assess simmer for electric cooktops was to show the distinction in energy use between the different electric technologies, i.e. induction, radiant. For electric cooktops, technology has an impact on how much energy is used to get to boil and also how much energy it uses to keep a simmer temperature. Thus, some technologies may appear to be more or less efficient if just a time to boil was assessed. For electric, the simmer portion of the test is needed to accurately show the cooktop's energy use and to allow comparison across the product types. Figure 1 below shows how the test distinguishes between electric technologies.[2]

[2] CECED, 2012.

Figure 1: CECED Test Results For Electric Cooktops



2. In an attempt to keep one test method, DOE extended this electric method to gas cooktops. AHAM appreciates the attempt to reduce the number of test methods. But, in this case, there is no reason to use one type of test. There are not different types of gas technologies and so a simmer period is not needed to differentiate between technologies as it is in electric. The significant added burden of including the simmer setting (and the variation it introduces) is not likely balanced by a benefit in terms of energy savings.

In addition, most consumers likely replace their cooktops with the same fuel that is already in their home. Based on a 2010 study conducted for AHAM, the vast majority of consumers surveyed replaced their cooktops and ranges with a similar unit. According to the study, nearly nine in ten households that bought a freestanding single oven range did a direct replacement. Homeowners were even more likely to do a direct replacement of this type of appliance, at 94 percent.[3] So, it is unlikely that consumers are comparing gas and electric products.

3. The best comparison for comparing gas cooktops to other gas cooktops would be based on a simple bring to boil test, which is what Europe and the ASTM methods both use. DOE is the first to reinvent the wheel and require gas and electric cooktops to be tested in the same way.

4. On a gas unit, there is very little overshoot which means there is no retained heat. Electric cooktops, on the other hand, often have a significant amount of retained heat. A gas cooktop's ability to maintain simmer in the absence of retained heat is largely a function of grate to burner relationships, burner design, valve design, and pan position. This relationship is not accounted for in the electric cooktop test because it does not need to be. But it does need to be addressed in a test applicable to gas cooktops.

5. More so than electric elements, gas burners are designed for a specific cooking purpose. For example:

a. Small or semi-rapid burners are typically used for simmering. This simmering performance is developed for melting chocolate and fine sauces, not keeping water simmering.

b. Ultra rapid or rapid burners are designed to reduce time to boil, or for frying. Often flame stability suffers at low rates, making simmering results poor.

c. Other high input burners are designed for rapid cooking (i.e. Wok) and are not designed for simmering.

Each of these burner types have been optimized in design to serve a particular cooking function for consumers. Thus, it may not make sense to apply a water boil test to all of them. For example, a consumer would not likely boil water on the small/semi-rapid burner that is meant to be used for melting chocolate or cooking fine sauces—the time to boil on such a burner would be extremely long, perhaps 40 minutes. In addition to not being representative, the test will drive significant variation in the assessment because DOE did not address this in the test procedure. DOE did, however, address this issue for electric cooktops—the test procedure removes certain burners from assessment.

6. Additionally, because DOE extended a test meant for electric cooktops to gas cooktops, the test does not require preheating of the gas burner. A gas system will change rates and how

[3] Bellomy Research for AHAM, 2010 Major Appliance Consumer Research Survey, Cooking Appliances (2010).

it performs as it warms. The European test for gas products has a 10 minute preheat because the working group that developed that test found that preheating improved the representativeness of the test results as well as repeatability and reproducibility. The ASTM test has a 30 minute stabilization period at 50 percent heat for the same reason. Thus, DOE's failure to include preheating in the gas test ignores the wisdom generated by other groups' extensive testing and experience and likely contributes to the high degree of variation we describe below.

7. The pots specified by the European electric test are different than the pots used in the European gas cooktop test. The gas pots are Aluminum test pans having a matt base and polished walls—that material is of the highest level of conduction. The electric test pans are a very thick stainless steel plate (6 mm) with thin stainless walls (1 mm) that are joined by a heat resistant glue. The pan construction is significantly different which will have an impact on heat transfer from the burner to the pan. The pot spacing of the large flat corner pans designed for electric cooktops will perform differently with the gas burners compared to the EN specified Aluminum pots and will not drive representative results. A gas flame heats a pot differently and this should be accounted for in the test.

DOE did not assess a sufficient variety of gas cooktop designs to conclude that the test procedure it adopted is representative for gas products, especially in light of Europe's use of a different procedure for residential gas products. As highlighted above, the residual heat loss of a gas burner on simmer is significantly different than simmer on electric unit where the electric unit retains heat from the cooktop. DOE also has specified stainless steel pans whereas the European procedure for gas cooktops uses Aluminum, which has a higher level of conduction. The pan construction is also different which will have an impact on heat transfer from the burner to the pan.

AHAM has not been the only commenter to question the representativeness of extending the European electric test procedure to gas cooktops. During the test procedure rulemaking, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (collectively, the Southern California investor-owned utilities (SoCal IOUs)) commented that DOE should conduct a sensitivity analysis of the impact of ambient temperature and pressure conditions on the test results for gas and electric cooking products in order to ensure consistent test results across various regions, climates, and altitudes. In addition, the SoCal IOUs commented that validating the ambient condition requirements would address the impact of the proposed correction to the gas heating value to standard temperature and pressure conditions. DOE responded only that it incorporated the ambient air pressure and temperature conditions specified in EN 60350–2:2013 and thus believed that the results ''should not'' be impacted by tests being conducted in different locations.[4] But DOE did not do any additional testing to determine if that is in fact the case and, as discussed below in Section II, AHAM's testing demonstrates reproducibility issues which could be attributed, in part, to these differences. Moreover, efficiency for a gas cooktop depends heavily on the external environment, much more so than for electric products. Simmering is, thus, not the right parameter to measure the ability to keep the control in this technology. That is yet another reason why the European gas test does not include the simmer setting—it will be variable and inaccurate.

In addition, the U.S. market consists of a wide array of grate and burner offerings to consumers and DOE did not sufficiently assess those offerings in developing the test procedure. DOE itself acknowledged 283 gas configurations.[5] Yet DOE tested only five units. The varying designs available to consumers, most of which DOE did not assess, have offerings of a sealed/unsealed burner, stacked burner, different burner shapes, a range of grate weight and shape, and different grate materials. DOE has not shown that the test procedure is repeatable and reproducible for the different designs on the marketplace. *For DOE to conclude these issues do not exist simply because it did not observe them in its small test sample is illogical. DOE made assumptions that are not supported by sufficient data and are in direct conflict with the technical support for the European gas test and ASTM standard which drove those procedures to have a pre-heat requirement, to exclude a simmer assessment, and to use specifically constructed Aluminum pans.* Until and unless DOE can demonstrate that data show the cooktop test procedure is representative of actual U.S. consumer use of gas cooktops and will deliver accurate results, DOE should withdraw the test procedure. Keeping it in place will very likely result in inaccurate information to consumers and is contrary to EPCA's and the Administrative Procedure Act's requirements.

II. DOE Has Not Demonstrated That The Test Procedure Is Repeatable or Reproducible For Gas Cooktops.

A. *Lab to Lab Variation*

Because of the short comment period on the August 2016 SNOPR, AHAM was not able to conduct a round robin to assess the repeatability and reproducibility of the test procedure for gas products. And DOE had no data regarding repeatability or reproducibility upon which to rely. DOE instead relied on a European Committee of Domestic Equipment Manufacturers (CECED) round robin conducted five years ago on *electric* cooktops. But, that round robin is irrelevant. As discussed above, Europe does not extend its electric cooktop test procedure to gas cooktops for good reason. DOE would be the first to do that. Thus, there is no historical data for that test procedure. Therefore, AHAM commented that DOE should evaluate its proposed procedure even more carefully and in more detail than the electric cooktop test procedure. Repeatability and reproducibility cannot be established based only on DOE's limited within lab testing and complete lack of lab to lab testing.

In order to address AHAM's concerns, DOE conducted investigative testing on gas cooktops in support of the Final Rule. DOE conducted testing on five gas cooking tops that covered a range of burner input rates, installation widths (two 30 inch and three 36 inch), burner quantities (two four burner, three six burner), and grate weights. To evaluate variation in the test, DOE conducted two to three tests on each burner. For each individual test, DOE performed the full test method, including the preliminary test required to determine the turndown temperature and simmering setting for a given burner. DOE also included test results from previous testing conducted in support of the August 2016 SNOPR. The coefficient of variation DOE observed for the measured AEC for its test sample was, on average 1.0 percent. DOE also noted that the average per-cycle energy consumption coefficient of variation for each burner was 1.7 percent.

DOE based its Final Rule conclusions regarding total variation of the entire plethora of cooktops in the marketplace on only this meager five unit sample

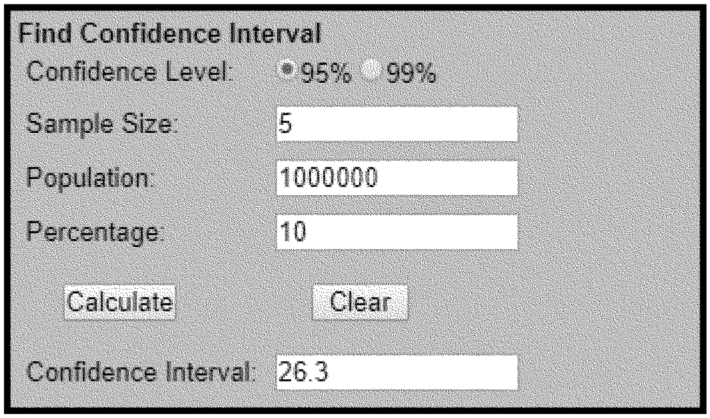
[4] *See* Final Rule, 81 Fed. Reg. 91418, 91434 (Dec. 16, 2016).

[5] *Id.* At 91438 (''DOE surveyed 335 electric cooking tops and 283 gas cooking tops available on the market in the United States.'').

and a simulated round robin. DOE's testing did not *truly* test reproducibility from lab to lab because DOE simply used different technicians for some of its tests. DOE did not conduct testing on the same units in *different labs.* It makes sense that under those conditions—using the *same laboratory equipment* and test technicians trained in the *same* laboratory—variation would be lower. Moreover, this assessment looks at within lab variation and not total variation. As discussed below regarding DOE's electric cooktop testing, DOE's testing is insufficient to support a conclusion that the test procedure for gas cooktops is repeatable and reproducible and, thus, is insufficient to support the final test procedure.

Moreover, because DOE tested such a small sample the confidence level of its results is low (the same is true for electric cooktops). For a sample size of five, trying to represent the millions of units that will be produced and the tens of different labs that will be doing testing this inherently has a large margin of error as shown in Figure 2.[6]

Figure 2



Based on this sample size, results can vary plus or minus 26 percent. We fully understand that a larger sample size is a function of cost and that there are limitations on the amount of further testing that can be done. ***Nevertheless, it is important not to lose sight of the fact that DOE's sample size results in as much as 50 percent in variation on the expected results.*** Thus, it is no surprise that AHAM's testing has shown significant variation that DOE's did not. This large confidence interval, which the difference between DOE's and AHAM's test results bear out, further supports AHAM's request that DOE withdraw the cooktop test procedure. A test procedure that could be required to demonstrate compliance with possible energy conservation standards should not be finalized with such a high confidence interval, particularly when conflicting data has been provided to highlight this high confidence interval. At a minimum, this demonstrates that DOE's data alone and when added together with AHAM's data raises significant questions about whether the test is repeatable and reproducible. *Thus, DOE's Final Rule is not supported by adequate data and could be considered arbitrary and capricious.*

Moreover, as with electric cooktops and discussed more fully below, DOE did not engage stakeholders—either manufacturer labs or third party labs—in its assessment of the Final Rule. *Thus, based on DOE's testing, neither DOE nor stakeholders have any idea what the actual test procedure total variation is.*

In order to assess whether the final test procedure for gas cooktops is repeatable and reproducible, after DOE issued the final test procedure rule, AHAM conducted a round robin on gas cooktops. It is likely that even more testing would be helpful in better understanding both the test procedure and its variation, but these results are enough to demonstrate that there is sufficient doubt regarding the gas cooktop test procedure's accuracy such that DOE should withdraw it.

AHAM's gas cooktop round robin included four units (two cooktops and two ranges), with a range of product types.[7] Four labs tested the burners with the highest and lowest burner input rates (i.e., one high capacity and one low capacity burner was tested for each unit).[8] Each burner was tested three times each using the procedure specified in the DOE Final Rule. Labs recorded the simmering setting selection for the energy test cycle and the first laboratory marked the turn down temperature. AHAM's test plan is attached in Exhibit B and AHAM provided Navigant with raw data under a confidentiality agreement.

We note that some of the tests could not meet the specified ambient temperature requirements. Specifically, some of the laboratories were not able to hold the ambient temperature as required during the duration of the test. Manufacturers ran the tests in the tightest environments that are currently available at +/−5 °F in their laboratories. The Final Rule requires new equipment to maintain +/−2 °F, which is difficult or, in some cases, impossible to do in existing laboratories. Section IV below further discusses this point. The labs that ran the tests have been approved by the safety certification bodies and Canadian Energy Verification organization. We removed the most errant runs and included the test data to show the variation that was noticeable during our tests as it is representative of the current lab capability. Importantly, improving the ability to maintain ambient temperature will involve significant upgrades to laboratories, which will add cost and burden for manufacturers.

As mentioned above, AHAM's test plan called for running the test differently than the DOE test by having the first laboratory mark the turn down temperature it used. AHAM understands that this is not fully

[6] *See, e.g., www.surveysystem.com.*

[7] A summary of the test unit characteristics is attached at Exhibit B and data in Exhibit C.

[8] Unit A was tested by five labs.

consistent with DOE's test procedure. But, because the test procedure is unduly burdensome to conduct, as discussed below, this method was necessary to reduce the test burden—reducing the number of possible settings for the cooktop was seen as a worthwhile experiment. *Importantly, it was not always possible for laboratories to use the marked temperature and so, in several instances, laboratories followed DOE's test procedure to the letter.* In the end, only half of the labs were able to follow AHAM's test plan. The other half ran the test according to the DOE test procedure as written. Our data below differentiates these methods by referring to the tests that used the marked turndown temperature as the ''truncated test'' or ''preset.''

The DOE test procedure tried to address some of the variation that is not controllable in the methodology of its burdensome test procedure—e.g., heating values, different ambient temperatures, equipment, and technicians. AHAM's methodology was an effort to determine if the extra burden aimed at reducing that variation reduced it enough to justify the extra time, labor, and cost. Our conclusion: it is not. ***Although neither method showed results with an acceptable level of variation, the runs that used the truncated test resulted in less variation.*** Regardless, the results cast significant doubt on DOE's small amount of supporting data for the Final Rule and support AHAM's request that DOE withdraw it.

Good lab practice is that within lab variation should clearly be less than two percent. For current data acceptance programs within the appliance industry, it is common practice that data between labs should be no more than three percent variation. DOE's data within its own lab fell within the target zone for variation for four of the five units DOE tested. DOE did not test at different labs, so the Final Rule is not based on any accurate lab-to-lab data showing an acceptable range of lab-to-lab variation.

AHAM's round robin shows similar results to DOE's in terms of within lab variation. Significantly, however, as shown in Table 1, lab-to-lab variation considerably exceeds the three percent maximum lab-to-lab variation target regardless of whether the full DOE test was run or the truncated test was run.

TABLE 1—AHAM GAS ROUND ROBIN SUMMARY RESULTS

Cooking unit	Width	Number of burners	Minimum input rate (Btu/hr)	Maximum input rate (Btu/hr)	Average annual energy consumption (kBtu/yr)	Coefficient of variation —1 lab (repeatability) (%)	Coefficient of variation across multiple labs (reproducibility) (%)
AHAM A—set	36	5	8,000	18,000	936.3	0.89	3.60
AHAM A—Preset					918.7	0.68	2.30
AHAM B	30	4	5,000	15,000	1,034.1	9.20	17.10
AHAM B—Preset					870.1	1.70	13.50
AHAM C	30	4	5,000	15,000	843.1	2.70	12.50
AHAM C—Preset					827.9	1.80	7.00
AHAM D	30	5	5,500	18,000	1,077.2	0.78	12.00
AHAM D—Preset					1,123	1.59	12.00

This highlights the significant gap in the data DOE used to justify the rule. DOE assumed that low variation in one lab means repeatability and reproducibility across labs. But AHAM's round robin demonstrates that this is not the case. Our round robin shows reproducibility is not present in the current procedure as demonstrated by only one of the three units, Unit A, having an acceptable coefficient of variation across labs. Notably, the low input rate on that burner is 8,000 BTU. AHAM units B, C, and D all have low capacity burner rates of or about 5,000 BTU. DOE only tested one of its five units with a low capacity burner at 5,000 BTU. DOE's coefficient of variation for that model was 1.40 percent. Some of the best AHAM single lab coefficients of variation for models at that rate are 0.78, 1.59, 1.70, and 1.80 percent. The AHAM data would appear to agree that one lab can repeat the same results, ***but that is not the full story***.

Focusing on the units with low simmer rates and digging deeper into the data, AHAM's data show the following:

cooking Unit	width	Number of Burners	Minimum Input Rate (Btu/hr)	Maximum Input Rate (Btu/hr)	HC Etvg(Btu)	Coefficient of Variation - 1 lab Repeatability	Coeffiecient of Variation across multiple labs Reproducibility	LC Etvg(Btu)	Coefficient of Variation - 1 lab Repeatability	Coeffiecient of Variation across multiple labs Reproducibility
AHAM A - set	36	5	8000	18000	7032.9	0.93%	3.80%	4817.4	0.83%	3.00%
AHAM A - Preset					6752.8	0.88%	4.10%	4821.6	0.36%	1.00%
AHAM B	30	4	5000	15000	6248	4.23%	5.90%	3907.1	24.22%	30.80%
AHAM B - Preset					5937.1	1.18%	4.80%	3228.9	1.33%	3.30%
AHAM C	30	4	5000	15000	6444.2	2.05%	5.60%	2381.3	3.08%	33.10%
AHAM C- Preset					6120.1	0.68%	3.20%	2587.7	2.23%	16.30%
AHAM D	30	5	5500	18000	5819.6	1.11%	4.50%	4403.1	0.26%	11.40%
AHAM D - Preset					6748.7	1.02%	16.70%	4260.8	3.41%	11.60%

- On all units except one, Unit B, the repeatability on the high capacity burner within the lab had acceptable variation but the reproducibility across labs did not. Overall, ***on the high capacity burner, the variation was higher using the DOE test procedure than it was using the truncated test and none of the variation was within an acceptable range from lab-to-lab***.

• On all units, the repeatability on the low capacity burner was marginal—25 percent of the time the variation was greater than the two percent maximum target. There is a distinct difference in the low capacity variation and the three units that had simmer at or near 5,000 BTU had significant repeatability and reproducibility issues. In some cases, using the truncated test actually *improved* lab-to-lab variation. This demonstrates that the burden associated with determining the turn down temperature in DOE's full test procedure is not always justified—it does not categorically improve repeatability and reproducibility. Thus, not only is DOE's final test procedure rule unsupported by sufficient data to demonstrate its reproducibility, but it is also unduly burdensome to conduct. In addition, this highlights the weakness in the DOE test procedure which conducts a water boil and simmer test on small burners that are not meant for either purpose. As discussed above in Section I, those burners are designed to provide a simmer only cooking function for melting chocolate and cooking sauces, not for boiling or simmering water.

B. *Within Unit And Between Unit Variation*

DOE did not evaluate or account for variation within units. There are issues inherent in testing gas cooktops and ranges that contribute significantly to within unit variation. For example, heating value, gas pressure, and atmospheric pressures all have an impact. More specifically, as atmospheric pressure changes due to weather, test results will vary even on the same unit from day to day. Also, gas pressure and atmospheric pressure can vary from run to run, and that can have an impact on how the gas is mixing within the burner port which then impacts burner combustion and energy creation. Moreover, heating values vary within a lab on a daily basis and likely vary greatly between labs. Thus, the same unit tested on different days in the same lab or in different labs will not perform the same unless the heating value of the gas is the same. That is statistically unlikely because values vary every day. It is not likely that the heating value is 1075, so there is a conversion from what it actually was to 1075 and this artificial adjustment induces variation. Each of these factors, among others, individually and collectively contribute to variation from test to test and DOE has made no effort to understand the impact of these factors.

This inherent variation in gas cooking product testing has been known for decades and is the reason the safety test, ANSI Z21.1, requires certified technicians to drill testing orifices. The drilling of orifices achieves precise rates for nominal, high, and low values. Experience shows that certified gas technicians can dial in the precise values for assessment by using number sized drills but there are also factors the technician must manage in this process such as burrs from the drilling. *AHAM is not suggesting that DOE require testing orifices be drilled for purposes of energy testing—the burden is significant to say the least and would make the test unduly burdensome to conduct.* Although such burden is justified for purposes of ensuring the safety of cooking products, which carry inherent safety risks, it is not justified for purposes of energy testing. And, because safety testing is not similar to energy testing (for example, cooktops are tested on high for hours and products are over-stressed in abnormal conditions), it is not possible to re-use the units tested for safety purposes for energy testing.

In addition, neither DOE nor AHAM have evaluated or accounted for the additional variation inherent in producing gas products, i.e., between unit variation. This is significant because it will add further variation on top of the within lab variation, lab to lab variation, and within unit variation. In order to ensure compliance with any future energy conservation standard, manufacturers will have to take this total variation into account. The result will likely be that it becomes difficult or impossible to meet standards because the buffer needed to ensure accurate ratings will require levels of efficiency that are not economically justified or technologically feasible. AHAM explored this concept in more detail in its comments on DOE's proposed standards, which we hereby incorporate by reference.[9]

One of the test requirements that will vary within the unit is the simmer setting on gas products. Subsequent to AHAM's round robin, Lab Three conducted some additional investigative testing to determine whether using the same simmering setting improves repeatability. The lab used two different operators to test a unit and provided both with the same instructions, which are identified in Exhibit A. The test plan was as follows:

1. Operator F conducted the test and found the simmer setting and gas flow;
2. Operator M conducted the test independently and found a simmer setting and gas flow;
3. Operator M repeated the test using the Operator F simmer setting; and
4. Operator F repeated the test using the Operator M simmer setting.

The results show that technicians are likely to be able to work to achieve passing results on their own efforts to determine a simmering setting. But when given the target setting, the results show that it is likely that different technicians cannot recreate a first technician's passing result about half of the time.

The data also highlight that there are more issues with finding the right simmer setting on low capacity burners—the Lab Three technicians each failed the first time they tried to set the low capacity burner. Also, see in Exhibit A where an additional experiment was run with one of Lab Four's technicians developing the simmer setting without using the previously provided information. This resulted in different energy average and lower variation values between the two Lab 4 technicians.

According to these results, relying on a given setting actually *increased* variation and retests due to failing performance. Thus, though recording the turn down temperature as required by the Final Rule may help understand differences in results between labs, *it does not reduce variation.* And it does not seem that simply following the test procedure to the letter, as DOE suggested in response to AHAM's comments and discussed in Section II below, reduces variation. AHAM's test results demonstrate that additional efforts to reduce variation on turndown settings were unsuccessful—even standardizing the simmering setting does not drive sufficient variation reduction. (Moreover, for gas products, it will not be possible to specify turndown settings for gas products due to orifice variation, which is discussed in more detail below). Accordingly, because DOE's final test procedure does not sufficiently reduce total variation, DOE should withdraw the cooktop test procedure.

C. *Full Population and Total Variation*

As stated previously, DOE's small sample size could not address the full population or total variation. Table 2 below lists the units have been tested to the final test procedure as specified

[9] AHAM Comments on DOE's SNOPR for Energy Conservation Standards for Residential Conventional Cooking Products; Docket No. EERE–2014–BT–STD–0005; RIN 1904–AD15 (Nov. 2, 2016).

from both DOE's sample and AHAM's sample and Figure 3 shows the samples and their results graphically.

TABLE 2—DOE AND AHAM TEST SAMPLES COMBINED

Cooking unit	Width	Number of burners	Minimum input rate (Btu/hr)	Maximum input rate (Btu/hr)	Burner configuration	Grate type	Grate weight per burner lbs)	Average annual energy consumption (kBtu/yr)	Coefficient of variation —1 lab (repeatability) (%)	Coeffiecient of variation across multiple labs (reproducibility) (%)
DOE 1	30	4	9,000	9,000	open	Steel-wire	0.5	640.4	2.40	N/A
DOE 2	30	4	5,000	15,000	Sealed	Cast Iron	3.7	854.4	1.40	N/A
DOE 3	36	6	18,000	18,000	Sealed—stacked	Cast Iron	4.4	974.8	0.40	N/A
DOE 4	36	6	9,200	15,000	Sealed—stacked	Cast iron—Continuous	5.8	963.5	0.30	N/A
DOE 5	36	6	15,000	18,500	Sealed	Cast iron—Continuous	7	893.1	0.30	N/A
AHAM A	36	5	8,000	18,000	Sealed—stacked?	Cast iron—Continuous	?	936.3	0.89	3.60
AHAM B	30	4	5,000	15,000	Sealed	Cast Iron	?	1,034.1	9.20	17.10
AHAM C	30	4	5,000	15,000	Sealed	Cast Iron	?	843.1	2.70	12. 5
AHAM D	30	5	5,500	18,000	Sealed	Cast Iron	?	1,077.2	0.78	12.00

Figure 3: DOE and AHAM Test Samples Combined

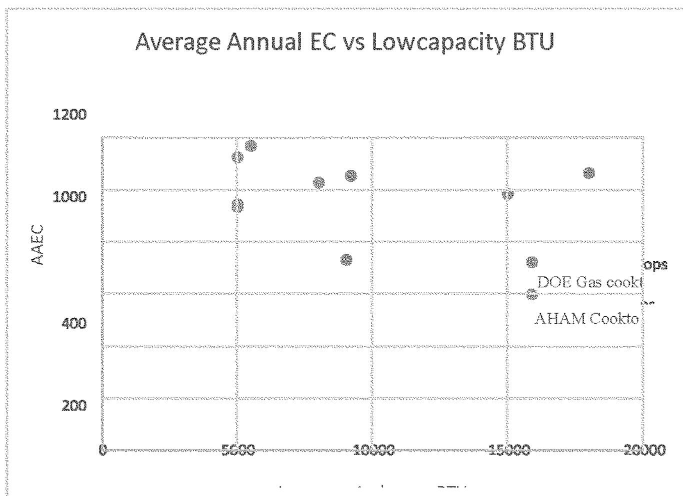


Figure 3 shows the units tested and what their AAEC number is versus their lowest burner capacity rating. It highlights how skewed the DOE sampling was, especially as compared to AHAM's. As discussed above in Section I, DOE identified that nearly half of the models in the market had a 5,000 BTU burner. Yet, DOE selected only one unit with a burner of that capacity. Aside from the fact that DOE's sample inadequately represents the market, this demonstrates that DOE's test procedure will produce inaccurate results for most of the gas products on the market. The test has a high degree of variation for those products, as shown above, and, thus, the test will not allow consumers to compare across products.

Neither DOE nor AHAM have evaluated or accounted for the all of the variation inherent in producing gas products, i.e., total variation across the population. It is a large task and assuming the small amount of work applies to the total picture is not acceptable and further supports the withdrawal of the test procedure.

III. DOE Has Not Demonstrated That The Test Procedure Is Repeatable Or Reproducible For Electric Cooktops.

As discussed above, in response to the August 2016 SNOPR, based on round-robin testing, AHAM identified several sources of potential variation that needed to be resolved prior to DOE finalizing a cooktop test procedure. DOE conducted additional testing in order to evaluate AHAM's concerns and made clarifications to attempt to address many of them. Unfortunately, DOE's testing was not sufficient to demonstrate that the final test procedure significantly reduced the high degree of total variation AHAM identified in its comments. AHAM does not agree that the final test procedure is sufficiently repeatable and reproducible. Accordingly, AHAM respectfully requests that DOE withdraw the cooktop test procedure.

A. *DOE's Testing*

DOE did not do enough testing to verify that its clarifications resulted in a final test procedure that is repeatable and reproducible and, so, the Final Rule is not supported by sufficient data. DOE conducted testing of five electric cooktops incorporating different heating technologies (one coil element cooktop, two radiant element cooktops, and two induction cooktops) and control types (four with step controls and one with infinite). For each unit, DOE conducted testing on surface units capturing a range of heating element sizes. DOE conducted two to three tests per surface unit. For each individual test, DOE performed the full surface unit test method, including the preliminary test required to determine the turndown temperature and simmering setting for a given surface unit. DOE varied test operators for surface unit tests, but did not test at different laboratories. DOE also included test results from previous tests of these units conducted in support of the August 2016 SNOPR.

AHAM appreciates that DOE conducted this testing. But it is not enough to justify finalizing the test procedure. DOE did not complete full tests—it tested only two to three burners. Although that is helpful in assessing potential variation, AHAM is concerned that DOE would finalize a rule based on the results of only partial tests.

DOE's testing demonstrates a low average coefficient of variation of 1.2 percent. It is uncertain whether those results are accurate given that DOE did assess the full IAEC for an entire cooktop. But, assuming that the partial tests do give a reasonable understanding of repeatability and reproducibility, DOE has not identified why DOE's coefficient of variation was so much lower than AHAM's.

One potential reason is that DOE's testing did not truly test reproducibility from lab to lab—DOE simply used different technicians for some of its tests. DOE did not conduct testing on the same units in *different labs.* It makes sense that under those conditions—using the *same laboratory equipment* and test technicians trained in the *same* laboratory—variation would be lower. DOE's test parameters did not accurately simulate reproducibility. The simulation run by DOE only changed the test technician. It is unclear from DOE's analysis if those technicians had previous knowledge of the procedure or were allowed to imprint their interpretation on the execution of the test. DOE did not simulate running the test with different equipment and a different environment, as would be run in a true round robin.

Conversely, AHAM's tests were conducted on the same units in three (now four) *different laboratories.* Those laboratories have *different* technicians with different training, *different* equipment, and, potentially, different interpretations of the test procedure. These true round robin conditions are far more likely to reveal ambiguity in the test and sensitivities that cause variation. They also replicate a real scenario—one lab attempting to verify the results of a different lab. As discussed above in Section II, the testing conducted to date, necessarily, has a low confidence level and the differences between AHAM's and DOE's results demonstrate that. AHAM's testing resulted in significantly higher variation than DOE's and the large confidence interval that results supports AHAM's request for DOE to withdraw the cooktop test procedure.

Moreover, DOE did not engage stakeholders—either manufacturer labs or third party labs—in its assessment of the Final Rule. *Thus, based on DOE's testing, neither DOE nor stakeholders have any idea what the actual total test procedure variation is.* The test laboratory DOE used to run the tests in support of the proposed and final rules will not be a lab that regularly runs the test procedure when reporting and/or compliance with standards is potentially required. (The labs that participated in AHAM's round robin, will, of course, be conducting testing to demonstrate compliance with any potential future standards). Thus, because DOE's reproducibility testing is essentially theoretical and only simulates a round robin test, DOE's testing is helpful, but not enough to determine the repeatability and reproducibility of the test.

B. *Determining the Simmering Setting*

AHAM commented that there is variability in determining the simmering setting for the simmering phase of the test and noted that the simmering setting plays an important role in the overshoot temperature and the ability to maintain a temperature as close as possible to 90 °C during the simmering phase of the test.

DOE responded that it expects that correctly following the methodology—starting with the lowest simmering setting and repeating the test as necessary with the next highest setting until the setting that maintains the water temperature above, but as close as possible to 90 °C, is identified—will result in only a single appropriate simmering setting for a given surface unit.

DOE agreed with AHAM that the selection of the simmering setting has a significant impact on the overall energy consumption of a surface unit and amended Appendix I to require that the simmering setting selection for the energy test cycle of each cooking area/zone be recorded. AHAM appreciates that DOE required recording the simmering setting selection—it will help in enforcement/verification actions to understand differences in test results. Unfortunately, recording the setting *will do nothing to decrease variation* or prevent false findings of potential noncompliance.

AHAM acknowledges that in its initial round robin, laboratories did not start at the lowest simmering setting—laboratories started at the lowest setting they believed would be able to maintain a water temperature above and as close as possible to 90 °C. AHAM is a proponent of conducting the test that way in order to reduce test burden which, as discussed further below, is already significant.

Nevertheless, in order to understand if variation would decrease by following the letter of the test procedure as DOE suggested in the Final Rule, AHAM, in conducting a round robin on gas cooktops, required participating laboratories to (a) follow the DOE test procedure for selection of the simmering setting; (b) record their simmering setting; and (c) for the first lab, mark the turn down temperature on the unit itself.[10] Our data, which are discussed above in Section II, show that following the letter of the test procedure does not sufficiently reduce variation. In particular, lab-to-lab variation remains high for gas cooktops and AHAM's round robin testing for electric cooktops provided data to support a conclusion that it is likely also high for electric cooktops. DOE did not adequately address AHAM's concern in its Final Rule and AHAM's gas testing casts further doubt on this question.

AHAM incorporates by reference the data we submitted to DOE during the rulemaking regarding our electric round robin, which is summarized in the below tables. These data highlight that the simmer setting is a significant source of variation. Because DOE has not yet adequately addressed it, and, thus has not sufficiently demonstrated that its test procedure is valid, DOE should withdraw the cooktop test procedure.

[10] Results of the AHAM gas round robin are discussed in Section II.

Reproducibility

Unit	Coefficient of Variance Between Labs of Energy Consumed			
	Technology	**Heat Up to 90°C**	**20 min Simmer**	**Total**
A	Radiant	1.1%	25.0%	9.2%
B	Coil	2.1%	19.4%	7.1%
C	Induction	3.5%	21.3%	8.4%

Note data is for the total Cooktop. Including pot differences.

Repeatability

Coefficient of Variance within Labs of Energy Consumed					
Unit	**Lab**		**Heat Up to 90°C**	**20 min Simmer**	**Total**
		Mean	0.9%	2.1%	0.9%
		Max	2.8%	15.0%	3.3%
		Min	0.2%	0.0%	0.1%

C. *Spiking Temperatures When Reaching 90 °C*

AHAM commented that our round robin demonstrated difficulty in determining when the water temperature first reaches 90 °C to start the 20-minute simmering phase of the test because, when the temperature first reaches that temperature, it may oscillate slightly above or below it. DOE's testing showed similar fluctuations. Thus, DOE amended Appendix I to clarify that the 20-minute simmering period starts when the water temperature first reaches 90 °C and does not drop below 90 °C for more than 20 seconds after initially reaching 90 °C.

AHAM thanks DOE for making this clarification which seems like it could reduce variation. DOE's testing—completed in a single lab and with technicians trained in the same lab—does not, however, adequately demonstrate that this clarification sufficiently reduces variation and improves reproducibility. AHAM's members were not able to dedicate resources to re-performing a round robin to verify DOE's findings on a single unit. Without knowing whether total variation has, in fact, been reduced, DOE should not have finalized the test procedure and *DOE cannot rely on assumptions* that this change will reduce total variation—to do so could be considered arbitrary and capricious. Total variation is made up of within lab and between lab variations AND within and between units variations. DOE only addressed some of the within lab variation causes, meaning that other causes of variation are unaddressed. DOE does not have sufficient data to demonstrate that the test procedure is reproducible and should withdraw the test.

D. *Heating Element Cycling*

AHAM commented that cycling of power to the heating element is unpredictable and causes variation in test results. It is unknown if the surface unit will cycle the heating element off during a critical phase of the test—i.e., at the start of the simmering phase or when determining the simmering setting. In response to DOE's September 27, 2016 data request, AHAM provided further data on how this was observed during our testing. DOE could not have reviewed or considered that data in drafting the Final Rule given that the Final Rule was issued the same day AHAM provided the data. AHAM incorporates the data we submitted on November 23, 2016, in this petition by reference.

DOE did, however, examine its own data. DOE indicated that it observed only one electric smooth-radiant cooktop in its sample for which the heater cycled on and off during the heat-up phase of the test. That particular unit cycled back on within a few seconds of cycling off and, as a result, the water temperature continued to rise at a ''fairly steady state.'' Thus, DOE concluded that it was infrequent for heating elements to cycle during the heat-up phase and, so, it was unlikely that other electric smooth-radiant cooktops would require any substantive amount of heating element cycling to protect the glass surface. DOE indicated that it did not expect any measurable impacts of heating element cycling on the total measured per-cycle energy consumption.

DOE based its conclusions on the single unit in its sample and is *guessing* that because only one unit in its small sample did not cycle on and off during the heat-up phase, it must not occur frequently and/or if it does, it will not have a measurable impact on the total per-cycle energy consumption. But AHAM also observed element cycling during its testing. Thus, in only the small amount of testing conducted in the U.S. to date, unit cycling during the heat-up phase has been observed twice.

That is not insignificant. *Almost 20 percent of units in the combined AHAM and DOE tested sample experienced unit cycling.*

Moreover, AHAM submitted additional data to DOE regarding the unit cycling it observed. As mentioned in that data submission, AHAM tested two eight-inch coil elements on different cooktops with the same model number to evaluate unit to unit variation. One cooktop cycled during the T70 turndown test and the other did not. The unit that cycled resulted in a higher turn down temperature when compared to the test that did not cycle. The unit did not cycle on either test run during the final T90 simmer test. The high Tc value caused one test run to have a higher overshoot and allowed for a lower turn down during the simmer phase driving unit to unit variation. This resulted in 36 watts less power on the unit with the lower turn down. This is six percent of the normalized power level. Six percent is not insignificant and demonstrates the potential difference between the energy measured on two units of the same construction. DOE should withdraw the Final Rule for cooktops and review and consider the data AHAM submitted. This issue must be addressed in order to reduce total variation.

Furthermore, DOE did not address the arguments AHAM made about the uncertainty regarding how unit cycling will impact test results and test burden—this is a significant concern and could drive redesign of products. Heating element cycling is key to cooking performance for electric ranges because the algorithm that governs heating element cycling controls the temperature of the food being cooked. If the temperature is not properly maintained, the consistency of the food can change. Moreover, for smooth top electric ranges, heating element cycling also serves a safety function. Such cooktops are equipped with a glass break sensor to monitor temperature. That sensor will dictate when a unit needs to cycle down to avoid glass breakage. AHAM is concerned that the test procedure, as finalized by DOE, could drive changes to the algorithm for heating element cycling design. Any such changes will result in significant product development efforts which have not been accounted for in DOE's test procedure rulemaking. A test procedure change should not dictate this sort of design change simply to manage uncertainty and variation.[11]

For these reasons, DOE should withdraw the cooktop test procedure due to total variation that is not fully understood and, from available data, appears to be at an unacceptable level.

E. *Upcoming New Cooktop Designs*

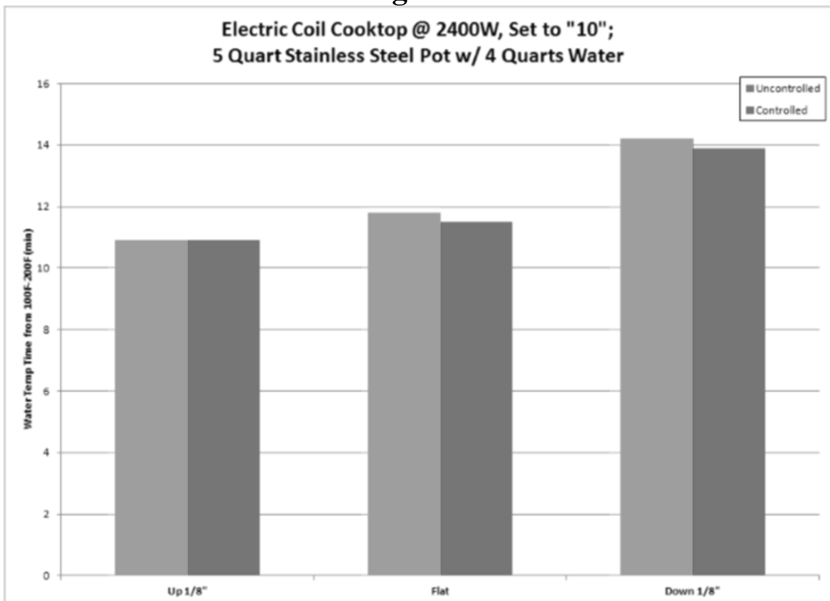
As AHAM has commented to DOE many times, Underwriters Laboratory (UL) Standard 858 will soon require a new test for electric coil element cooktops. The change to the voluntary safety standard, which AHAM developed and proposed to UL with the support of the Consumer Product Safety Commission, will require electric coil element cooktops and ranges to monitor and limit pan bottom temperature and is aimed at reducing the incidences of unattended cooking fires. *It represents a major redesign for all electric coil cooktops by every manufacturer.* The change will be required to show compliance on coil cooktops with the updated voluntary safety standard as of June 15, 2018.

Given the date of this requirement, it is certain that any cooktop standard DOE may promulgate (and AHAM opposes any change to the existing standards for conventional cooking products) would apply to these newly designed products. But, because these products are still in development, DOE has not done testing on products using these controls and neither have manufacturers. Because company designs to comply with the UL 858 requirements may involve cycling of the element, it is quite possible that heating element cycling will be different than it is for existing products. Thus, DOE's data, even as supplemented by AHAM's data, on heating element cycling may be irrelevant because it does not represent products that will be on the market if the test is required to demonstrate compliance with possible energy conservation standards.

As shown in Figure 4, initial data, based on testing conducted by Primaria LLC to develop UL 858's new requirements, show that though time to boil water may not increase significantly using temperature limiting controls on coil cooktops, the difference could be enough to further impact the current assumptions on variation. And, the control cycling could be somewhat different as well. DOE should understand how the energy test will respond to these new technologies.

[11] It is possible, for example, consumers often jump from one side (rolling boil) to the other side (boil action lost) a couple of times before they understand where to set the dial to maintain their desired simmering temperature. If manufacturers make the dials more precise in order to reduce variation in the energy test, that could result in more settings and consumers could change back and forth more times because they see less impact in adjusting the knob. This could actually drive consumers to use more energy in the field. Accordingly, DOE should examine potential unintended consequences of addressing this uncertainty.

Figure 4



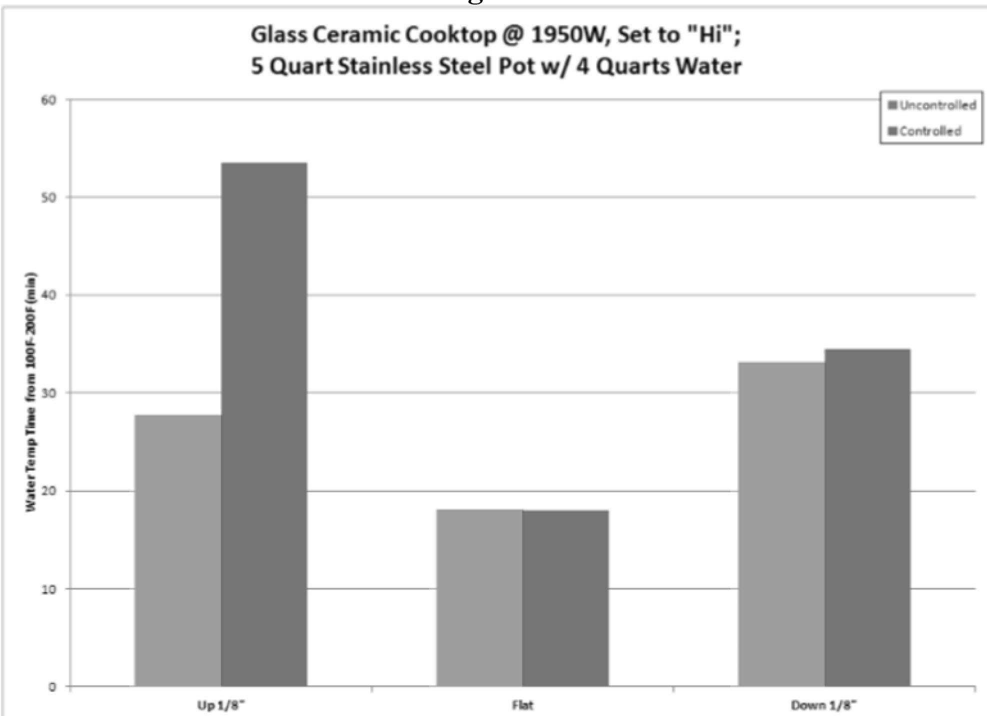
F. *Pan Warpage*

Although DOE sought feedback on the degree to which the heating element or cookware may deform and impact the heat transfer between the two surfaces in its rulemaking on energy conservation standards for cooktops, DOE did not investigate the impact of pan warpage on the repeatability and reproducibility of the test procedure.

The UL 858 test for coil cooktops initially required use of an aluminum pan. But, based on manufacturer experience doing significant testing, AHAM proposed a cast iron alternative to aluminum pans for the test. UL published this update in August of 2017. The shift is to account for warping and the variation and lack of repeatability it is driving in the safety assessment. There is no reason to believe this variation will not also extend to energy testing.

The data from the UL 858 work with Primaira show that any variation in pans of the same type will drive variation that the energy testing has not yet shown because the pans have yet to warp substantially. Significantly, using a warped stainless steel pan on a ceramic cooktop did increase the boil time with the cooktop fire mitigation control active (that control cycles the element on and off per an algorithm). And, warpage on stainless steel pans style will cause a difference in energy use on units without a limiting control as shown in Figure 5. DOE's failure to further investigate this issue means that its test procedure is not adequately supported.

Figure 5



IV. The Cooktop Test Procedure Is Unduly Burdensome To Conduct.

The discussion in the sections above highlights several significant burdens associated with conducting DOE's cooktop test procedure that AHAM believes make it unduly burdensome to conduct. Specifically:

• The test procedure takes about 20 hours for an average four burner cooktop and requires the testing of every single burner or element individually. And, because the test requires the technician to determine the turn-down temperature before every test and the ambient conditions are quite tight, several runs are often required before a valid run can be achieved. Our testing found that some tests took upward of five days for a single cooktop.

• As indicated by AHAM's truncated gas test plan, it is burdensome to determine the turn down temperature for each individual test and burner. And doing so does not serve any purpose as it appears that it does not decrease variation.

• The ambient temperature requirements are incredibly tight and it is difficult or impossible for some laboratories to meet them without investing in lab improvements. Some companies had difficulty maintaining the ambient conditions and AHAM could not use their data in its round robin results.

• Test pots will warp during testing and will need to either be repaired or replaced frequently.

• The test procedure variation means that manufacturers will need to add a larger than usual ''buffer'' to any eventual energy conservation standards ratings, which will effectively increase the stringency of any future standard, probably by a large amount.

In addition to the test burden itself, there is also substantial cost associated with the test procedure. DOE determined that the test procedure would cost $700 per test for labor, with a one-time investment of $2,000 for new test equipment, which was split between test pots and other instrumentation. AHAM collected data from its members on the cost of the test procedure, both ongoing and initial investments. This data is based on company experience with the test through AHAM's round robins and in testing in Europe, on the number of models each company has, and on the potential need for third party testing. AHAM's data show that DOE significantly underestimated the cost associated with running the cooktop test procedure.

Table 3 below shows the difference between DOE's estimates in the Final Rule and AHAM's data.

TABLE 3—PER TEST COSTS (DOE ESTIMATE V. AHAM DATA)

Cooktop full product line	One time (initial year)		On-going (annual)	
Per test costs (per manufacturer)	DOE	AHAM	DOE	AHAM
Labor Costs	$700	$970		$970
Instrumentation (equipment for testing)	15	1,432		[1] 38
Test pots (vessels)	152	113		[2] 209
Testing structures	8	159		[3] 43
Transducer (for ambient air temp.)	2	N/A		0
Total	876	2,673	700	1,260

Note: On average, 543 tests will be required to certify companies' full product lines.

[1] This includes equipment maintenance (new/existing and calibrations for testing equipment).
[2] Manufacturers will require ongoing replacement of test pots due to warping.
[3] This includes increased/new annual costs from third party labs and/or UL and ISO (re) certification.

One of the significant differences between DOE's estimate and AHAM's data is the total number of tests required and the number of models to be tested. It is difficult for manufacturers to determine at this stage how many basic models they would have. DOE's proposed energy conservation standards for cooktops, which AHAM strongly opposes, would be the first time manufacturers would need to certify compliance with standards and determine basic models. To do that may require testing of all models in order to determine likely model families, particularly because cooking products are complex. It will be difficult to determine which models can be grouped together in a basic model. That said, AHAM understands that not each individual model will need to be tested. Thus, it is likely that something between DOE's estimate and AHAM's data would be the actual average total number of models tested.

Nevertheless, the difference in the number of tests and number of models to be tested is shown below in Table 4. DOE cost estimations (particularly for labor) are on a per-test basis. As described above, it is difficult to determine the total number of tests to be performed in the initial year. Comparing the DOE estimation of number of tests to AHAM member data shows a signficant difference or wide range. As a result, total costs are substantially higher when considering the average number of tests required according to AHAM member data.

TABLE 4—AVERAGE NUMBER OF TESTS AND MODELS TO BE TESTED

Tests/models comparison	DOE	AHAM	Estimated total cost	
			DOE	AHAM
Average total number of tests required	66	543	$46,000	$1,100,000
Average total number of models tested	21	166	58,000	1,450,000

Another important difference is that DOE did not address upfront investments made in order for manufacturers to be able to perform the test procedure. But those costs should not be ignored. Manufacturers identified significant investments in specialized equipment to perform the test procedure successfully. For example, all respondants to AHAM's survey expressed frustration in obtaining the necessary test pots because the supplier is overseas. Acquiring even one set is difficult, as AHAM has discussed in previous comments, and the cost is about $9,500 excluding shipping and handling. Manufacturers indicated they would require between three and 24 sets to do certification testing.

DOE concluded that it would cost about $500 to fabricate existing testing structures. But manufacturers identified significantly higher costs. AHAM's members consistently cited investments to redesign entire lab stations and expand facility space. These changes would be needed to control for ambient temperature at the tight levels DOE's test requires, cool test units, add new equipment, and account for much higher volumes of testing. AHAM also believes that third party testing (for certification only) could cost over $2,500 per model. Table 5 details the comprehensive costs.

TABLE 5—COMPREHENSIVE COSTS

Cooktop full product line	Overall per company costs
	AHAM
Labor costs (annual total salaries)	[1] $272,186
Instrumentation (equipment for testing)	[2] 376,635
Test pots (vessels)	[3] 84,200
Testing structures	[4] 368,100
Transducer (for ambient air temp.)	N/A
Total	1,101,121

Note: Overall costs may not align with per-test costs due to reporting measures and averaging.
[1] Annual salary for full-time technicians across multiple labs (1 to 5, up to 13 stations/chambers).
[1] Annual salary for full-time technicians across multiple labs (1 to 5, up to 13 stations/chambers).
[2] Specialized equipment (designed/purchased) to complete test procedure.
[3] Companies require on average 3 sets of test pots to be replaced over multiple years.
[4] Combination of costs from third party labs, certifications (UL/CSA/ISO), retrofitting existing facilities.

The test and cost burden associated with the cooktop test procedure is not likely justified by any balancing benefit to consumers or the environment. In 2009, DOE determined that none of the trial standards levels that included efficiency standards instead of just prescriptive design standards had benefits that were outweighed by the economic burden that would be placed on consumers. DOE found that the potential economic savings realized by average consumers were outweighed by the risk that certain consumers would not realize the savings and the adverse loss of industry net present value, among other things. Thus, DOE prescribed standards consisting of prescriptive design standards, not energy performance standards. As we have commented previously, AHAM does not believe anything has changed since 2009 to justify amended standards.[12] The available technology options have not changed. The energy savings opportunities remain small. Thus, the cooktop test procedure is not necessary and its burden is not balanced by any benefit to consumers.

Given the extraordinary regulatory burden the cooktop test procedure will place on manufacturers, ***the procedure is an ideal candidate for repeal*** consistent with Executive Order 13771,

[12] *See* AHAM Comments on DOE's Energy Conservation Standards for Residential Cooking Products, Request for Information; Docket No. EERE–2014–BT–STD–0005; RIN 1904–AD15 (Apr. 14, 2014) (AHAM does not, however, believe that energy conservation standards different from those currently in place for conventional cooking products are technologically feasible or economically justified. There have been no significant changes since the existing standards for gas cooking tops and ''no standard'' standard for other conventional cooking products were promulgated that would result in justified standards. The available technology options have not changed, the energy savings opportunity remains small, and consumer cooking behavior still plays a significant role in the energy use of cooking products. In addition, AHAM believes that the introduction of new standards for cooking products could have a significant impact on the utility of cooking products . . .'').

Reducing Regulation and Controlling Regulatory Costs, which requires agencies to repeal two regulations for every new one issued and offset the costs. Because, as AHAM has demonstrated above, DOE's cooktop test procedure may be considered arbitrary and capricious because it is not supported by sufficient data and likely has a high degree of total variation, the test procedure does not benefit consumers. It serves only to burden manufacturers who must comply with a test procedure that does not adequately represent products and, due to variation, will require manufacturers to make conservative claims.

CONCLUSION

Because AHAM's testing shows that DOE did not sufficiently demonstrate that the cooktop test procedure is repeatable or reproducible for gas and electric cooktops, because DOE has yet to demonstrate—as EPCA requires it to do—that the final test procedure is representative for gas cooktops, and because the test procedure is unduly burdensome to conduct, we respectfully request that DOE withdraw the final cooktop test procedure while maintaining the repeal of the oven test procedure that was part of this same Final Rule. Even absent an energy conservation standard for cooktops that requires use of the test procedure, manufacturers are required to report energy use via a test procedure DOE has not demonstrated is representative of consumer use for all product types and AHAM has demonstrated is not reproducible. This means that reported energy values for some products could be inaccurate and, for all products, will not be directly comparable to each other across manufacturers. Thus, consumers could be misled when evaluating and comparing energy claims. Accordingly, we also seek an immediate stay of the effectiveness of the cooktop test procedure, including the requirement that manufacturers use the final test procedure to make energy related claims.

Respectfully submitted,

Association of Home Appliance Manufacturers By:

Jennifer Cleary,

Senior Director, Regulatory Affairs, 1111 19th St. NW, Suite 402, Washington, DC 20036, 202-872-5955 x314.

[FR Doc. 2018–08641 Filed 4–24–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2018–D–0075]

The Declaration of Added Sugars on Honey, Maple Syrup, and Certain Cranberry Products: Draft Guidance for Industry; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the notification of availability of a draft guidance for industry entitled ''The Declaration of Added Sugars on Honey, Maple Syrup, and Certain Cranberry Products: Guidance for Industry'' that appeared in the **Federal Register** of March 2, 2018. The draft guidance, when finalized, will advise food manufacturers of our intent to exercise enforcement discretion related to the use in the Nutrition Facts label of a symbol ''†'' immediately after the added sugars percent Daily Value information on certain foods. The symbol would lead the reader to truthful and non-misleading statements outside the Nutrition Facts label to provide additional information regarding the added sugars present in particular foods. We are taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: We are extending the comment period on the document that published in the **Federal Register** of March 2, 2018 (83 FR 8953). Submit either electronic or written comments by June 15, 2018.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–0075 for ''The Declaration of Added Sugars on Honey, Maple Syrup, and Certain Cranberry Products: Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Blakely Fitzpatrick, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 2, 2018 (83 FR 8953), we published a document announcing the availability of a draft guidance for industry entitled ''The Declaration of Added Sugars on Honey, Maple Syrup, and Certain Cranberry Products: Guidance for Industry.'' The draft guidance is intended to advise food manufacturers of our intent to exercise enforcement discretion related to the use in the Nutrition Facts label of a symbol ''†'' immediately after the added sugars percent Daily Value information on certain foods. The symbol would lead the reader to truthful and non-misleading statements outside the Nutrition Facts label to provide additional information regarding the added sugars present in particular foods. The draft guidance explains that we intend to consider exercising enforcement discretion for the use of this symbol on single ingredient packages and/or containers of pure honey or pure maple syrup, and certain dried cranberry and cranberry juice products that are sweetened with added sugars, and that contain total sugars at levels no greater than comparable products with endogenous (inherent) sugars, but no added sugars. We provided a 60-day comment period that was scheduled to close on May 1, 2018.

We have received requests to extend the comment period for the draft guidance (Refs. 1 and 2). The requests conveyed concern that the current 60-day comment period does not allow sufficient time to develop meaningful or thoughtful comments to the draft guidance.

We have considered the requests and are extending the comment period for the draft guidance for 45 additional days, until June 15, 2018. We believe that this extension allows adequate time for interested persons to submit comments without significantly delaying finalizing the guidance.

II. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov*.

1. Letter from Margaret Lombard, Chief Executive Officer, National Honey Board, to FDA Dockets Management Staff (April 3, 2018).
2. Letter from Ray Bonenberg, President, International Maple Syrup Institute, to Dr. Scott Gottlieb, Commissioner of Food and Drugs, FDA (April 4, 2018).

Dated: April 19, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–08603 Filed 4–24–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0078]

RIN 1625–AA00

Safety Zone; Officer Lehner Memorial Vintage Regatta; Buffalo Outer Harbor, Buffalo, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain waters of the Buffalo Outer Harbor during the Officer Lehner Memorial Vintage Regatta. 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 May 25, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0078 using the Federal eRulemaking Portal at *http://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 Michael Collet, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@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 December 27, 2017, the Buffalo Vintage Boat Racing Association and BR Guest Inc., notified the Coast Guard that it will be conducting a boat race from 10:00 a.m. to 4:00 p.m. on July 1, 2018, on the Buffalo Outer Harbor. Hazards from the boat regatta include high speed vessels. The Captain of the Port Buffalo (COTP) has determined that potential hazards associated with the Officer Lehner Memorial Vintage Regatta would be a safety concern for anyone within the designated course encompassed by all waters inside of the Outer Harbor, Buffalo, NY starting at position 42° 52′04″ N, 078° 53′03″ W then South to 42° 51′07″ N, 078° 52′09″ W (NAD 83). The course will extend a minimum of 100 yards from the shore and the breakwall.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the above stated points before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary safety zone, enforced intermittently, from 9:45 a.m. to 4:15 p.m. on July 1, 2018. The safety zone will encompass all waters inside of the Outer Harbor, Buffalo, NY starting at position 42° 52′04″ N, 078° 53′03″ W then South to 42° 51′07″ N, 078° 52′09″ W (NAD 83). The course will extend a minimum of 100 yards from the shore and the breakwall. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10:00 a.m. to 4:00 p.m. boat races. 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone, which would impact a small designated area of the Buffalo Outer Harbor, by transiting a short distance in Lake Erie. The safety zone would also have built in times where vessels will be able to transit through between race heats. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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 rule would economically affect it.

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, which guides 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 an intermittently enforced safety zone lasting 6.5 hours that would prohibit entry into all waters inside of the Outer Harbor, Buffalo, NY starting at position 42° 52′04″ N, 078° 53′03″ W then South to 42° 51′07″ N, 078° 52′09″ W (NAD 83). The course will extend a minimum of 100 yards from the shore and the breakwall. Normally such actions are categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

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 *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact 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 *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://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 record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0078 to read as follows:

§ 165.T09–0078 Safety Zone; Officer Lehner Memorial Vintage Regatta; Buffalo Outer Harbor, Buffalo, NY.

(a) *Location.* The safety zone will encompass all waters inside of the Outer Harbor, Buffalo, NY, starting at position 42° 52′04″ N, 078° 53′03″ W then South to 42° 51′07″ N, 078° 52′09″ W (NAD 83). The course will extend a minimum of 100 yards from the shore and the breakwall.

(b) *Enforcement Period.* This rule is effective from 9:45 a.m. until 4:15 p.m. on July 1, 2018.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

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

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his 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 Captain of the Port Buffalo, or his on-scene representative.

Dated: March 21, 2018.

J.S. DuFresne,

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

[FR Doc. 2018–08626 Filed 4–24–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0056; FRL–9976–75–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Reasonable Further Progress Plan for the Houston-Galveston-Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) requirements for the Houston-Galveston-Brazoria (HGB) moderate 2008 8-hour ozone nonattainment area (HGB area). Specifically, EPA is proposing to approve the RFP demonstration, contingency measures, motor vehicle emissions budgets (MVEBs) and an updated 2011 base year emissions inventory.

DATES: Written comments must be received on or before May 25, 2018.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2017–0056, at *http://www.regulations.gov* or via email to *jacques.wendy@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Wendy Jacques, (214) 665–7395, *jacques.wendy@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Jacques, 214–665–7395, *jacques.wendy@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Wendy Jacques or Mr. Bill Deese at 214–665–7253.

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

I. Background

In 2008, we revised the 8-hour ozone primary and secondary national ambient air quality standards (NAAQS) to a level of 0.075 parts per million (ppm) to provide increased protection of public health and the environment (73 FR 16436, March 27, 2008). The HGB area was classified as a marginal ozone nonattainment area for the 2008 8-hour ozone NAAQS and initially given an attainment date of no later than December 31, 2015 (77 FR 30088 and 77 FR 30160, May 21, 2012). The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

On December 23, 2014, the DC Circuit Court issued a decision rejecting, among other things, our attainment deadlines for the 2008 ozone nonattainment areas, finding that we did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC* v. *EPA,* 777 F.3d 456, 464–69 (DC Cir. 2014). Consistent with the court's decision we modified the attainment deadlines for all nonattainment areas for the 2008 ozone NAAQS, and set the attainment deadline for all 2008 ozone marginal nonattainment areas, including the HGB area as July 20, 2015 (80 FR 12264, March 6, 2015). The HGB area qualified for a 1-year extension of the attainment deadline and we revised the attainment deadline to July 20, 2016 (81 FR 26697, May 4, 2016). As the HGB area did not meet the revised attainment deadline of July 20, 2016, we reclassified the area to moderate and set a due date for a revised SIP of January 1, 2017 (81 FR 90207, December 14, 2016). One moderate classification SIP requirement is reasonable further progress (RFP) reductions in volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions (CAA sections 172(c)(2) and 182(b)(1) and 40 CFR 51.1110). VOCs and NO_X are ozone precursors.

RFP plans must include contingency measures that will take effect without further action by the state or EPA, which includes additional controls that would be implemented if the area fails to reach the RFP milestones (CAA 172(c)(9)). While the CAA does not specify the type of measures or quantity of emissions reductions required, EPA provided guidance interpreting the CAA that implementation of these contingency measures would provide additional emissions reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) in the year following the RFP milestone year. For more information on contingency measures, please, see the April 16, 1992 General Preamble (57 FR 13498, 13510) and the November 29, 2005 Phase 2 8-hour ozone standard implementation rule (70 FR 71612, 71650). RFP plans must also include MVEBs, which are the allowable on-road mobile emissions an area can produce and continue to demonstrate RFP (40 CFR 93.101 and 93.118(b)(1)(i)).

On December 29, 2016, Texas submitted a RFP SIP revision for the HGB moderate area. The SIP revision (1) updates the 2011 base year emissions inventory that was approved by EPA (80 FR 9204, February 20, 2015), (2) demonstrates a 15% emissions reduction in ozone precursors from the 2011 base year through the 2017 attainment year, (3) demonstrates a 3% emissions reduction for contingency in 2018 if the reductions for 2017 are missed and (4) sets the NO_X and VOC MVEBs for transportation conformity purposes, for a 2017 attainment year.

II. The EPA's Evaluation

We reviewed the Texas SIP submittal for consistency with the requirements of the CAA, EPA regulations, and EPA guidance. A summary of our analysis and findings are provided below. For a more detailed discussion of our evaluation, please see our Technical Support Document (TSD) found in regulations.gov (docket EPA–R06–OAR–2017–0056).

A. Update to the 2011 Base Year Emissions Inventory

An emissions inventory is a comprehensive, accurate, and current inventory of actual emission from all sources. CAA sections 172(c)(3) and 182(b)(1) require that ozone nonattainment SIP revisions include an inventory of NO_X and VOC emissions from all sources in the nonattainment area. As noted above we previously approved the 2011 base year. Since that submittal, Texas further refined the inventory to more accurately reflect actual 2011 emissions. We determined that the revised inventory was developed in accordance with EPA guidance and regulations and propose to approve the update. Table 1 summarizes the update to the inventory. For more information, please see the TSD and the Texas SIP submittal.

TABLE 1—HGB RFP PREVIOUS AND UPDATED 2011 BASE YEAR EIS (TPD)

Source type	Previous NO_X	Updated NO_X	Previous VOC	Updated VOC
Point	108.44	108.33	94.83	95.99
Area	21.14	21.15	308.73	304.90
Non-road Mobile	121.11	142.44	49.93	49.78
On-road Mobile	196.21	188.02	82.62	80.73
Total	446.90	459.94	536.12	531.40

B. Reasonable Further Progress Demonstration

Texas developed emissions projections for 2017 to demonstrate that NO_X and VOC emissions would be reduced by 15%. Table 2 shows the calculations and reductions required to achieve RFP. For more information, please see the TSD and the Texas SIP submittal.

TABLE 2—CALCULATION OF NO_X AND VOC REDUCTIONS THROUGH 2017 (TPD)

Description	NO_X	VOC
a. 2011 Emissions Inventory (from Table 1 above)	459.94	531.40
b. Percent of NO_X and VOC to meet 15% reduction	14.5%	0.5%
c. 15% NO_X and VOC reduction, 2011–2017 (row a multiplied by row b)	66.69	2.66

TABLE 2—CALCULATION OF NO_X AND VOC REDUCTIONS THROUGH 2017 (TPD)—Continued

Description	NO_X	VOC
d. 2017 Target Level of Emissions (a–c)	393.25	528.74

Texas has provided sufficient control measures in their RFP plan to offset growth in emissions by estimating the amount of growth that will occur between 2011 and 2017. The control measures used to achieve the necessary emission reductions to meet the RFP requirements are listed in Table 3.

TABLE 3—NO_X AND VOC CONTROL MEASURES AND EXPECTED EMISSION REDUCTIONS (tpd) FOR THE HGB AREA, 2011–2017

Control Strategy Description	NO_X	VOC
Locomotive engine certification standards and fuel programs	18.41	0.65
Commercial marine vessel (CMV) engine certification standards and fuel programs	9.39	0.06
Small non-road Spark Ignition (SI engines) (Phase 1)	[1] −3.10	24.29
Heavy duty non-road engines	21.54	11.26
Tiers 2 and 3 non-road diesel engines	27.33	3.95
Small non-road SI engines (Phase 2)	2.17	22.48
Large non-road SI & recreational marine	33.49	13.71
Non-road Texas Low Emission Diesel (TxLED)	1.74	0.00
Non-road Reformulated Gasoline (RFG)	0.03	0.08
Tier 4 non-road diesel engines	11.41	0.59
Diesel recreational marine	0.00	0.01
Small SI (Phase 3)	1.91	13.14
Drilling rig Tier2, 3 and 4 non-road diesel engines	0.68	0.15
Drilling rig low emission diesel	0.04	0.01
RFG with Tier 3 sulfur standard and federal ultralow sulfur diesel	85.13	16.87
Federal Motor Vehicle Control Program (FMVCP)	464.25	198.54
Inspection and Maintenance (I/M)	6.89	7.94
On-road TxLED [2]	2.81	0.00
Total Reductions Projected	684.12	313.73

[1] The increase in emissions is due to engine modifications to meet the standards for VOC and carbon monoxide.
[2] The TxLED fuel rules apply to highway (on-road) and non-road vehicles and were approved into the Texas SIP on November 14, 2001 (66 FR 57196). Subsequent revisions were approved April 6, 2005 (70 FR 17321), October 6, 2005 (70 FR 58325), October 24, 2008 (73 FR 63378), and May 6, 2013 (78 FR 26255).

The projections of growth are labeled as the ''Uncontrolled Emissions'' for 2017 under (a) in the table below. The State followed our standard guidelines in estimating the growth in emissions and are described in greater detail in the TSD.

TABLE 4—SUMMARY OF RFP DEMONSTRATION FOR HGB THROUGH 2017 (tpd)

Description	NO_X	VOC
2017 Uncontrolled Emissions	1018.21	829.50.
Projected Emission Reductions between 2011 and 2017 (from Table 3 above)	684.12	313.73.
Projected Emissions after Reductions	334.09	515.77.
2017 RFP Targets (from Table 2 above)	393.25	528.74.
Surplus or (shortfall)	59.16	12.97.
RFP Met?	yes	Yes.

C. Contingency Measure Demonstration

As noted earlier in this action, RFP plans for moderate and above nonattainment areas must include contingency measures to be implemented in the event an RFP milestone is missed.

The Texas 3% attainment year RFP contingency measure demonstration is based on a 2% reduction in NOx and a 1% reduction in VOC, to be achieved between 2017 and 2018. Controlled emissions reductions not previously used in the 2017 RFP demonstration may also be used to satisfy contingency requirements, so the excess emissions reductions from the 2017 RFP demonstration are included in the contingency measure demonstration. The 2018 reductions from the federal motor vehicle control program, inspection and maintenance program, and the fuel requirements program were also used in the RFP contingency demonstration.

Texas demonstrated that federal and State measures being implemented are sufficient to reduce emissions by more than 3% and meet the contingency measure requirement for the RFP SIP. We determined that Texas used acceptable methodology to demonstrate that the required emissions reductions are in excess of those needed for RFP and propose to approve the RFP demonstration. Table 4 summarizes the demonstration. For more information, please see the TSD and the Texas SIP submittal.

TABLE 5—HGB AREA RFP CONTINGENCY MEASURE DEMONSTRATION (tpd)

Description	NO_X	VOC
A. 2011 Base Year EI (Table 2, line a)	459.94	531.40.
B. Percent of NO_X and VOC to meet 3% contingency	2%	1%.
C. Required reduction to provide contingency (A × B)	9.20	5.31.
D. Excess reduction to meet RFP in 2017 (Table 4)	59.16	12.97.
E. Subtract 2017 RFP demonstration MVEB safety margin from excess reductions from 2018 RFP	−23.66	−11.67.
F. 2018 On-road FMVCP, I/M, and RFG reductions (23.84–0.94 + 1.45 = 24.35) and (9.01–0.51 + 0.28 = 8.78).	24.35	8.78.
G. Total RFP demonstration contingency reductions (D + E + F) (59.16–23.66 + 24.35 = 59.85) and (12.97–11.67 + 8.78 = 10.08).	59.85	10.08.
Total surplus or shortfall		
Subtract line G from C for surplus (59.85–9.20 = 50.65) and (10.08–5.31 = 4.77)	50.65	4.77.
Is the contingency measure requirement met?	Yes	Yes.

D. Motor Vehicle Emission Budgets

An RFP plan must establish MVEBs for transportation conformity purposes (40 CFR 93.118(b)(1)(i)). The MVEB is the mechanism to ensure that future transportation activities will not produce new air quality violations, worsen existing violations, delay reaching RFP milestones, or delay timely attainment of the NAAQS. A MVEB establishes the maximum amount of emissions allowed in the SIP for on-road motor vehicles. The MVEBs for 2017 provided by Texas in the SIP revision can be found in Table 6.

TABLE 6—RFP MOTOR VEHICLE EMISSION BUDGETS FOR HGB

[Tons/Day]

Year	NO_X	VOC
2017	121.81	68.04

For the budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). The availability of these budgets was posted on our website on January 18, 2017, for the purpose of soliciting public comments on their adequacy. The comment period closed on February 17, 2017, and we received no comments. On March 6, 2017, we published the Notice of Adequacy Determination for these MVEBs (88 FR 26091). As a result of such adequacy determination, these MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. The adequacy determination represents a preliminary finding by EPA of the acceptability of the MVEBs. We are proposing to finalize our finding that these MVEBs are fully consistent with RFP. As the MVEBs sets the allowable on-road mobile emissions the HGB area can produce and continue to demonstrate RFP, we are proposing to approve the MVEBs for the HGB area.

III. Proposed Action

We are proposing to approve the HGB RFP SIP revision submitted on December 29, 2016. Specifically, we are proposing to approve the RFP demonstration, contingency measures, MVEBs and an updated 2011 base year emissions inventory.

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: April 19, 2018.

Anne Idsal,

Regional Administrator, Region 6.

[FR Doc. 2018–08660 Filed 4–24–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 07–135, CC Docket No. 01–92; FCC 18–29]

Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) considers further reform to establish a budget that will allow for robust broadband deployment in rate-of-return areas while minimizing the burden that contributions to the Universal Service Fund (the Fund) place on ratepayers and to bring greater certainty and stability to rate-of-return high-cost funding, both in the near term and in the future. The Commission also seeks comment on additional reforms to increase broadband deployment, while promoting the efficient use of limited resources.

DATES: Comments are due on or before May 25, 2018 and reply comments are due on or before June 25, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 10–90, 14–58, 07–135, CC Docket No. 01–92, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Website: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket Nos. 10–90, 14–58, 07–135, CC Docket No. 01–92; FCC 18–29, adopted on March 14, 2018 and released on March 23, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0323/FCC-18-29A1.pdf.* The Report and Order and Third Order on Reconsideration that was adopted concurrently with the NPRM is published elsewhere in this issue of the **Federal Register**.

I. Introduction

1. Universal service can—and must—play a critical role in helping to bridge the digital divide to ensure that rural America is not left behind as broadband services are deployed. The directive articulated by the Commission in 2011 remains as true today as it did then: ''The universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed internet access.'' Though the Commission has made progress for rural Americans living in areas served by our nation's largest telecommunications companies, the rules governing smaller, community-based providers—rate-of-return carriers—appear to make it more difficult for these providers to serve rural America. As a result, approximately 11 percent of the housing units in areas served by rate-of-return carriers lack access to 10 Mbps downstream/1 Mbps upstream (10/1 Mbps) terrestrial fixed broadband service while 34 percent lack access to 25 Mbps downstream/3 Mbps upstream (25/3 Mbps). It is time to close this gap and ensure that all of those living in rural America have the high-speed broadband they need to participate fully in the digital economy.

2. By improving access to modern communications services, the Commission can help provide individuals living in rural America with the same opportunities that those in urban areas enjoy. Broadband access fosters employment and educational opportunities, stimulates innovations in health care and telemedicine and promotes connectivity among family and communities. And as important as these benefits are in America's cities, they can be even more important in America's more remote small towns, rural, and insular areas. Rural Americans deserve to reap the benefits of the internet and participate in the 21st century society—not run the risk of falling yet further behind.

3. Today, the Commission takes the next step in closing the digital divide through proposals designed to stimulate broadband deployment in rural areas. To reach its objective, the Commission must continue to reform its existing high-cost universal support programs. Building on earlier efforts to modernize high-cost universal service support, the Commission seeks to offer greater certainty and predictability to rate-of-return carriers and create incentives to bring broadband to the areas that need it most.

4. In the NPRM, the Commission considers further reforms to establish a budget that will allow for robust broadband deployment in rate-of-return areas while minimizing the burden that contributions to the Fund place on ratepayers and to bring greater certainty and stability to rate-of-return high-cost funding, both in the near term and in the future. The Commission also seeks comment on additional reforms to increase broadband deployment, while promoting the efficient use of limited resources. For example, the Commission seeks comment on whether to fully fund existing A–CAM support recipients, afford a new opportunity for legacy providers to elect model-based support, and establish a minimum threshold of support for legacy providers that would not be subject to a budget cap. Lastly, the Commission seeks comment on other reforms, including, for example, exploring the need for caps on capital and operating expenses, using an auction process to address substantial competitive overlaps, and other options for simplifying the legacy rate-of-return mechanism.

II. Notice of Proposed Rulemaking

5. *Discussion.* The Commission seeks comment on revising the budget for rate-of-return carriers within the high-cost program. The Commission has not revised the budget since 2011, and as a result, has not accounted for the effects of inflation on the budget. Had the Commission accounted for inflation, the rate-of-return budget would have increased from $2 billion in the 2012 budget year to $2.193 billion in the 2018 budget year.

6. Moreover, since 2011 consumers' expectations and the Commission's requirements regarding broadband speed have continued to increase. The Commission's initial speed benchmark for Connect America Fund (CAF) recipients was 4 Mbps downstream and 1 Mbps upstream, later revised to 10 Mbps downstream and 1 Mbps upstream, and certain CAF recipients are now required to offer 25 Mbps downstream and 3 Mbps upstream. Consumer demand for higher speeds is also evident. Among residential users, the percentage of fixed broadband connections with a ''downstream speed of at least 25 Mbps has grown from 24% (or 23 million connections) in June 2013 to 57% (or 59 million connections) in June 2016,'' and ''slower downstream speeds of less than 3 Mbps has decreased from 18% (or 17 million connections) in June 2013 to 5% (or 5 million connections) in June 2016.'' A budget designed to speed the deployment of 4 Mbps/1 Mbps broadband to rural America may be insufficient to encourage the deployment of the high-speed broadband networks that residents of rural America need.

7. In initiating the budget review, the Commission seeks comment on the appropriate level of support—and the Commission notes that the Communications Act of 1934, as amended (Act) requires such support to be ''predictable and sufficient . . . to preserve and advance universal service.'' Should the Commission establish a separate budget dedicated to High-cost Loop Support (HCLS) and Connect America Fund Broadband Loop Support (CAF BLS)? If so, should the Commission set that budget at $1.23 billion (the current amount available for HCLS and CAF BLS), at $1.35 billion (that amount adjusted by the inflationary ratio that reflects inflation since 2011), or at some other amount? Commenters should submit evidence that labor costs or other costs, such as fiber or electronics, have increased since 2011 due to inflation. Commenters should also submit evidence that those increased costs, if any, have not been offset by savings related to increased labor productivity or the lower cost of network equipment.

8. Alternatively, should the amount of support available for HCLS and CAF BLS continue to be calculated by subtracting Alternative Connect America Cost Model (A–CAM), Alaska Plan, and Connect America Fund Intercarrier Compensation (CAF ICC) support from a single rate-of-return budget? If so, should the Commission increase that rate-of-return budget for the 2018 budget year to $2.193 billion (the inflation-adjusted figure) or adopt some other figure? If the Commission retains a single budget, how should the Commission account for other changes and proposals it makes today? For example, in the concurrently adopted Report and Order, the Commission offers existing A–CAM carriers revised support up to a per-location cap of $146.10 and here seeks comment on making a second A–CAM offer to legacy carriers—should that additional funding come from within a single, combined budget? The Commission notes that any increase in the budget attributable to those carriers now receiving A–CAM could help fully fund the original offer at the $200 per-location cap or incent more legacy carriers to elect a new model offer. Should the Commission adopt a budget that would fully fund a new model offer and fully fund the original A–CAM offer for all existing A–CAM providers? The Commission also proposes to offer model-based support to glide path carriers, which would decline over the 10-year term as transition payments phase down to the model amount. Should that support then be available to carriers continuing to receive HCLS and CAF BLS?

9. In revisiting the budget, how should the Commission take into account the reforms it adopted in the *Rate-of-Return Reform Order,* 81 FR 24282, April 25, 2016, as well as proposals the Commission makes in this NPRM—reforms and proposals that will bring more predictability to rate-of-return carrier support, while spurring deployment and mitigating regulatory inefficiencies? And how should the Commission account for the fact that recipients of CAF BLS and HCLS are uniquely situated because each recipient effectively determines its own support claims through its behavior (its expenses and capital investments) and each recipient's behavior has a collective effect on all recipients of these funds due to the budget cap. In other words, how should the Commission account for the fact that spending by one legacy carrier could reduce support available to other providers once adjustments are made to ensure that total spending falls below the cap?

10. The Commission is mindful of its obligation to ensure that scarce public resources are spent judiciously. As courts have recognized, too much subsidization could affect the affordability of telecommunications services for those that pay for universal service support, in violation of section 254(b). The Commission also notes that when the Tenth Circuit upheld the budget adopted in 2011, it stated that ''the FCC quite clearly rejected any notion that budgetary 'sufficiency' is equivalent to 'complete' or 'full' funding for carrying out the broadband and other obligations imposed upon carriers who are voluntary recipients of USF funds.'' The Commission therefore asks commenters to discuss whether the benefits of any budget increase would outweigh the burden on ratepayers from an increase in the contribution factor. The Commission notes that the proposed contribution factor for the second quarter of 2018 is 18.4 percent. The Commission takes seriously its obligations as steward of the Fund and is committed to fiscal responsibility. The Commission also recognizes that increases in the contribution factor raise the costs, directly and indirectly, of service to businesses and consumers. The Commission thus asks that commenters consider its commitment to fiscal responsibility when advocating an appropriate high-cost budget.

11. With any proposed budget, the Commission urges commenters to provide a detailed economic analysis. The Commission would find most helpful comments providing evidence on the amount of support legacy carriers would need to meet mandatory buildout requirements while offering at least one plan at the comparative benchmark rate, and why/if current support levels are insufficient. The Commission also asks that comments quantify how much additional broadband deployment could occur with any budget increase.

12. After the Commission has set a new initial budget, it proposes to increase that budget for inflation going forward and seek comment on this proposal. The Commission believes that adjusting the budget for inflation would account for any increases in the costs of network inputs and allow carriers an opportunity to recover those increased costs. The Commission seeks comment on inflation's impact on the costs of deploying and maintaining a network.

13. For an inflationary factor, the Commission proposes using Gross Domestic Product—Chain Price Index (GDP–CPI), the same factor used for the Rural Growth Factor (RGF). Using the same inflationary factor the Commission uses for the RGF would be administratively efficient. In addition, the Commission has been using the GDP–CPI in other contexts since 1996, and of the two versions used to index federal programs, the GDP–CPI is more accurate in estimating cost of living changes from month to month. Furthermore, in the document, the Commission modifies the operating expense limitation to add GDP–CPI as

the inflationary factor, which the industry had requested. Nonetheless, the Commission seeks comment on whether another inflationary factor be more appropriate and, if so, why?

14. The Commission also seeks comment on when it should next revisit the budget. Should the Commission revisit the budget again in six years, as set forth in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011? Given that current A–CAM funding continues until 2026, would it be more appropriate to revisit the budget in 2026? The Commission asks that commenters consider that any time frame should take into account carriers' needs for a sufficient and predictable funding stream, while providing the flexibility to make adjustments as marketplace circumstances warrant.

15. *A–CAM Offer.* In the *A–CAM Revised Offer Order,* 82 FR 4275, January 13, 2017, the Commission recognized that glide path carriers—those carriers electing A–CAM despite an ''offer of model-based support . . . less than the legacy support that they received''—leave more funding available in the A–CAM rate-of-return budget to the benefit of consumers and other rate-of-return carriers that elected model support. Here, the Commission proposes to extend a new model offer to carriers willing to accept lower support amounts in exchange for increased certainty of funding—which in turn could create additional headroom for legacy rate-of-return carriers over time. The Commission seeks comment on this proposal.

16. In proposing this new model offer, the Commission first seeks comment on limited adjustments to the cost model that may make participation more favorable to carriers that declined the A–CAM, including the addition of a Tribal Broadband Factor. The Commission next seeks comment on which carriers should be eligible to participate. The Commission then seeks comment on the support amounts available for electing carriers, as well as their accompanying obligations. Finally, the Commission seeks comment on the process used for elections.

17. *Revising Model Parameters.* The Commission generally proposes to use the A–CAM and the parameters it adopted in the *Rate-of-Return Reform Order* to provide its new model offers, but the Commission seeks comment on several proposed revisions.

18. *First,* the Commission proposes to adjust the model to reflect the unique challenges of deploying high-speed broadband to rural, Tribal communities by incorporating a Tribal Broadband Factor into the model. Specifically, the A–CAM incorporates assumptions about take rates and potential average revenues per subscriber that may be unrealistic given the ''high concentration of low-income individuals [and] few business subscribers'' in many rural, Tribal areas. By reducing the funding threshold by 25 percent for locations in Indian country—in other words, by setting a high-cost funding benchmark of $39.38 on Tribal lands—the Commission believes the revised model will better reflect the business case of deploying high-speed broadband in rural, Tribal areas and therefore spur further broadband deployment there. Because A–CAM support is calculated at the census block level, the Tribal Broadband Factor would efficiently target support to carriers that serve significant Tribal lands, as well as those carriers that serve only a minimal amount of Tribal lands or a small number of housing units on Tribal lands in their study area. The Commission proposes to use the definition of ''Tribal lands'' that was used in the *USF/ICC Transformation Order* and later modified in the *2015 Lifeline Reform Order,* 80 FR 40923, July 14, 2015. The Commission seeks comment on this proposal.

19. *Second,* the Commission proposes to include census blocks where an incumbent or its affiliate is providing 10 Mbps/1 Mbps or better broadband using either fiber to the premises (FTTP) or cable technologies. In the *Rate-of-Return Reform Order,* the Commission excluded these census blocks to focus its limited budget on those carriers most likely to build new networks with new funding. Because the Commission proposes to limit this new offer to glide path carriers, providing model support to maintain and upgrade existing networks is financially feasible and may create an additional incentive for legacy providers to consider shifting to model-based support.

20. *Third,* consistent with the $146.10 per-location funding cap the Commission is implementing for the original A–CAM electors, it proposes to cap the total amount of support available for the second offer at $146.10 per location instead of $200. The Commission also proposes a $13.12 higher per-location cap on rural, Tribal lands to reflect the high-cost threshold created by applying the Tribal Broadband Factor. The Commission seeks comment on this proposal. The Commission also seeks comment on alternatives. For example, because the Commission proposes to limit eligibility to carriers for whom A–CAM support would be less than legacy support, should the Commission anticipate that the available budget could potentially fund a higher per-location funding cap of $200? If so, should the Commission establish a per-location cap up to that amount? Alternatively, the Commission notes that a single per-location funding cap may unnecessarily exclude some carriers from participating in the new model offer. For example, a carrier might be willing to accept a small loss of support but not a larger loss—meaning a $146.10 per-location funding cap may be, for that carrier, too low to induce participation. In contrast, a carrier might be willing to accept a small loss of support but is not given the chance—because a $146.10 per-location funding cap may result in an increase to that carrier's legacy support. Should the Commission adjust the per-location funding cap for each carrier so that every legacy carrier has an opportunity to accept the new model with only a small loss (5 to 15 percent) of support? If so, should the Commission nonetheless retain a per-location funding cap maximum of $200 or $146.10?

21. *Fourth,* the Commission proposes to update the broadband coverage data with the most recent publicly available FCC Form 477 data prior to any additional offer of support. The Commission proposes to rely on the certified FCC Form 477 data rather than conducting a time-consuming and administratively burdensome challenge process. In this regard, the Commission notes that in the challenge process for the first A–CAM offer, the Bureau granted only 61 challenges of the more than 250 requests received to change A–CAM coverage. Even with the challenges granted, the coverage data may not have changed to ''unserved'' in particular census blocks if there were other unsubsidized providers that were not challenged reporting service in those census blocks. The Commission seeks comment on updating the broadband coverage data.

22. *Eligibility Requirements. First,* the Commission proposes to limit this new model offer to legacy carriers eligible to receive HCLS and CAF BLS, *i.e.,* those rate-of-return carriers that are not recipients of A–CAM support and that are not participants in the Alaska Plan.

23. *Second,* the Commission proposes to limit this new model offer to carriers that would be glide path carriers, *i.e.,* those for whom the new offer of model support will be below their legacy support. The Commission seeks comment on how to set the baseline level of legacy support for these purposes. Should the Commission use the same baseline it did in authorizing

the A–CAM? Should the Commission set the baseline as total support received in calendar year 2017 or budget year 2017? In setting the baseline, should the Commission ignore the parent trap rule where applicable? For instance, if a carrier's legacy support would have been $500,000, but because of the parent trap rule, support is $300,000, which amount should the Commission use?

24. *Third,* the Commission seeks comment on whether to exclude from this new model offer carriers whose deployment obligations would include no fully funded locations. That is, should the Commission exclude from the new model offer those carriers that would only be obligated to deploy 4/1 Mbps to a certain number of locations, and to provide broadband only upon reasonable request to the remaining locations?

25. In the *Rate-of-Return Order,* the Commission excluded from the initial A–CAM offer any carrier that had deployed 10/1 Mbps broadband to 90 percent or more of its eligible locations in a state in order to maximize its limited funding toward those areas with less deployment. Because the Commission proposes to limit this new offer to glide path carriers, it declines to propose such a limit because offering model support to such carriers is financially feasible and may create an opportunity for legacy providers to consider shifting to model-based support and increasing their deployment of even higher-speed service. The Commission also seeks comment on any other eligibility criteria that it should consider.

26. *Support.* The Commission proposes aligning the term of support for this new model offer with the 10-year term of the first A–CAM offer. Current A–CAM support recipients began receiving support as of January 1, 2017. If support is authorized pursuant to a second A–CAM offer in 2018, the Commission seeks comment on providing a nine-year term of support that will expire at the end of 2026, with support beginning January 1, 2018. If additional A–CAM recipients are not authorized until late 2018, in 2019, or later, should the Commission offer a shorter term of support or take other measures to align the A–CAM support terms? In addressing an appropriate term of support, commenters are invited to address the Commission's competing goals of providing the certainty needed to stimulate investment with its interest in promoting administrative efficiency and accounting for marketplace developments over time.

27. As adopted by the Commission for current A–CAM recipients, it proposes a three-tiered process to transition electing carriers from the legacy support mechanism to the model. The Commission proposes to base the transition payments on the difference between model support and legacy support, and phase down transition payments over longer periods of time where that difference is greater. If the Commission aligns the term of support for the new model offer with the 10-year term of the original A–CAM offer, the Commission proposes to adjust the percentage reductions also to align with the shorter support term. The Commission seeks comment on this proposal. In the alternative, the Commission seeks comment on modifying the transition payments so that a greater portion of the available budget will be directed to increased broadband deployment obligations. Commenters are also invited to address whether the Commission should modify deployment obligations if a carrier forgoes transition payments or accepts faster transitions.

28. The Commission notes that given that it proposes to extend a new model offer only to those carriers for whom the offer is less than their legacy support, support claims alone will cover the A–CAM support plus transition payments regardless of any per-location cap adopted by the Commission. The Commission therefore proposes to base the budget for a new model offer on the 2017 claims amount contributed by electing carriers.

29. *Obligations.* The Commission proposes to require the same performance and deployment obligations as the Commission requires for existing A–CAM recipients. Specifically, the Commission proposes to require rate-of-return carriers electing model support to maintain voice and existing broadband service and to offer at least 10/1 Mbps to the number of locations ''fully funded'' by the model, and at least 25/3 Mbps to a certain percentage of those locations, by the end of the support term. The Commission continues to believe that this approach strikes the appropriate balance in allowing carriers to conduct network planning, while accounting for evolving standards in the future.

30. The Commission proposes to vary the deployment obligations by density, as it did for the previous A–CAM offers. Carriers with a density in the state of more than 10 housing units per square mile would be required to offer 25/3 Mbps to at least 75 percent of the fully funded locations; carriers with 10 or fewer, but more than five, housing units per square mile would be required to offer 25/3 Mbps to at least 50 percent of the fully funded locations; and carriers with five or fewer housing units per square mile would be required to offer 25/3 Mbps to at least 25 percent of the fully funded locations.

31. The Commission also proposes requiring carriers electing model support to offer at least 4/1 Mbps to a defined number of locations that are not fully funded (*i.e.* with a calculated average cost above the funding cap) by the end of the support term. The Commission proposes that carriers with a density of more than 10 housing units per square mile be required to offer at least 4/1 Mbps to 50 percent of all capped locations; and carriers with a density of 10 or fewer housing units per square mile be required to offer at least 4/1 Mbps to 25 percent of all capped locations. The remaining capped locations would be subject to the reasonable request standard. The Commission seeks comment on these proposed obligations. The Commission also seeks comment on whether it should modify the broadband speed obligations in any way, such as by requiring additional 25/3 Mbps deployment in census blocks that would have been excluded from the original A–CAM offer because of reported cable or fiber deployment.

32. Consistent with CAF requirements for funding recipients, the Commission proposes to require carriers electing the new model offer to offer a minimum usage allowance of the higher of 170 GB per month or one that reflects the average usage of a majority of consumers, using Measuring Broadband America data or a similar data source. In addition, the Commission proposes to require carriers electing to receive model support to certify that 95 percent or more of all peak period measurements of round-trip latency are at or below 100 milliseconds. Because there may be a need for relaxed standards in areas where carriers may use alternative technologies to meet their public interest obligations, the Commission proposes that this latency standard would apply to locations served by terrestrial technologies. The Commission seeks comment on whether to use the high latency metric adopted in the CAF II auction proceeding for any capped locations served by a non-terrestrial technology. Under the high-latency standard, carriers would be required to certify that 95 percent or more of all peak period measurements of round-trip latency are at or below 750 milliseconds, and with respect to voice performance, a score of four or higher using the Mean Opinion Score (MOS). The Commission seeks comment on these proposals.

33. The Commission proposes to require carriers electing a new model offer to meet the same deployment milestones as the Commission requires for existing A–CAM recipients, adjusted for the proposed nine-year term of support or as appropriate. Assuming a nine-year term, the Commission would eliminate the 40 percent benchmark in 2020, and propose to require new A–CAM support recipients to offer at least 10/1 Mbps service to 50 percent of the requisite number of funded locations by the end of 2021, an additional 10 percent each year thereafter, and 100 percent by 2026. In addition, by the end of 2026, the Commission proposes to require these carriers to offer at least 25/3 Mbps and 4/1 Mbps to the requisite percentage of locations, depending on density. The Commission also proposes to provide the same flexibility afforded other A–CAM recipients to deploy to only 95 percent of the required number of fully funded 10/1 Mbps locations by the end of the term of support. The Commission seeks comment on these proposed deployment milestones.

34. Consistent with existing obligations, the Commission proposes to require carriers to report geocoded location information for all newly deployed locations that are capable of delivering broadband meeting or exceeding the speed tiers. The Commission also proposes to adopt defined deployment milestones, so that the same previously adopted non-compliance measures would apply.

35. *Election Process.* The Commission proposes a single-step process whereby electing carriers make an irrevocable acceptance of the offered amount because no support adjustments will need to be made to address budget targets.

36. *Continuing Uniform Collections.* The Commission seeks comment on whether it should extend its direction to the Universal Administrative Company (USAC) to forecast total high-cost demand as no less than one quarter of the annual high-cost budget, regardless of actual quarterly demand in order to minimize volatility in contributions. If the Commission maintains an overall cap on the legacy portion of the rate-of-return budget, are there any reasons why demand might shift dramatically, causing unexpected increases to the contribution factor? Are uniform collections with a reserve fund a prudent budgetary practice or an unnecessary change to the Commission's traditional framework?

37. *Fully Fund Existing A–CAM.* In the concurrently adopted Report and Order, the Commission offers additional support to authorized A–CAM recipients based on a $146.10 per-location cap. Here, the Commission seeks comment on whether to offer A–CAM support to those carriers using a $200 per-location funding cap, and what additional deployment commitments may be appropriate. The Commission also provides information on the amount by which the acceptances for the model exceeded the available funding. The Commission notes that carriers who elected A–CAM offers that were below then-current support levels have already received full funding. To stay within the budget, however, the Bureau revised the offer for all other electing carriers by reducing the funding cap to $146.10 per location, and then further reducing carrier-specific offers by varying amounts based on the percentage of locations lacking 10/1 Mbps.

38. The Commission now seeks comment on using additional headroom in the budget to offer the carriers that accepted the revised offer of A–CAM support in 2017 the fully funded amount, using a per-location funding cap of $200 per location. Providing full funding for the original A–CAM recipients would accelerate broadband deployment in those rural areas for which rate-of-return carriers accepted the first A–CAM offer. If all eligible carriers accept this offer, it anticipates that it would result in approximately $66.6 million more support per year for the 10-year A–CAM term. If the Commission were to move forward with this additional offer, the Bureau would release a public notice announcing the offer and provide carriers 30 days to accept the offer and carriers accepting the fully funded offer be subject to the original deployment obligations. The Commission seeks comment on this option, including any timing considerations that it should bear in mind.

39. *An A–CAM Offer for All Legacy Carriers.* Encouraged by the response to the first A–CAM offer, the Commission seeks comment on whether to open a new window for all legacy carriers—not just those for whom the offer of model-based support is less than the legacy support they received—to elect to receive specific and predictable model-based support on a state-level basis in exchange for extending broadband service to a pre-determined number of locations in eligible census blocks. Expanding the number of carriers receiving A–CAM support will advance the Commission's longstanding objective to provide high-cost support based on forward-looking, efficient costs to help spur additional broadband deployment in rural areas. If the Commission initiates a broader new model offer, generally propose to use the same process, obligations, and criteria described in this document. Accordingly, when reviewing the proposals and questions the Commission asks in this document, commenters should also consider them in light of a second offer to all legacy carriers. In the following, the Commission discusses and seeks comment on aspects of a new model offer that are not discussed in this document, *i.e.* those aspects that are applicable only if the Commission makes a new model offer to legacy carriers who might receive more funding than they had received previously.

40. *Budget.* If the Commission extends a second offer to all legacy rate-of-return carriers, it proposes to direct the Bureau to use a multi-step process for non-glide path carriers, similar to the one used in the first offer, to determine support amounts if the available budget is insufficient to maintain the initial per-location funding cap of $146.10 (or some other amount). The Bureau would first total the amount of model-based support for electing carriers and determine the extent to which, in the aggregate, their model-based support exceeds the total legacy support they received in 2017. The Commission seeks comment on whether it should collect additional contributions to fully fund all electors at this point, rather than calculating a second offer for electors. The Commission seeks comment on this approach.

41. Alternatively, if the Commission does not decide to collect sufficient contributions to fully fund all electors, should it direct the Bureau to reduce the funding cap and/or prioritize support amounts to those areas that have the lowest deployment of broadband? Should the Bureau first reduce the per-location funding cap? If the new model support amounts using this lower funding cap still exceeded the budget, should the Bureau further reduce support offers by varying percentages based on the percentage of locations lacking 10/1 Mbps? Is there a different way to allocate the budget amongst new model electors that would maximize broadband deployment?

42. *Election Process.* If the Commission extends a new model offer to non-glide path carriers, it proposes to use the same two-step election process the Commission used for the first A–CAM offer. The Bureau would first release a public notice showing the offer of model-based support for each carrier in a state and associated deployment obligations, including the number of

fully funded and capped locations. The Commission seeks comment on providing carriers 30 days or 60 days to indicate on a state-by-state basis whether they elect to receive model-based support. The Commission proposes that the elections would be irrevocable if no adjustment to the support amounts would be required either because the support amounts are within the available budget or because the Commission has concluded to collect sufficient amounts to fully fund the offers. If the budget is insufficient, the Commission proposes that it adopts a methodology similar to that used to revise the first A–CAM offers. The Bureau would approve fully funded amounts for glide path carriers. The Bureau would also release a public notice showing the revised offers for all other carriers. Carriers would have 30 days to accept the revised offer. The Commission seeks comment on this option.

43. *Threshold Level of Support.* In funding support claims affected by the budget control mechanism from July 2017 to June 2018 in the concurrently adopted Report and Order, the Commission provides an opportunity to consider the effects of the budget control mechanism on rate comparability in conjunction with its overall review of the rate-of-return budget. The Commission also acknowledges carriers' claims that unpredictability may make capital planning difficult, potentially resulting in reduced broadband deployment that, in turn, could harm consumers. With each successive annual calculation of the budget control mechanism, the budget adjustment factor has increased and legacy carriers have faced increasing reductions in their support relative to their support claims. Moreover, the Commission notes that reductions can vary from year-to-year and even quarter-to-quarter, given that each carrier's reduction in support is affected by the spending of other carriers.

44. Here, the Commission seeks to address this concern and provide greater long-term stability and predictability for legacy carriers to facilitate planning and help spur deployment. At the same time, the Commission wants to better motivate legacy carriers to operate efficiently. To achieve this result, the Commission proposes two changes to the budget control mechanism.

45. *First,* the Commission proposes to modify the budget control mechanism to use only a pro rata reduction applied as necessary to achieve the target amount and no longer include a per-line reduction. The Commission's experience thus far with per-line reductions has led to larger and more unpredictable swings in support than might otherwise be expected; accordingly, using only a pro rata reduction may be a more predictable and equitable way to reduce support amounts because all carriers' support is reduced by the same percentage. It is also a less complex mechanism to administer. Accordingly, the Commission proposes that the budget control mechanism would operate in the same manner as the current one, but without the per-line reduction aspect. The Commission seeks comment on this proposal.

46. *Second,* the Commission proposes to provide legacy providers a threshold level of annual support that would not be subject to a budget cap. Establishing a level of uncapped support may give legacy carriers more predictability, allowing them to make longer term plans while knowing that certain expenses could push them above the uncapped amount and therefore would be less likely to be fully recoverable.

47. The Commission seeks comment on alternatives for establishing a level of high-cost support that would not be subject to the budget control mechanism. One option would be to set the uncapped amount of annual support at 80 percent of the amount a legacy carrier would have received had they elected the new model offer (based on a funding cap of $146.10 per location). In evaluating this option, the Commission seeks comment on whether basing a carrier's uncapped level of support using 80 percent of the revised model is appropriate, as opposed to a different percentage.

48. Another option would be to use the five-year CAF BLS forecast developed by the National Exchange Carrier Association (NECA) for the carrier-specific deployment obligation as the uncapped threshold, but subject any amounts greater than that to a budget control mechanism. A third option could set the uncapped threshold at a specified fraction of each carrier's unconstrained 2016 or 2017 claims amount. If the Commission adopts this approach, would a 70 percent fraction be appropriate? Should it be lower or higher? And should this amount be adjusted to reflect line loss, so that a carrier is not guaranteed a fixed amount to serve a decreasing number of lines? Finally, a fourth option if the Commission does retain the per-line reductions would be to limit any reductions in support due to the budget control mechanism to no more than twice the ''budget adjustment factor.'' For example, if total demand, prior to the application of the budget control mechanism, was $1.4 billion and the overall legacy rate-of-return budget remains at $1.23 billion, then a 12.1 percent reduction would be applied to CAF BLS and HCLS to stay within the budget. Under this alternative, no carrier would have a reduction in support greater than 24.2 percent.

49. The Commission seeks comment on these alternatives, and any others that parties may propose. What are the benefits and costs of each proposal? Would they result in a threshold level of support that is sufficient or excessive? Should any of these options be adopted as an additional layer to one of the methods of limiting support losses described above? In evaluating the various options, the Commission requests that commenters discuss what factors and goals it should consider. For instance, is the best option the one where the average decrease in support from current levels is the least or is it better to base the guaranteed amount on those carriers the cost model indicates can use it most efficiently? To what extent should the Commission weigh the certainty and predictability of support associated with each option? The Commission also seeks comment on how each option helps to mitigate the inefficiencies of the legacy rate-of-return system, such as the incentive for rate-of-return companies to over-invest capital to increase profits, the Averch–Johnson effect. In addition, the Commission seeks comment on any other mechanisms for calculating an amount of support not subject to a budget control that balances the Commission's objective of providing specific, predictable, and sufficient support, with its goals of spurring rural broadband deployment, all while fairly allocating a finite budget among legacy carriers.

50. The Commission seeks comment on revising deployment obligations should it decide to provide carriers a threshold level of support that is not subject to the budget control mechanism or a cap on overall support, based on the A–CAM model. The deployment obligations adopted in the *Rate-of-Return Reform Order* were based on each legacy carrier targeting a defined percentage of its five-year forecasted CAF BLS support to the deployment of broadband where the carrier has not already deployed. Deployment obligations were determined by dividing the dollar amount of targeted CAF BLS by a cost-per-location amount. In forecasting the amount of CAF BLS that a carrier would receive, NECA incorporated the impact of the budget control mechanism.

51. Consistent with the Commission's proposal in this document, it seeks comment on revising the deployment obligations to reflect any guaranteed level of support that is not subject to the budget control mechanism. Specifically, the Commission seeks comment on whether each carrier should have a minimum deployment obligation that is based on the number of locations that would be served under the revised A–CAM model at an 80 percent funding level. For example, if the revised A–CAM, at the 80 percent funding level, indicated that a carrier should serve 1,000 locations with broadband service, and it currently serves 900, then it would be required to build out to an additional 100 locations. Each carrier would have further deployment obligations based on any additional support it is forecasted to receive in excess of its uncapped threshold level of support. The forecasted amount and the further obligations could be developed using the same methodology as was initially used after the adoption of the *Rate-of-Return Reform Order* (*i.e.,* by dividing the amount of targeted CAF BLS in excess of the threshold level by a cost-per-location amount).

52. The Commission seeks comment on this option. Would this buildout requirement better serve the public interest and promote deployment than the current buildout obligations? Does setting deployment obligations consistent with the threshold level of support improve certainty for carriers? Are there any additional benefits or possible concerns regarding setting deployment obligations in this manner? Should deployment obligations be modified to align with the expiration of the A–CAM support mechanism? Are there other ways to improve the determination of deployment obligations?

53. *Monthly Per-Line Limit.* The Commission seeks comment on lowering the $250 per-line monthly limit on support to $225 or $200. The Commission adopted the monthly limit on support in the *USF/ICC Transformation Order,* finding that amounts higher than $250 per loop per month (not including CAF ICC) should not be provided to carriers without further justification. In adopting that limit, the Commission noted that only 18 incumbent rate-of-return carriers received more than $250 per loop each month and estimated that only 12 would be subject to the limit after other reforms adopted in the *USF/ICC Transformation Order* were applied.

54. The Commission's experience suggests that a lower limit may be justified. Currently, approximately 13 study areas are affected by the monthly per-line limit. However, carriers serving only 10 of those study areas have petitioned the Commission to justify higher support amounts, and some withdrew their requests. To date, the Commission has awarded relief in only three instances. This history suggests that the $250 per-line monthly limit has been neither too restrictive nor likely to have a negative impact on the ability of carriers to provide service. Moreover, the Commission notes that a reduction to $200 would currently affect approximately 25 study areas that are not already subject to the $250 per-line monthly limit, and the same waiver process would be available to all affected study areas. Lowering the per-line monthly limit would also free up additional support within the legacy budget for other carriers. The Commission invites comment on whether to adopt a lower per-line monthly limit and, in particular, what amount may be appropriate.

55. *100 Percent Overlap Process.* The Commission seeks comment on whether to replace the 100 percent overlap process by which it eliminates support for legacy rate-of-return study areas that are fully served by unsubsidized carriers with a different mechanism. In the *USF/ICC Transformation Order,* the Commission adopted a rule to eliminate high-cost universal service support in incumbent LEC study areas where an unsubsidized competitor or a combination of unsubsidized competitors offers voice and broadband services that meet the Commission's service obligations throughout the study area. High-cost universal service support for the study areas found to be 100 percent overlapped is frozen at the amount disbursed in the prior calendar year, and support is phased down over three years. The Bureau conducted this biennial review in 2015 and 2017 and found only one study area to be 100 percent overlapped by unsubsidized competitors.

56. The Commission seeks comment on the effectiveness of the 100 percent overlap process. The Commission notes that to date there has been little participation by unsubsidized competitors. This lack of participation likely reflects the absence of incentives to participate. In competitively served rate-of-return areas, a study area is often not completely overlapped by one competitor, but rather multiple competitors covering different parts of the study area. An unsubsidized competitor that only partially overlaps an incumbent may not participate in the current process because there is a cost to doing so (*e.g.,* cost of compiling the information and filing) but other competitor(s) similarly may not participate such that the incumbent's support will not be phased out. In addition, the current process requires Commission staff to weigh the certifications and evidence presented to determine whether all locations are in fact served by voice and broadband, which can be challenging. Does the benefit of eliminating support from study areas 100 percent served by competitors outweigh the cost of conducting this process?

57. In lieu of the current process to determine whether a study area is 100 percent overlapped, the Commission seeks comment on using an auction mechanism to award support to either the incumbent LEC or the competitor(s) in areas where there is significant competitive overlap. Competitive bidding can result in more efficient levels of support. Competitors will have an incentive to bid less than the amount the incumbent currently receives, and incumbents will have an incentive to increase efficiencies by bidding less than the competitor(s). In addition, the Commission anticipates that the competitive overlap process adopted by the Commission in the 2016 *Rate-of-Return Reform Order* will require substantial Commission resources because it will require the Commission to review evidence regarding each census block that is competitively served individually. An auction procedure is likely to be quicker and more efficient.

58. If the Commission were to conduct auctions, should it focus only on study areas that are 100 percent overlapped according to FCC Form 477 data, or should the Commission focus on some lesser percentage, such as 90 percent overlapped or greater? If a lesser percentage, should the Commission adopt an auction to replace the competitive overlap process adopted by the Commission in the *Rate-of-Return Reform Order*? Using an auction at the study area level rather than the current process would give competitors an incentive to participate—the opportunity to win support to serve these areas. In the current 100 percent overlap process, the Commission uses the 10/1 Mbps standard to determine whether an area is served by unsubsidized competitors. If a study area is determined to be 100 percent overlapped, then the incumbent's support is phased out, perhaps trapping the area at 10/1 Mbps for the foreseeable future. An auction for support in these areas could increase speeds to the Commission's current standard of 25/3 Mbps, or indeed even higher. If one of

the goals of this auction process is to increase speeds in these areas, should the Commission only auction those areas that are overlapped at the 10/1 Mbps level, or any speed less than 25/3 Mbps?

59. *Other Reforms to Legacy Support Mechanisms.* The current legacy support mechanisms are complicated and remain mired in the complexities and disadvantages of rate-of-return regulation. The Commission therefore seeks comment on broader measures that would simplify its legacy support mechanisms while providing flexibility and certainty to carriers. For example, the Commission could rely on its prior HCLS and Interstate Common Line Support (ICLS) mechanisms but treat all lines similarly, regardless of what services customers purchase. Under this scenario, carriers would include certain costs associated with standalone broadband service when calculating HCLS and ICLS and all voice and standalone broadband lines would be counted as working loops when calculating support. Thus, HCLS and ICLS would continue as they had prior to the adoption of the *Rate-of-Return Reform Order* but would now include standalone broadband costs and lines in the calculations. The Commission seeks comment on whether this approach would be less complex than the CAF BLS program adopted by the Commission in 2016. Alternatively, is there a way to treat voice and broadband lines similarly that could be incorporated into the CAF BLS program? If so, would this approach minimize the effect of the budget control mechanism? Because carriers have long experience with HCLS and ICLS, would using HCLS and ICLS for standalone broadband line support provide more certainty and predictability to support flows?

60. The Commission also seeks comment on whether combining its high-cost support programs into one support stream would be simpler to administer and provide carriers with more flexibility. HCLS and CAF BLS rely on mechanisms originally designed to support voice services. Carriers receiving A–CAM support receive one monthly payment in exchange for meeting specific buildout obligations. Would a single support mechanism that combines current HCLS and CAF BLS resources and focuses on broadband deployment rather than voice services reduce regulatory burdens and provide more certainty and predictability to carriers receiving legacy support? Could such a mechanism be structured to provide incentives for carriers to operate efficiently and minimize the disadvantages of rate-of-return regulation? The Commission seeks comment on how a single high-cost support mechanism could reduce the need for complex cost regulation while encouraging broadband deployment.

61. The Commission seeks comment on whether there are other alternatives it should consider to further enhance the efficiency of the legacy high-cost program and target support to where it is most needed. For example, should the Commission target support not only to high-cost areas but low-income areas as well? Should the Commission adopt means-testing within the high-cost program? Either approach could target support where it is needed most by focusing only on areas or consumers with lower household income. Should the Commission award support for high-cost areas through a portable consumer subsidy or voucher? Would a voucher system increase the choices available to consumers? Should the Commission target support to States with less ability to fund the deployment of broadband in rural areas? How should the Commission identify States that are most in need of support, and how can the Commission do so while avoiding perverse incentives? Are there other alternatives the Commission should consider? Commenters should address considerations of timeliness, ease of administration, and cost effectiveness for each alternative.

62. *Modifying Limitations on Capital and Operating Expenditures.* The Commission seeks comment on the opex limitation and capital investment allowance. Through this proceeding, the Commission seeks to adopt further reforms to legacy support mechanisms that will simplify administrative processes and provide carriers with greater flexibility to deploy efficient broadband networks. Accordingly, the Commission seeks comment on whether the current limitations on capital and operating expenditures—currently untethered from the budget control mechanism—are successfully curbing unnecessary expenditures and incentivizing prudent investments or instead creating unnecessary burdens or deterring efficient investments. The Commission notes that for NECA to calculate the capital investment allowance, legacy carriers must track every capital expenditure and the number of locations affected by that expenditure. Is that additional administrative work yielding results for ratepayers? Also, given the trade-off many carriers must make between capital and operating expenditures, the Commission seeks comment on whether these limitations might actually lead to greater inefficiencies in overall business operations than would be the case without the constraints.

63. The Commission also seeks comment on the extent to which the limitations on capital and operating expenditures have been effective in promoting efficient spending. Do the company-specific limitations reflect reasonable upper limits on the amount of operating and capital expenses that a carrier need incur? For example, the Commission notes that that the National Tribal Telecommunications Association recently argued that carriers serving Tribal lands incur costs that other rural carriers do not face, resulting in significantly higher operating expenses to serve very sparsely populated service areas. Are there other specific examples that the Commission should take into account? For instance, are there modifications to the process or amounts that would improve operation of these limitations? Alternatively, should the Commission eliminate the opex limitation or the capital investment allowance entirely?

64. *Conforming Changes to Information Collection.* The Commission seeks comment on proposed changes related to the collection of line count data for rate-of-return carriers. Currently, carriers that receive CAF BLS must use FCC Form 507 to file, on July 31 of each year, their voice and broadband-only line counts as of the prior December 31. Carriers may file, also using FCC Form 507, optional updates on September 30, December 31, and March 31, reporting line counts as of six months prior to the filing. These data are used to apply the monthly $250 per-line cap and to administer the budget control mechanism. In addition, these data are extremely useful in monitoring and analyzing the benefits and efficiency of high-cost universal service.

65. First, the Commission proposes to change the date for mandatory line count filings for CAF BLS to March 31 of each year but to continue to require line counts as of December 31 (*i.e.,* reduce the lag until filing to 3 months). This would ensure that recent line counts are used to apply the monthly cap and administer the budget control mechanism. Currently, when USAC performs the necessary calculations in April of each year, it typically must rely on the carrier's FCC Form 507 from the prior July, which in turn reports line counts as of the prior December 31. In other words, these calculations are based on line counts that are more than 15 months old. Revising the line count reporting process as proposed would mean that USAC would be able to use

line count data that is only three months old. The Commission seeks comment on this proposal.

66. The Commission notes that the FCC Form 507 filing deadlines mirror the line count filing deadlines used for HCLS. Would changing the FCC Form 507 deadlines so that they no longer coincided with the HCLS deadlines create significant administrative burdens? Would it be feasible also to revise the HCLS line count deadlines to be consistent with the proposed FCC Form 507 deadlines? If the Commission modifies the filing schedule as proposed, do the optional filings serve any benefit, or could they be eliminated?

67. The Commission also seeks comment regarding whether FCC Form 507 should be mandatory for rate-of-return carriers that do not receive CAF BLS (*i.e.,* carriers that have elected A–CAM) or whether there are alternative sources of this data that would be less burdensome for carriers. Line count data is extremely useful for monitoring and analyzing high-cost universal service programs. Carriers that elected A–CAM were required to file line count data on FCC Form 507 prior to the implementation of A–CAM because they received ICLS, but no longer do so. Requiring the A–CAM carriers to continue to provide line count information would allow the Commission to maintain a frequently used data set for assessing whether the Commission's rules are achieving its universal service goals, while being a minimal burden to A–CAM recipients. The Commission seeks comment on this proposal. The Commission currently estimates that it takes approximately six hours to complete and file FCC Form 507. Is this an accurate estimate of the burden associated with completing this form? Are there alternate sources of these data that the Commission could rely on instead? Would the public benefit of maintaining these data for the purpose of monitoring and analyzing high-cost universal service exceed the burden?

68. In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2016–02, Leases, which is codified as Accounting Standards Codification (ASC) Topic 842 (ASC 842). The new standard affects both capital and operating leases. Under this new standard, capital leases are referred to as financing leases and the procedures for expensing amounts recorded for financing leases are the same procedures previously used for capital leases.

69. ASC 842 adopts new requirements for operating leases. For example, ASC 842 requires that operating leases longer than one year be carried on a company's balance sheet along with a corresponding liability to reflect the net present value of future lease commitments. The new standard provides procedures for expensing amounts recorded in the operating lease asset account. A carrier would recognize a lease expense from the operating lease on a straight-line basis over the lease term. Thus, for an operating lease with an escalation clause, ASC 842 would require the recorded operating expense to be higher in the first year than the amount paid in cash. This is different than the current Part 32 treatment of operating leases, which classifies leases as expenses associated with the executory agreements that are recorded as expenses at the time lease payments are made. Pursuant to the current Part 32 treatment, a company would continue to disclose future lease commitments through a footnote to the financial statements. Additional recordkeeping would be necessary if Part 32 were not to adopt the ASC 842 guidelines.

70. The Commission seeks comment on whether to incorporate the ASC 842 guidelines into the Uniform System of Accounts (USOA) contained in Part 32. The differences in the two approaches raise questions regarding how the asset and liability should be recorded and the ability of, and the additional burden on, a carrier to maintain records to support the two approaches. The Commission seeks comment on these questions in general, as well as in connection with the specific issues raised below. The Commission is particularly interested in the additional record-keeping burden that maintaining both the Part 32 and ASC 842 lease accounts would place on carriers if the Commission were not to adopt ASC 842 for Part 32 purposes. A party asserting a burden should address the level of that burden in the context of any ratemaking effects that would occur.

71. If the Commission were to incorporate ASC 842 into Part 32, it proposes to create an asset and a liability account to reflect operating leases. The Commission seeks comment on this proposal. The Commission also invites comment on whether other balance sheet or income statement-related accounts are necessary to account for leasing activities, either financing or operating. If so, parties should specify the additional accounts that are needed. The Commission proposes to adopt new or revised instructions for accounting for leases. Commenters supporting the adoption of ASC 842 are encouraged to provide language for the instructions and other rule revisions needed to implement ACS 842 in Part 32, taking into account the issues raised below.

72. The creation of a new asset account and a new liability account for operating leases raises questions about the treatment of these amounts in the ratemaking context. The operating lease asset would record the discounted value of payments due under operating leases longer than one year. Because there is no current outlay of funding for the operating leases, the Commission proposes that such amounts be excluded from the carrier's rate base. Similarly, because the liability is based on the value in the operating lease account, the Commission proposes that such liability should not be used in calculating the cost of capital. The Commission seeks comment on these two proposals, including whether the proposed treatment is warranted and what effect such treatment would have on a carrier's revenue requirement. Commenters are encouraged to identify and provide specific language to effectuate the changes to Part 65, or other affected provisions in the Commission's rules, that would be needed to implement this proposal.

73. Adopting ASC 842 would also modify the way operating lease expenses are currently calculated pursuant to the Commission's Part 32 rules. As noted earlier, ASC 842 would spread lease payments on a straight-line basis over the term of the operating lease. The Commission seeks comment on any recognition or timing issues between the Part 32 treatment and the treatment under ASC 842. In particular, the Commission seeks comment on how any entries reflecting interest associated with the use of the net present value approach to recording operating leases should be treated for purposes of calculating lease expense. If the Commission adopts ASC 842, it proposes to assign operating lease costs to the expense accounts currently being used to record such amounts. Would any revisions to the separations rules contained in Part 36 be required under this proposal, and if so, which sections would need to be revised and what specific language should be used?

74. The Commission also seeks comment on the impact any ratemaking changes resulting from this proposed accounting modification would have on the levels or distribution of CAF BLS or other universal service support mechanisms. Commenters should identify any recognition and/or timing issues raised by any change and should,

to the extent possible, quantify any difference.

75. ASC 842 becomes effective for fiscal years beginning after December 15, 2018 for public business entities and certain other businesses. For all other entities, it becomes effective for fiscal years beginning after December 15, 2019. Early adoption is permitted. The Commission seeks comment on when any changes the Commission adopts should become effective and whether there are any other implementation issues the Commission should address.

III. Procedural Matters

A. Paperwork Reduction Act

76. The NPRM adopted herein contains new, proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

77. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in the NPRM. The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

78. The proposals in this NPRM seek to build on efforts to modernize high-cost universal service support by offering greater certainty, predictability, and stability to rate-of-return carriers and creating incentives for efficient spending and bringing broadband to the areas that need it most.

79. The Commission reviews the amount of support available to rate-of-return carriers by initiating review of the high-cost universal service support budget, proposing to increase the budget based on inflation, and proposing an offer of model-based support for carriers whose model-based support would be lower than the support they received in 2016. By examining the budget and the support available for rate-of-return carriers, the Commission is looking to bring stability to the program and fulfill its commitment to reexamine the budget. To address some of the shortcomings and inefficiencies in the Commission's existing support programs, it also seeks comment on whether to fully-fund carriers that have elected to receive model-based support, subject to additional build-out obligations, and on providing another opportunity for all legacy rate-of-return carriers still receiving legacy support to elect a voluntary path to model support. For those carriers that choose to remain on legacy support, the Commission proposes to adopt a mechanism whereby legacy carriers would be guaranteed a threshold level of annual support, and the Commission seeks comment on an implementing an individual cap for each legacy carriers. This would alleviate the unpredictability created by the budget control mechanism. The Commission also seeks comment on eliminating limitations on capital, operational, and corporate expenses to minimize the burden these mechanisms put on carriers. Finally, the Commission seeks comment on modifying various rules, including legacy buildout obligations, the methodology for applying the budget constraint, the $250 per-loop, per-month cap, and looking at other reforms to the rate-of-return mechanisms. The Commission also seeks comment on proposals to modify line count data reporting requirements and accounting rules for capital and operating leases.

80. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1–4, 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151–155, 201–206, 214, 218–220, 251, 256, 254, 256, 303(r), 403 and 405.

81. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

82. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

83. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

84. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

85. *Line Count Data.* In the NPRM, the Commission seeks comment on

proposed changes related to the collection line count data for rate-of-return carriers. Currently, carriers that receive CAF BLS must use FCC Form 507 to file, on July 31st of each year, their voice and broadband-only line counts as of the prior December 31st. Carriers may also file quarterly updates. First, the Commission proposes to change the date for mandatory line count filings for CAF BLS to March 31st of each year, but to continue to require line counts as of December 31st (*i.e.,* reduce the lag until filing to 3 months). Second, the Commission seeks comment regarding whether the FCC Form 507 should be mandatory for rate-of-return carriers that do not receive CAF BLS (*i.e.,* carriers that have elected A–CAM).

86. *Accounting for Capital and Operation Leases.* In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2016–02, Leases, which are codified as Accounting Standards Codification (ASC) Topic 842 (ASC 842). The new standard affects both capital and operating leases. Under this new standard, capital leases are referred to as financing leases and the procedures for expensing amounts recorded for financing leases are the same procedures previously used for capital leases. ASC 842 adopts new requirements for operating leases. The Commission seeks comment on whether to incorporate the ASC 842 guidelines into the Uniform System of Accounts (USOA) contained in Part 32. The changes the Commission proposes would lead to carrier being required to modify certain accounting practices. The Commission is interested in the burden this change would create for carriers.

87. *Deployment Obligations.* In the NPRM, the Commission seeks comment on whether the number of locations legacy carriers are required to deploy to should change and how based on the new support mechanism proposed.

88. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission expects to consider all of these factors when it has received substantive comment from the public and potentially affected entities.

89. Largely, the proposals in the NPRM if adopted would have no impact on or would reduce the economic impact of current regulations on small entities. Certain proposals in this NPRM could have a positive economic impact on small entities; for instance, the Commission seeks comment on fully funding the original A–CAM offer and increasing the budget for rate-of-return carriers based on an inflationary factor.

90. In this NPRM, the Commission seeks comment on making a second offer of A–CAM support. The offer will be voluntary and carriers are not required to accept it or take any action. Therefore, the Commission's proposal for a second A–CAM will not have a significant impact on small entities.

91. The Commission also seeks comment on mechanisms to provide legacy carriers a guaranteed threshold of annual support and a carrier specific cap, which would reduce the unpredictability of the current budget control mechanism. The Commission proposes several alternatives for carriers to evaluate. In addition, because legacy carriers' support amounts could change due to the Commission's proposals, to minimize significant economic impact, the Commission seeks comment on whether or how deployment obligations should change.

92. The Commission also seeks comment on whether it should retain the operating expense limitation, the corporate operations limit, and the capital investment allowance. If the Commission were to eliminate these limitations on expenses and investment, it would be further minimizing the economic impacts on small entities of the Commission's current regulations. In addition, the Commission seeks comment on ways to simplify legacy support mechanisms by making changes to how HCLS and CAF BLS are calculated.

93. The Commission proposes to change the date for mandatory line count filings for CAF BLS to March 31st of each year, but to continue to require line counts as of December 31st (*i.e.,* reduce the lag until filing to 3 months). The Commission also seeks comment regarding whether FCC Form 507 should be mandatory for rate-of-return carriers that do not receive CAF BLS (*i.e.,* carriers that have elected A–CAM). Finally, the Commission seeks comment on whether to incorporate the ASC 842 guidelines into the Uniform System of Accounts (USOA) contained in Part 32. These changes would require carriers to modify certain accounting practices and for certain carriers add a reporting requirement. In the NPRM, the Commission seeks comment on the burden this change would create for carriers and will factor that into its decision.

94. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding. The proposals and questions laid out in the NPRM were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

95. *Permit-But-Disclose.* The proceeding this NPRM initiates 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). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize

themselves with the Commission's *ex parte* rules.

96. *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).

97. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. The Commission also strongly encourages parties to track the organization set forth in the NPRM in order to facilitate its internal review process.

IV. Ordering Clauses

98. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1–4, 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151–155, 201–206, 214, 218–220, 251, 256, 254, 256, 303(r), 403 and 405, this Notice of Proposed Rulemaking IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**.

99. *It is further ordered*, Pursuant to Section 220(i) of the Communications Act, 47 U.S.C. 220(i), that notice be given to each state commission of the above rulemaking proceeding, and that the Secretary shall serve a copy of this Notice on each state commission.

100. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 1302, *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

Federal Communications Commission.

Marlene Dortch,

Secretary.

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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 829, 846, 847, 852, and 870

RIN 2900–AQ04

Revise and Streamline VA Acquisition Regulation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, we will publish them in the **Federal Register**. VA will combine related topics, as appropriate. In particular, this rulemaking revises VAAR Parts 829—Taxes, 846—Quality Assurance, and 847—Transportation, as well as affected Parts 852—Solicitation Provisions and Contract Clauses and 870—Special Procurement Controls.

DATES: Comments must be received on or before June 25, 2018 to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026 (this is not a toll-free number). Comments should indicate that they are submitted in response to ''RIN 2900–AQ04—Revise and Streamline VA Acquisition Regulation—Parts 829, 846, 847.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act, which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are broken up consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authority that are removed from the VAAR will be included in the VA Acquisition Manual (VAAM) as internal agency guidance.

VAAR Part 829—Taxes

We propose to revise the part 829 authorities to include the applicable U.S. code citations where the Secretary of the Treasury has exempted spirits and alcohol purchases by the Federal government, pursuant to 26 U.S.C. 5214(a)(2), 26 U.S.C. 5271, and 26 U.S.C. 7510. We also propose to include an updated positive law codification of Title 41 authority—41 U.S.C.1303(a)(2), to reflect additional authority of VA as an executive agency to issue regulations that are essential to implement Government-wide policies and procedures, as well as to issue additional policies and procedures required to satisfy VA's specific needs.

In subpart 829.2, Federal Excise Taxes, we propose to redesignate 829.202–70, Tax exemptions for alcohol products, as 829.203–70, Tax exemptions for alcohol products. We propose to revise paragraphs (a), (b) and (c) to reflect updated legislative and regulatory citations, to include 26 U.S.C. 5214(a)(2), 26 U.S.C. 5271, and 27 CFR parts 1–39. We also propose to remove paragraph (d) since there is no free of tax provision for beer in the Department of the Treasury regulation. This revised structure would conform more closely to the FAR structure of part 29, and moves to the VAAM the internal procedural instructions to the contracting officer regarding obtaining new permits. We also propose to remove the number and title of 829.202, General exemptions, since its sole section is proposed for removal.

We propose to remove 829.302, Application of State and local taxes to the Government, and move it to the VAAM as internal procedural guidance to the contracting officer.

We propose to remove 829.302–70, Purchases made from patients' funds, which prescribes 852.229–70, Sales or Use Taxes, as obsolete and redundant of FAR 52.212–4, Contract Terms and Conditions—Commercial Items clause, paragraph (k), which requires contractors to include ''all applicable Federal, State, and local taxes and duties.'' While VA uses the personal funds of patients to maintain fiscal controls and accountability, such controls are administrative in nature and unrelated to contracting.

We propose to add 829.303, Application of State and local taxes to Government contractors and subcontractors, to delegate to the Head of the Contracting Activity (HCA), without power of redelegation, the authority to make the determination prescribed in FAR 29.303(a).

VAAR Part 846—Quality Assurance

In new subpart 846.1, General, we propose to add 846.101, Definition, to explain the term ''rejected goods'' since that term is the subject of a revised clause at 852.246–71, Rejected goods.

We propose to revise subpart 846.3, Contract Clauses, to remove 846.302–70, Guarantee clause, which prescribes 852.246–70, Guarantee, because there are sufficient FAR warranty clauses that could be used, such as FAR clause 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria.

We propose to remove 846.302, Fixed-price supply contracts, and add 846.370, Clauses for supplies, equipment or perishable goods, as the current VAAR numbering convention for subpart 846.3, Contract Clauses, does not align with the FAR subpart 46.3, Contract Clauses.

We propose to revise 846.312, Construction contracts, to remove a duplicate contract clause number.

We propose to add 846.370, Clauses for supplies, equipment or perishable goods. The analysis of the current VAAR revealed that the present VAAR numbering convention for subpart 846.3, Contract Clauses, does not align with FAR subpart 46.3, Contract clauses. For example, FAR 46.302 deals solely with fixed-price supply contracts and the current sections which prescribe these clauses (*e.g.,* 846.302–70, Guarantee clause; 846.302–71, Inspection; 846.302–72, Frozen processed foods; and 846.302–73. Noncompliance with packaging, packing and/or marking requirements) could include both cost and fixed price types of contracts. Therefore, it became necessary to remove these sections and move them to the proposed new section, 846.370, which supplements the FAR coverage at subpart 46.3. Accordingly, we propose to add the following sections prescribing clauses for cost and fixed-price type contracts:

846.370–1, Rejected goods, (formerly 846.302–71, Inspection), which would prescribe the clause 852.246–71, Rejected Goods, and clarify a contractor's obligations to remove goods rejected by the Government.

846.370–2, Frozen processed foods (formerly 846.302–72), which would prescribe clause 852.246–72, Frozen Processed Foods, and describe the requirements for safe handling of frozen foods.

846.370–3, Noncompliance with packaging, packing and/or marking requirements (formerly 846.302–73), which would prescribe clause 852.246–73, Noncompliance with Packaging, Packing and/or Marking Requirements, describing corrective steps for compensating the Government in the case of non-compliance.

We propose to add 846.370–4, Purchase of Shellfish, formerly 870.111–3, to conform to the FAR requirement to place clauses and their prescriptions in the appropriate parts, and would prescribe clause 852.246–76, Purchase of Shellfish, and describe the requirements for safe handling of shellfish.

We propose to revise subpart 846.4, Government Contract Quality Assurance.

In section 846.408, Single-agency assignments of Government contract quality assurance (no text), we propose to remove the single title as it is unnecessary.

We propose to amend 846.408–70, Inspection of subsistence, to remove paragraph (a) since FAR 46.408 identifies the Food and Drug Administration, the Department of Agriculture and the National Maritime Fisheries Service of the Department of Commerce as the entities to perform inspection. We also propose to remove paragraph (c) since it contains procedural guidance that is internal to VA and will be updated and moved to the VAAM, and to simplify the requirements in paragraph (d) that are the contractor's responsibilities, eliminating parts of paragraph (3) and all of (4). Paragraphs throughout the section will be appropriately renumbered.

We propose to remove 846.408–71, Waiver of USDA inspection and specifications, since no other agencies, including the Department of Agriculture, still require this type of inspection for subsistence.

We propose to remove the existing text of 846.471, Determination authority, since the authority it grants is provided to the contracting officer in 846.470. We propose to revise the title of 846.471, to now read, ''Food service equipment,'' formerly at 870.115. This conforms to the FAR requirement to place clauses and their prescriptions in the appropriate parts, and to require all dietetic food service equipment to meet National Sanitation Foundation (NSF) standards.

We propose to remove 846.472, Inspection of repairs for properties under the Loan Guaranty Program and Direct Loan Programs, and its two sections, 846.472–1, Repairs of $1,000 or less, and 846.472–2, Repairs in excess of $1,000. Such sections are unnecessary given that a private contractor performs such inspection and repair functions on VA's behalf. The contractor's authority to perform these functions is established by other provisions of law.

In subpart 846.7, Warranties, we propose to remove 846.710, Contract clauses, since it redundantly prescribes a clause in FAR. We also propose to delete the two sections: 846.710–70, Special warranties, as repetitive of FAR clause coverage, and 846.710–71, Warranty for construction—guarantee period services, which has been replaced by 846.702–70, Guarantee period services and specifications.

We propose to add 846.702–70, Guarantee period services and specifications, to state VA's policy regarding guarantee period services, and to prescribe a clause, 852.246–75, Warranty of Construction—Guarantee Period Services, in all solicitations and contracts for construction that include the FAR clause 52.246–21, Warranty of Construction.

VAAR Part 847—Transportation

We propose to amend the authority citation for part 847 to add 41 CFR part 102–117. This CFR reference pertains to ''Transportation Management'' and it has relevance to part 847.

We propose to add subpart 847.2, Contracts for Transportation or for Transportation-Related Services. This new subpart would be comprised of new section 847.207, Solicitation provisions, contract clauses, and special requirements, and the following sections:

847.207–8, Government responsibilities, which would provide guidance to contracting officers for VA transportation contracts and subsequent payments on those contracts, and 847.207–70, VA solicitation provisions, contract clauses, and special requirements, which would provide guidance on contractual requirements for insurance provisions and contractor personnel performing on VA transportation contracts.

We propose to revise subpart 847.3, Transportation in Supply Contracts, by adding 847.302, Place of delivery—F.o.b. point. This section would specify delivery locations, in addition to referencing a new corresponding clause, to be inserted in supply contracts when it is necessary to specify delivery locations. This new section would help eliminate confusion by specifying exact delivery locations, so there would be a better representation of delivery scheduling and pricing.

Under subpart 847.3, we propose to remove the following sections as they include internal guidance and will be considered for revision and placement in the VAAM:

847.303, Standard delivery terms and contract clauses.

847.303–1, F.o.b. origin.

847.303–70, F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

Under 847.305, Solicitation provisions, contract clauses, and transportation factors, we propose to add 847.305–10, Packing, marking, and consignment instructions. This new section would specify consignment instructions, and would prescribe new clauses to be included in VAAR Part 852. It would cover those areas of shipping and marking that may not otherwise be covered, and are not covered in the FAR. We propose to add new section 847.305–70, Potential destinations known but quantities unknown, which prescribes clause 852.247–70, Determining Transportation Costs for Evaluation of Offers, when the contracting officer contracts with multiple bidders to provide items directly to VA field installations, on an F.o.b. origin basis.

We propose to add new section 847.305–71, VA contract clauses. This section references new clauses to the VAAR that are used for both free on board (F.o.b.) origin and F.o.b. destination, ensuring proper receipt and documentation of shipments.

We propose to remove 847.306–70, Transportation payment and audit, and replace it with 847.306–70, Records of claims. This new section recommends that the contracting officer use an offeror's record of claims involving loss or damage as an evaluation factor or subfactor for VA transportation contracts.

VAAR Part 852—Solicitation Provisions and Contract Clauses

In subpart 852.2, Texts of Provisions and Clauses, we propose to remove clause 852.229–70, Sales or Use Taxes, as obsolete and redundant of FAR clause 52.212–4, Contract Terms and Conditions—Commercial Items, paragraph (k), which would require contractors to include all applicable Federal, State, and local taxes and duties.

We propose to remove 852.246–70, Guarantee, as redundant of the coverage of warranties by several clauses in FAR sections 52.246–17 through 52.246–21, and to reserve the section number.

We propose to revise 852.246–71, Inspection, to retitle it as ''Rejected Goods'' to more accurately reflect the content; to revise the citation where it is prescribed; and to make other minor edits for clarity.

We propose to revise 852.246–72, Frozen Processed Foods, to revise the prescription citation.

We propose to revise 852.246–73, Noncompliance with Packaging, Packing, and/or Marking Requirements, to revise the prescription citation, and to make one minor edit.

We propose to remove 852.246–74, Special Warranties, as redundant of the coverage of warranties by several clauses in FAR sections 52.246–17 through 52.246–21, and to reserve the section number.

We propose to amend 852.246–75, Warranty of Construction—Guarantee Period Services, to revise the prescription citation, and to make one minor edit for clarity.

We propose to add 852.246–76, Purchase of Shellfish, formerly 852.270–3, to conform to the FAR requirement to place clauses and their prescriptions in the appropriate parts, and to make one minor edit for clarity.

We propose to amend 852.247–70 to revise its title to ''Determining Transportation Costs for Evaluation of Offers'' which would make it applicable to negotiated as well as sealed bid contracts.

We propose to add 852.247–71, Delivery Location. This new clause would ensure that the proper delivery locations are included in the contract, for accountability, tracking, and delivery.

We propose to add 852.247–72, Marking Deliverables. This new clause would ensure that packages are properly marked for tracking, delivery, and acceptance purposes.

We propose to add 852.247–73, Packing for Domestic Shipment. This new clause would ensure acceptance by common carriers and safe delivery at destination.

We propose to add 852.247–74, Advance Notice of Shipment. This new clause would be used when the F.o.b. point is destination, and special Government assistance is required in the delivery or receipt of the items.

We propose to add 852.247–75, Bills of Lading, which would define when a commercial or Government bill of lading is to be used when shipments of deliverable items under this contract are F.o.b. origin.

We propose to delete 852.270–2, Bread and Bakery Products—Quantities, as unnecessary since variations in quantities is adequately covered in FAR subpart 11.7, Variation in Quantity, and in its related clauses.

We propose to delete 852.270–3, Purchase of Shellfish, and move it to 852.246–76 to conform to the FAR requirement to place clauses and their prescriptions in the appropriate parts.

VAAR Part 870—Special Procurement Controls

We propose to delete 870.111–3, Contract clauses, since paragraph (a) prescribes the clause 852.270–2, Bread and Bakery Products—Quantities, which is unnecessary since variations in quantities is adequately covered in FAR subpart 11.7 and in its related clauses, and paragraph (b), which prescribes the clause 852.270–3, Purchase of Shellfish, and which is proposed to be moved to new section 852.246–76 to conform to the FAR requirement to place clauses and their prescriptions in the appropriate parts.

We propose to remove 870.111–5, Frozen processed food products, which is proposed to be moved to 846.370–2.

We propose to remove 870.115, Food service equipment, which is proposed to be moved to 846.471.

We propose to reserve part 870 since all sections and sections have either been proposed for deletion or removal to other parts of the VAAR.

Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the VAAR for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with FAR subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review, defines ''significant regulatory action'' to mean any regulatory action that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.''

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined to be a significant regulatory action under E.O. 12866, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date. This proposed rule is not expected to be subject to the requirements of E.O. 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

This proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The overall impact of the proposed rule would be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating procedures. VA is merely adding existing and current regulatory requirements to the VAAR and removing any guidance that is applicable only to VA's internal operation processes or procedures. VA estimates no cost impact to individual business would result from these rule updates. This rulemaking does not change VA's policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the proposed rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule will have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Part 829

Government procurement, Taxes.

48 CFR Part 846

Government procurement.

48 CFR Part 847

Government procurement, Transportation.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 870

Asbestos, Frozen foods, Government procurement, Telecommunications.

Signing Authority

The Secretary of Veterans Affairs, 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. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on September 1, 2017, for publication.

Dated: April 3, 2018.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 48 CFR, chapter 8, parts 829, 846, 847, 852, and 870 as follows:

PART 829—TAXES

■ 1. The authority citation for part 829 is revised to read as follows:

Authority: 26 U.S.C. 5214(a), 5271, 7510; 40 U.S.C. 121(c); 41 U.S.C. 1303(a)(2) and 48 CFR 1.301–1.304.

■ 2. Subpart 829.2 is revised to read as follows:

Subpart 829.2—Federal Excise Taxes

829.203 Other Federal tax exemptions.

829.203–70 Tax exemptions for alcohol products.

(a) *General.* (1) Pursuant to 26 U.S.C. 5214(a)(2) and 26 U.S.C. 5271, VA may purchase spirits using a tax exemption as provided by Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations (see 27 CFR parts 1–39). As stated in 27 CFR 19.426, agencies of the United States Government that wish to obtain either specially denatured spirits or spirits free of tax for nonbeverage purposes must apply for and receive a permit on form TTB F 5150.33 or must have a previously issued permit on ATF Form 1444.

(2) When purchasing spirits under a tax exemption, the contracting officer shall indicate in the contract document the basis for the exemption and make a copy of the permit available to the contractor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated or as directed by the contracting officer.

(3) Department of Veterans Affairs activities that require spirits free of tax for beverage purposes under 26 U.S.C. 7510 must provide a proper purchase order signed by the head of the agency or an authorized designee.

(b) *Specially denatured spirits or spirits free of tax for nonbeverage purposes.* Contracting officers may make purchases of excise tax-free spirits, including denatured alcohol and specially denatured alcohol only from qualified distillery plants or bonded dealers.

(1) Permits previously issued on Alcohol, Tobacco, and Firearms (ATF) Form 1444, Tax-Free Spirits for Use of United States, remain valid until surrendered or cancelled.

(2) A copy of the current ATF Form 1444 or TTB Form 5150.33 shall be made available to the supplier with the initial order. The permit number only needs to be referenced on any future orders with the same supplier.

(c) *Wine.* No tax exemption form or ATF/TTB permit is required for the tax-free procurement of wine from bonded wine premises. The purchase order must show the kind, quantity, and alcohol content of the wine and must state the purpose for which wine is to be used (see 27 CFR 24.293). An extra copy of a properly executed purchase order may be furnished to the bonded wine premises from which wine is purchased to facilitate record keeping. The order must be signed by the Head of Contracting Activity or designee.

■ 3. Subpart 829.3 is revised to read as follows:

Subpart 829.3—State and Local Taxes

829.303 Application of State and local taxes to Government contractors and subcontractors.

(a) The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the Head of the Contracting Activity (HCA).

PART 846—QUALITY ASSURANCE

■ 4. The authority citation for part 846 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

■ 5. Subpart 846.1 is added to read as follows:

Subpart 846.1—General

846.101 Definition.

As used in this part—

Rejected goods means supplies and/or equipment failing to meet contractual terms and conditions and/or generally accepted quality standards that may be returned by the Government at the contractor's risk and expense.

■ 6. Subpart 846.3 is revised to read as follows:

Subpart 846.3—Contract Clauses

Sec.

Subpart 846.3—Contract Clauses

846.312 Construction contracts.

The contracting officer shall insert the clause at 852.236–74, Inspection of Construction, in solicitations and contracts for construction that include the FAR clause at 52.246–12, Inspection of Construction.

846.370 Clauses for supplies, equipment or perishable goods.

846.370–1 Rejected goods.

The contracting officer shall insert the clause at 852.246–71, Rejected Goods, in solicitations and contracts for the acquisition of supplies, equipment or perishable goods. Perishable goods include such items as packing house and dairy products, bread and bakery products, fresh and frozen fruits, and vegetables.

846.370–2 Frozen processed foods.

(a) The contracting officer shall insert the clause at 852.246–72, Frozen Processed Foods, in solicitations and contracts for frozen processed foods.

(b) The following frozen processed food products must contain a label that complies with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301), which requires all ingredients be listed in accordance with their predominance order:

(1) Frozen processed food products that contain meat, poultry, or a significant proportion of eggs.

(2) Frozen processed food products that contain fish or fish products.

(3) Frozen bakery products.

(c) All procured frozen processed food products that contain meat, poultry or a significant proportion of eggs must meet the following requirements:

(1) The products must be processed or prepared in plants operating under the supervision of the Department of Agriculture (USDA).

(2) The product must be inspected and approved in accordance with USDA regulations governing meat, poultry, or egg inspection. A label or seal that indicates compliance with USDA regulations, affixed to the container, will be accepted as evidence of compliance.

(d) All procured frozen processed food products that contain fish or fish products must meet the following requirements:

(1) The product must be processed or prepared in plants operated under the supervision of the Department of Commerce (DOC). The products listed in DOC's publication ''Approved List of Sanitarily Inspected Fish

Establishments'' are processed in plants under Federal inspection of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, DOC. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or DOC seal indicating compliance with DOC regulations, affixed to a container, will be accepted as evidence of compliance.

(2) If the condition in paragraph (d)(1) of this section was not met (*e.g.,* no seal), the shipment may be lot-inspected by the DOC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment.

(e) Producers of frozen bakery products that ship products in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, the product must be verified as shipped interstate or that the producer ships products to other purchasers interstate.

846.370–3 Noncompliance with packaging, packing and/or marking requirements.

The contracting officer shall insert the clause at 852.246–73, Noncompliance with Packaging, Packing, and/or Marking Requirements, in non-commercial item solicitations and contracts for supplies or equipment where there are special packaging, packing and/or marking requirements. The clause may be used in commercial item acquisitions if a waiver is approved in accordance with FAR 12.302(c).

846.370–4 Purchase of shellfish.

(a) The U.S. Food and Drug Administration (FDA) at *http://www.fda.gov* provides quality assurance seafood safety guidelines.

(b) The contracting officer shall insert the clause at 852.246–76, Purchase of Shellfish, in solicitations and contracts for shellfish.

■ 7. Subpart 846.4 is revised to read as follows:

Subpart 846.4—Government Contract Quality Assurance

Sec.

846.408–70 Inspection of subsistence.

846.470 Use of commercial organizations for inspections and grading services.

846.471 Food service equipment.

Subpart 846.4—Government Contract Quality Assurance

846.408–70 Inspection of subsistence.

(a) The contracting officer shall indicate the time and place of inspection in the solicitation.

(b) The contracting office shall also provide in the solicitation that the contractor is responsible for all of the following:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspectors a certificate indicating that the product complies with specifications.

(3) Assuring that the certificate, or copy, accompanies the shipment.

(4) Furnishing samples for inspection at the contractor's expense.

(5) Indicating the address where inspection will occur.

(c) The contracting officer must furnish a copy of the purchase document to the inspecting activity.

846.470m Use of commercial organizations for inspections and grading services.

The contracting officer may use a commercial organization for inspection and grading services when the contracting officer determines that all of the following exist:

(a) The results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques.

(b) VA is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal agency capable of providing the service.

(c) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.

(d) The services may be performed without direct Government supervision.

846.471 Food service equipment.

(a) All new food service equipment purchased for Dietetic Service through other than the Defense General Supply Center sources must meet requirements set forth by National Sanitation Foundation (NSF) at *http://www.nsf.org.*

(b) The contracting officer will ensure that the following language is placed in the solicitation to assert that the equipment meets NSF standards:

The Government will accept an affixed NSF label and/or documentation of the NSF Certification from the contractor as evidence that the subject equipment meets NSF Sanitation standards.

■ 8. Subpart 846.7 is revised to read as follows:

Subpart 846.7—Warranties

846.702–70 Guarantee period services and specifications.

(a) Guarantee period of services are associated with preserving and protecting a specified piece of contractor-installed equipment that is guaranteed under a construction contract. Specifications for certain high-dollar or traditionally troublesome equipment are designed to allow for the original installer of the equipment to service the equipment throughout the guaranty period.

(b) Guarantee period services are not the same as the 1-year general construction guaranty clause found at FAR clause 52.246–21, Warranty of Construction.

(c) The contracting officer may determine, when in the best interest of VA that guarantee period services, not to exceed a period of 5 years, are appropriate to protect the integrity of the installed equipment and ensure that the equipment performs as guaranteed.

(d) When the determination is made under paragraph (c), the contracting officer shall include the guarantee period of services as a separately priced contract line item number (CLIN) in solicitations and contracts.

(e) The contracting officer shall insert the clause at 852.246–75, Warranty of Construction—Guarantee Period Services, in solicitations and contracts for construction that include the FAR clause 52.246–21, Warranty of Construction, and that also include guarantee period services.

(f) In accordance with the approved VA specifications, the following types of equipment contain the guarantee period services specifications. The following represents a sampling of these specifications.

(1) *Division 14—Conveying Equipment:*

(i) Electric Dumbwaiters Geared Traction and Winding Drum (VA 14 12 11)

(ii) Electric Traction Elevators (VA 14 21 00)

(iii) Traction Cartlift (VA 14 21 11)

(iv) Hydraulic Elevators (VA 14 24 00)

(v) Hydraulic Cartlift (VA 14 24 11)

(vi) Public Address and Mass Notification Systems (VA 27 51 16)

(2) *Division 27—Communications:*

Intercommunication and Program Systems (VA 27 51 23)

(g) The construction contractor shall require the original installer of the equipment, which is normally a subcontractor to provide the guarantee period services.

PART 847—TRANSPORTATION

■ 9. The authority citation for part 847 is amended to read as follows:

Authority: 38 U.S.C. 513; 40 U.S.C. 121(c); 31 U.S.C. 1303; 41 U.S.C. 1702; 41 CFR part 102–117; and 48 CFR 1.301–1.304.

■ 10. Subpart 847.2 is added to read as follows:

Subpart 847.2—Contracts for Transportation or for Transportation-Related Services

Subpart 847.2—Contracts for Transportation or for Transportation-Related Services

847.207 Solicitation provisions, contract clauses, and special requirements.

847.207–8 Government responsibilities.

Transportation payments are audited by the Traffic Manager, to ensure that payment and payment mechanisms for agency transportation are uniform and appropriate in accordance with 41 CFR part 102–117.

847.207–70 VA solicitation provisions, contract clauses, and special requirements.

(a) Insurance under patient transportation contracts. The contracting officer shall ensure that all the proper certificates of insurance are submitted to perform on the contract, as outlined in the solicitation, and subsequently included in the contract file. In accordance with 828.306, the contracting officer shall insert the provision at 852.228–71, Indemnification and Insurance, in solicitations when utilizing term contracts or contracts of a continuing nature for ambulance, automobile and aircraft service. When contracting for these services, consider using requirements language such as the following:

(1) Written proof of Insurance coverage as required and outlined in the solicitation is required prior to award of any contract. Coverage must be maintained continually through the life of the contract.

(2) Within 10 days of notification of acceptance and pending award of contract, the contractor shall furnish to the contracting officer a certificate of insurance which shall contain an endorsement to the effect that cancellation of, or any material change in, the policies which adversely affect the interests of the Government in such insurance shall not be effective unless a 30-day advance written notice of cancellation or change is furnished to the contracting officer.

(3) Within 10 days of notification of acceptance and pending award of contract, and prior to award of a contract, the contractor shall furnish to the contracting officer a copy of the contractor's current and valid Worker's Compensation certificate.

(b) Contractor personnel. The contracting officer shall ensure that the contractor personnel have the appropriate level of training, experience, licensure, and pertinent qualifications to ensure patient safety. When contracting for these services, consider using requirements language such as the following:

(1) All contractor personnel performing contract services shall meet the qualifications as specified in the contract, as well as any qualifications required by Federal, State, county, and local government entities from the place in which they operate. Contractor personnel shall meet these qualifications at all times while performing contract services.

(2) During the contract period of performance, if the contractor proposes to add-on, or replace personnel to perform contract services, the contractor shall submit required evidence of training, certifications, licensing, background, and security clearances, and any other applicable qualifications to the designated COR. At no time shall the contractor utilize add-on or replacement personnel to perform contract services who do not meet the qualifications under the terms and conditions of the contract.

(3) Records of contractor personnel qualifications and eligibility to perform on the contract must be maintained current throughout the life of the contract, and be made available for inspection upon request. The contractor shall forward to the contracting officer, on an annual basis, a list of contractor employees listing the employees name, position(s), and licenses and/or certifications and their current certification number. This annual statement of driver competency must include any advanced certifications, such as Advanced Cardiac Life Support or specialized training to assist and secure patients by stretcher or wheelchair, as applicable.

(4) Within seven (7) days after receipt of award notification, the contractor shall provide evidence of required training, certifications, licensing and any other qualifications of any personnel who will be performing services under the contract. The initial documentation shall be provided to the contracting officer and COR.

(c) Contracts must include requirements to report vehicle accidents and incidents to the Contracting Officer with a formal accident report.

(d) Contracts for ambulance services must require that the contractor meet the current specifications of Federal Specification KKK–A–1822E, ''Star of Life Ambulance'' standard.

(e) Contracts must include requirements to ensure patient safety is maintained through the consistent practice of securing patient care equipment, other cargo, and vehicles, and ensure that security of patients in vehicles is established and observed when transportation needs are either primary or secondary in the actual performance of the contract. When contracting for these services, consider using requirements language to ensure that patient transportation meets industry standards for transporting patients based on the patient's condition/needs (*e.g.,* wheelchair, ambulatory, on stretcher, etc.).

■ 11. Subpart 847.3 is revised to read as follows:

Subpart 847.3—Transportation in Supply Contracts

Subpart 847.3—Transportation in Supply Contracts

847.302 Place of delivery—F.o.b. point.

The contracting officer shall insert clause 852.247–71, Delivery Location, or a clause substantially the same as the clause at 852.247–71, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and other delivery details (*e.g.,* quantities to be delivered to each location, etc.).

847.305–10 Packing, marking, and consignment instructions.

(a) The contracting officer shall insert clause 852.247–72, Marking Deliverables, or a clause substantially the same as 852.247–72 in solicitations and contracts if special marking on deliverables are required.

(b) The contracting officer shall insert the clause at 852.247–73, Packing for

Domestic Shipment, in contracts when item(s) will be delivered for immediate use to a destination in the continental United States; when the material specification or purchase description does not provide preservation, packaging, packing, and/or marking requirements; and/or when the requiring activity has not cited a specific specification for packaging.

847.305–70 Potential destinations known but quantities unknown.

When the contracting officer contracts with multiple bidders to provide items directly to VA field installations, on an f.o.b. origin basis, the evaluation of bids must follow specific procedures. In these instances, the contracting officer shall insert clause 852.247–70, Determining Transportation Costs for Evaluation of Offers, or a clause substantially the same as clause 852.247–70. By inserting this clause, each bid is placed on an equal basis, even though specific quantities required by each facility cannot be predetermined. The contracting officer must use an anticipated demand factor in proportion to the number of hospital beds or patient workload.

847.305–71 VA contract clauses.

(a) The contracting officer shall insert clause 852.247–74, Advance Notice of Shipment, or a clause substantially as 852.247–74, in solicitations and contracts when the F.o.b. point is destination, and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer shall insert clause 852.247–75, Bills of Lading, or a clause substantially the same as clause at 852.247–75, in F.o.b. origin solicitations and contracts.

847.306–70 Records of claims.

When contracting for transportation, and consistent with FAR 15.304, contracting officers should consider using the following as an evaluation factor or subfactor: Record of claims involving loss or damage.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C 1702;.and 48 CFR 1.301–1.304.

852.229–70 [Removed and reserved].

■ 13. Section 852.229–70 is removed and reserved.

852.246–70 [Removed and reserved].

■ 14. Section 852.246–70 is removed and reserved.

■ 15. Section 852.246–71 is revised to read as follows:

852.246–71 Rejected Goods.

As prescribed in 846.370–1, insert the following clause:

Rejected Goods (Date)

(a) *Supplies and equipment.* Rejected goods will be held subject to Contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the Contractor's address at the Contractor's risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the Contractor.

(b) *Perishable supplies.* The contractor shall remove rejected perishable supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Department of Veterans Affairs will not be responsible for, nor pay for, products rejected. The contractor will be liable for costs incident to examination of rejected products.

(End of clause)

■ 16. Section 852.246–72 is revised to read as follows:

852.246–72 Frozen Processed Foods.

As prescribed in 846.370–2, insert the following clause:

Frozen Processed Foods (Date)

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer burn and shall be transported and delivered to the consignee at a temperature of 0 degrees Fahrenheit or lower.

(End of clause)

■ 17. Section 852.246–73 is revised to read as follows:

852.246–73 Noncompliance with Packaging, Packing, and/or Marking Requirements.

As prescribed in 846.370–3, insert the following clause:

Noncompliance With Packaging, Packing and/or Marking Requirements (Date)

Failure to comply with the packaging, packing and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the Contractor, to perform the required repackaging, repacking, and/or marking services and charge the Contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order and charge the Contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking and/or marking services.

(End of clause)

852.246–74 [Removed and reserved].

■ 18. Section 852.246–74 is removed and reserved.

■ 19. Section 852.246–75 is revised to read as follows:

852.246–75 Warranty of Construction—Guarantee Period Services.

As prescribed in 846.702–70(e), insert the following clause:

Warranty of Construction—Guarantee Period Services (Date)

The clause 52.246–21, Warranty of Construction, is supplemented as follows:

Should the Contractor fail to complete the work or fail to proceed promptly to provide guarantee period services after notification by the Contracting Officer, the Government may, subject to the default clause contained at FAR 52.249–10, Default (Fixed-Price Construction), and after allowing the Contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damages to the Government resulting from the Contractor's refusal or failure to complete the work within this specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of clause)

■ 20. Section 852.246–76 is added to read as follows:

852.246–76 Purchase of Shellfish.

As prescribed in 846.370–4 insert the following clause:

Purchase of Shellfish (Date)

The supplier certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shellfish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shellfish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of clause)

■ 21. Section 852.247–70 is revised to read as follows:

852.247–70 Determining Transportation Costs for Evaluation of Offers.

As prescribed in 847.305–70, insert the following provision:

Determining Transportation Costs for Evaluation of Offers (Date)

For the purpose of evaluating bids and for no other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the F.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

ANTICIPATED DEMAND

Area destination	Factor
Oakland, California	3
Dallas, Texas	2
Omaha, Nebraska	3
Fort Wayne, Indiana	4
Atlanta, Georgia	3
New York, New York	5
Total of factors	20

(End of provision)

■ 22. Section 852.247–71 is added to read as follows:

852.247–71 Delivery Location.

As prescribed in 847.302, insert a clause substantially as follows:

Delivery Location (Date)

Shipment of deliverable items, other than reports, shall be to: __* Contracting Officer shall insert appropriate identifying data.

(End of clause)

■ 23. Section 852.247–72 is added to read as follows:

852.247–72 Marking Deliverables.

As prescribed in 847.305–10(a) insert a clause substantially the same as:

Marking Deliverables (Date)

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: ________*.

* Contracting Officer shall insert appropriate identifying data.

(End of clause)

■ 24. Section 852.247–73 is added to read as follows:

852.247–73 Packing for Domestic Shipment.

As prescribed in 847.305–10(b), insert the following clause:

Packing for Domestic Shipment (Date)

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with regulations of carriers as applicable to the mode of transportation.

(End of clause)

■ 25. Section 852.247–74 is added to read as follows:

852.247–74 Advance Notice of Shipment.

As prescribed in 847.305–71(a), insert the following clause:

Advance Notice of Shipment (Date)

[*Insert number of work days*] work days prior to shipping item(s)

[*Insert items to be shipped*], the Contractor shall furnish the anticipated shipment date, bill of lading number (*if applicable*), and carrier identity to [*Insert individual(s) to receive notification*] and to the Contracting Officer.

(End of clause)

■ 26. Section 852.247–75 is added to read as follows:

852.247–75 Bills of Lading.

As prescribed in 847.305–71(b), insert the following clause:

Bills of Lading (Date)

The purpose of this clause is to define when a commercial bill of lading or a government bill of lading is to be used when shipments of deliverable items under this contract are F.o.b. origin.

(a) Commercial Bills of Lading. All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice.

''I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: ________

Destination: ________.''

(b) Government Bills of Lading.

(1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, ''domestic overseas'' means non-continental United States, *i.e.,* Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: ________ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: ________ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(i) Item identification/description.
(ii) Origin and destination.
(iii) Individual and total weights.
(iv) Dimensional weight.
(v) Dimensions and total cubic footage.
(vi) Total number of pieces.
(vii) Total dollar value.
(viii) Other pertinent data.

(End of clause)

852.270–2 [Removed].

■ 27. Section 852.270–2 is removed.

852.270–3 [Removed].

■ 28. Section 852.270–3 is removed.

PART 870—SPECIAL PROCUREMENT CONTROLS

870 [Removed and reserved].

■ 29. Part 870 is removed and reserved.

[FR Doc. 2018–07130 Filed 4–24–18; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

[Docket No. FWS–HQ–MB–2018–0012; FF09M21200–178–FXMB1232099BPP0L2]

RIN 1018–BC72

Migratory Bird Permits; Regulations for Managing Resident Canada Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: In 2005, the U.S. Fish and Wildlife Service (Service or ''we'') published a final environmental impact statement on management of resident Canada geese (*Branta canadensis*) that documented resident Canada goose population levels ''that are increasingly coming into conflict with people and

causing personal and public property damage.'' Subsequently, the Service implemented several actions intended to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages; those actions included depredation and control orders that allow destruction of Canada goose nests and eggs by authorized personnel between March 1 and June 30. However, some resident Canada geese currently initiate nests in February, particularly in the southern United States, and it seems likely that in the future nest initiation dates will begin earlier and hatching of eggs will perhaps end later than dates currently experienced. Thus, the Service proposes to amend the depredation and control orders to allow destruction of resident Canada goose nests and eggs at any time of year.

DATES: Comments on this proposed rule must be received by May 25, 2018.

ADDRESSES:

Document availability: You may obtain copies of the related environmental assessment at *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2018–0012.

Comment submission: You may submit comments by either one of the following methods. Please do not submit comments by both.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–HQ–MB–2018–0012.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–MB–2018–0012; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov,* including any personal information you provide. See Public Comments, below, for more information.

FOR FURTHER INFORMATION CONTACT: Paul I. Padding, Atlantic Flyway Representative, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 11510 American Holly Drive, Laurel, MD 20708; (301) 497–5851 or email *paul_padding@fws.gov.*

SUPPLEMENTARY INFORMATION:

Authority and Responsibility

Migratory birds are protected under four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada in 1916 as amended in 1999), the United Mexican States (1936 as amended in 1972 and 1999), Japan (1972 as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (Act; 16 U.S.C. 703–712), which implements the above-mentioned treaties. The Act provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means allowing hunting, killing, and other forms of taking of migratory birds, their nests, and eggs is compatible with the conventions. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are federally protected by the Act because they are listed as migratory birds in all four treaties. Because Canada geese are covered by all four treaties, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with Canada. All regulations concerning resident Canada geese are compatible with its terms, with particular reference to Articles II, V, and VII.

Each treaty not only permits sport hunting, but permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of ''The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States'' provides specific limitations on allowing the take of migratory birds for reasons other than sport hunting. Article VII authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Article V relates to the taking of nests and eggs, and Article II, paragraph 3, states that, in order to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with listed conservation principles.

The other treaties are less restrictive. The treaties with both Japan (Article III, paragraph 1, subparagraph (b)) and the Soviet Union (Article II, paragraph 1, subparagraph (d)) provide specific exceptions to migratory bird take prohibitions for the purpose of protecting persons and property. The treaty with Mexico requires, with regard to migratory game birds, only that there be a ''closed season'' on hunting and that hunting be limited to 4 months in each year.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated at title 50, Code of Federal Regulations (CFR), parts 13, 21 and 22, and issued by the Service. The Service annually promulgates regulations governing the take, possession, and transportation of migratory game birds under sport hunting seasons at 50 CFR part 20. Regulations regarding all other take of migratory birds (except for eagles) are published at 50 CFR part 21, and typically are not changed annually.

Background

In November 2005, the U.S. Fish and Wildlife Service (Service or ''we'') published a final environmental impact statement on management of resident Canada geese that documented resident Canada goose population levels ''that are increasingly coming into conflict with people and causing personal and public property damage.'' On August 10, 2006, we published in the **Federal Register** (71 FR 45964) a final rule establishing regulations at 50 CFR parts 20 and 21 authorizing State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages. Those activities include depredation and control orders that allow destruction of resident Canada goose nests and eggs by authorized personnel between March 1 and June 30, because that timeframe encompassed the period when resident Canada geese typically nested.

In recent years, some resident Canada geese have initiated nests in February, particularly in the southern United States, and it seems likely that in the future nest initiation dates will begin earlier and hatching of eggs will perhaps end later than dates currently experienced. This proposed rule would amend the special permit and depredation and control orders to allow destruction of resident Canada goose nests and eggs at any time of year, thereby affording State agencies, private landowners, and airports greater flexibility to use these methods of controlling local abundances of resident Canada geese.

Definition of Resident Canada Geese

The current definition of resident Canada geese contained in 50 CFR 20.11 and 21.3 states that ''Canada geese that nest within the lower 48 States and the District of Columbia in the months of March, April, May, or June, or reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August'' are considered resident Canada geese. We are proposing to amend this definition by deleting the phrase, ''in the months of March, April, May, or June,'' (following the word ''Columbia'') to clarify that any Canada geese that nest within lower 48 States and the District of Columbia are resident Canada geese.

Removal of Date Restrictions on Nest and Egg Destruction

In title 50 of the CFR, destruction of resident Canada goose nests and eggs is currently authorized under special Canada goose permits (§ 21.26), a control order for airports and military airfields (§ 21.49), a depredation order specific to nests and eggs (§ 21.50), a depredation order for agricultural facilities (§ 21.51), and a public health control order (§ 21.52). Each of these regulations prescribes the dates during which nests and eggs of resident Canada goose may be destroyed. We propose to remove those date restrictions and allow destruction of Canada goose nests and eggs, as otherwise authorized under these regulations, at any time of year.

Our proposal is based on several factors. First, nest and egg destruction has been an effective tool in reducing local conflicts and damages caused by resident Canada geese. Second, resident Canada geese are identified as such based on where, not when, they nest. Lastly, some Canada geese are already nesting in February in southern States, and it seems likely that nest initiation dates will also advance into February in mid-latitude and perhaps northern States in the future, and hatching of nests may occur later than June 30.

Eliminating Date Restrictions for Lethal Control Activities in California, Oregon, and Washington

On June 17, 1999, we published in the **Federal Register** (64 FR 32766) a final rule establishing 50 CFR 21.26, the special Canada goose permit. Special Canada goose permits may be issued to State wildlife agencies authorizing them to conduct certain resident Canada goose management and control activities that are normally prohibited. At that time, we indicated that States may conduct those control activities between March 11 and August 31, but that they should make a concerted effort to limit the take of adult birds to June, July, and August in order to minimize the potential impact on migrant populations. We imposed a date restriction of May 1 through August 31 in some areas in California, Oregon, and Washington inhabited by the threatened Aleutian Canada goose (*Branta canadensis leucopareia)* pursuant to the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The Aleutian Canada goose was listed as endangered in 1967 (32 FR 4001; March 11, 1967) and reclassified to threatened status in 1990 (55 FR 51106; December 12, 1990). Aleutian geese occur in a small numbers within these States, primarily San Joaquin Valley and Sacramento River Delta areas in central California, Humboldt Bay and Crescent City areas on the northern California coast, and Langlois and Pacific City areas on the Oregon coast. We indicated that if this subspecies is delisted, we would review this provision.

On March 20, 2001, we published in the **Federal Register** (66 FR 15643) a final rule to remove the Aleutian Canada goose from the Federal List of Endangered and Threatened Wildlife, due to recovery. Abundance of this population increased from 790 birds in 1975, to an estimated 156,030 in the winter of 2016. The Pacific Flyway Council's objective for this population is 60,000 geese. Currently, there is no special habitat or other threat that may reduce this population back to levels that may need protection under the ESA. Considering the current status of the Aleutian Canada goose, we propose to remove the May 1 restriction so that management and control activities may be conducted during the same period (March 11 through August 31) throughout all States.

Environmental Assessment

We prepared an environmental assessment (EA) that analyzed two alternative courses of action to address these earlier nesting and later hatching dates and decrease local abundances of Canada geese that nest in the lower 48 States and the District of Columbia:

(1) Maintain the current date restrictions specified in regulations at 50 CFR 21.26, 21.49, 21.50, 21.51, and 21.52 on destruction of resident Canada goose nests and eggs, and no change in the definition of resident Canada geese at 50 CFR 20.11 and 21.3 (No action); and

(2) Revise the definition of resident Canada geese at 50 CFR 20.11 and 21.3, and allow destruction of resident Canada goose nests and eggs at any time of year under 50 CFR 21.26, 21.49, 21.50, 21.51, and 21.52 (Proposed action).

The full EA can be found on our website at *http://www.fws.gov/birds* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2018–0012.

We note that the proposed amendment to § 21.26 in regard to accounting for the current status of the Aleutian Canada goose was not addressed in the EA, but is a categorically excluded action (43 CFR 46.210) addressed in an environmental action statement (EAS). The EAS can be found on our website at *http://www.fws.gov/birds* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2018–0012.

Public Comments

You may submit your comments and supporting materials by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email or fax, or written comments sent to an address other than the one listed in **ADDRESSES**. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, are available for public inspection at *http://www.regulations.gov.*

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b).

The economic impacts of this proposed rule would primarily affect State and local governments and the U.S. Department of Agriculture's Wildlife Services because of the structure of wildlife damage management. Data are not available to estimate the exact number of local governments that would be affected, but it is unlikely to be a substantial number nationally. Therefore, we certify that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on a substantial number of small entities.

This rule would not have an annual effect on the economy of $100 million or more. This rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

Finally, this rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the abilities of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This proposed rule is expected to be an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) deregulatory action because it would relieve a restriction in 50 CFR parts 20 and 21.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This proposed rule would not "significantly or uniquely" affect small government activities. A small government agency plan is not required.

b. This proposed rule would not produce a Federal mandate on local or State government or private entities. Therefore, this action is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, this proposed rule does not contain a provision for taking of private property, and would not have significant takings implications. A takings implication assessment is not required.

Federalism

This proposed rule would not interfere with the States' abilities to manage themselves or their funds. We do not expect any economic impacts to result from this regulations change. This rule would not have sufficient Federalism effects to warrant preparation of a federalism summary impact statement under E.O. 13132.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the proposed rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule does not contain new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements associated with the control and management of resident Canada geese at 50 CFR part 20 and 50 CFR part 21, and assigned OMB Control Number 1018–0133 (expires December 31, 2018).

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.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and U.S. Department of the Interior regulations at 43 CFR part 46. We have completed an environmental assessment of the proposed amendment of the depredation and control orders that would allow destruction of resident Canada goose nests and eggs at any time of year; that environmental assessment is included in the docket for this proposed rule. We conclude that our proposed action would have the impacts listed below under *Environmental Consequences of the Action.* The proposed amendment to § 21.26 in regard to accounting for the current status of the Aleutian Canada goose was not addressed in the EA, but is a NEPA categorically excluded action (43 CFR 46.210) addressed in an environmental action statement (EAS), which is also included in the docket for this proposed rule. The docket for this proposed rule is available at *http://www.regulations.gov* (Docket No. FWS–HQ–MB–2018–0012).

Environmental Consequences of the Action

Migrant Canada geese do not nest in the lower 48 States or the District of Columbia; thus, this proposed action (amendments related only to depredation and control orders) is not expected to have any significant impacts on migrant Canada geese. All resident Canada goose population abundances are well above population objectives. Assuming that the number of resident Canada geese that initiate nests in January or February does not exceed the current number that initiate nests in March, we expect that this proposed action would result in destruction of a maximum of 2,749 additional nests in January and February. We expect it is more likely that the proposed action would shift some portion of the current resident Canada goose nest and egg destruction activities occurring in March to either January or February. All populations of resident Canada geese are expected to remain at or above population objective levels.

Socioeconomic. This proposed action is expected to have positive impacts on the socioeconomic environment in localized urban and suburban areas where resident Canada geese are subjected to continued (annual) nest and egg destruction actions that gradually reduce goose numbers and resulting conflicts. It is also expected to reduce crop depredation at some localized agricultural sites where nest destruction can encourage geese to leave the site.

Endangered and threatened species. The proposed rule will not affect endangered or threatened species or critical habitats.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (16 U.S.C. 1536(a)(1)). It further states that ''[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). The proposed rule would not affect endangered or threatened species or critical habitats.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. This proposed rule would not interfere with the tribes' abilities to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not a significant regulatory action under E.O. 13211, and would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action. No Statement of Energy Effects is required.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons stated in the preamble, we hereby propose to amend parts 20 and 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—MIGRATORY BIRD HUNTING

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703 *et seq,* and 16 U.S.C. 742a–j.

■ 2. Amend § 20.11 by revising paragraph (n) to read as follows:

§ 20.11 What terms do I need to understand?

* * * * *

(n) *Resident Canada geese* means Canada geese that nest within the lower 48 States and the District of Columbia or that reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August.

* * * * *

PART 21—MIGRATORY BIRD PERMITS

■ 3. The authority citation for part 21 is revised to read as follows:

Authority: 16 U.S.C. 703–712.

■ 4. Amend § 21.3 by revising the definition for ''*Resident Canada geese*'' to read as follows:

§ 21.3 Definitions.

* * * * *

Resident Canada geese means Canada geese that nest within the lower 48 States and the District of Columbia or that reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August.

* * * * *

■ 5. Amend § 21.26 by revising paragraph (d)(2) to read as follows:

§ 21.26 Special Canada goose permit.

* * * * *

(d) * * *

(2) *When may a State conduct management and control activities?* States and their employees and agents may conduct egg and nest manipulation activities at any time of year. Other management and control activities, including the take of resident Canada geese, under this section may only be conducted between March 11 and August 31.

* * * * *

■ 6. Amend § 21.49 by revising paragraph (d)(3) to read as follows:

§ 21.49 Control order for resident Canada geese at airports and military airfields.

* * * * *

(d) * * *

(3) Airports and military airfields may conduct management and control activities, involving the take of resident Canada geese, under this section between April 1 and September 15. The destruction of resident Canada goose nests and eggs may take place at any time of year.

* * * * *

■ 7. Amend § 21.50 by revising paragraph (d)(4) to read as follows:

§ 21.50 Depredation order for resident Canada geese nests and eggs.

* * * * *

(d) * * *

(4) Registrants may conduct resident Canada goose nest and egg destruction activities at any time of year. Homeowners' associations and local governments or their agents must obtain landowner consent prior to destroying nests and eggs on private property within the homeowners' association or local government's jurisdiction and be in compliance with all State and local laws and regulations.

* * * * *

■ 8. Amend § 21.51 by revising paragraph (d)(4) to read as follows:

§ 21.51 Depredation order for resident Canada geese at agricultural facilities.

* * * * *

(d) * * *

(4) Authorized agricultural producers and their employees and agents may

conduct management and control activities, involving the take of resident Canada geese, under this section between May 1 and August 31. The destruction of resident Canada goose nests and eggs may take place at any time of year.

*   *   *   *   *

■ 9. Amend § 21.52 by revising paragraph (e)(3) to read as follows:

§ 21.52 Public health control order for resident Canada geese.

*   *   *   *   *

(e) * * *

(3) Authorized State and Tribal wildlife agencies and their employees and agents may conduct management and control activities, involving the take of resident Canada geese, under this section between April 1 and August 31. The destruction of resident Canada goose nests and eggs may take place at any time of year.

*   *   *   *   *

Dated: April 10, 2018.

Susan Combs,

Senior Advisor to the Secretary, Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2018–08500 Filed 4–24–18; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 83, No. 80
Wednesday, April 25, 2018

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the West Virginia Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on Friday, May 4, 2018. The purpose of the meeting is to hear presentations from a panel of experts who will provide a national perspective on the impact a felony conviction/record has on a person's access to employment, housing, occupational licenses and public benefits.

DATES: Friday, May 4, 2018, at 12:00 p.m. EST.

PUBLIC CALL-IN INFORMATION: Conference call-in number: 1–800–474–8920 and conference call ID 8310490.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–474–8920 and conference call 8310490. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–800–474–8920 and conference call ID 8310490.

Members of the public are invited to submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=279,* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Friday, May 4, 2018

I. Rollcall
II. Welcome and Introductions
III. Panel Presentations
IV. Adjourn

Dated: April 19, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–08595 Filed 4–24–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Wednesday May 23, 2018, at 11am EDT for the purpose discussing civil rights concerns in the state.

DATES: The meeting will be held on Wednesday May 23, 2018, at 11 a.m. EDT.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION:

Public Call Information: Dial: 888–312–3048, Conference ID: 1416163.

Members of the public can listen to the discussion. This meeting is available to the public through the above toll-free call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 S. Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the

Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Michigan Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=255*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion: Civil Rights in Michigan
Public Comment
Future Plans and Actions
Adjournment

Dated: April 19, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–08587 Filed 4–24–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Virginia Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on Wednesday, May 16, 2018. The purpose of the meeting is to hear presentations from a panel of experts who will provide a national perspective on the Committee's civil rights project, titled Hate Crimes in VA—Incidences and Responses.

DATES: Wednesday, May 16, 2018, at 12:00 p.m. EST.

ADDRESSES: Public call-in information: Conference call-in number: 1–800–474–8920 and conference call ID number: 8310490.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–474–8920 and conference call ID number: 8310490. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–800–474–8920 and conference call ID number: 8310490.

Members of the public are invited to submit written comments. Comments must be received in the regional office approximately 30 days after each scheduled meeting. They may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=279,* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda: Wednesday, May 16, 2018

I. Rollcall

II. Welcome and Introductions

III. Panel Presentation

IV. Adjourn

Dated: April 19, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–08596 Filed 4–24–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Minnesota Advisory Committee (Committee) to the Commission will be held from 2:00–3:00 p.m. CDT Wednesday June 6, 2018 to discuss civil rights concerns in the State.

DATES: The meeting will be held on Wednesday June 6, 2018, from 2:00–3:00 p.m. CDT.

FOR FURTHER INFORMATION CONTACT: Carolyn Allen at *callen@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION:

Public Call Information: Dial: 800–839–7875; Conference ID: 4932013.

This meeting is available to the public through the above toll-free call-in number. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the U.S. Commission on Civil Rights, Regional Programs Unit, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may be faxed to the Commission at (312) 353–8324, or emailed Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://facadatabase.gov/committee/meetings.aspx?cid=256.*

Please click on the ''Meeting Details'' and ''Documents'' links to download. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Approval of Minutes
III. Discussion
 a. Report Publication: ''Responses to 21st Century Policing in Minnesota''
 b. Other Civil Rights Concerns in Minnesota
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: April 19, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–08588 Filed 4–24–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–828]

Silicomanganese From the People's Republic of China: Notice of Correction to the Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Joseph Degreenia, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 432–6430

SUPPLEMENTARY INFORMATION:

Correction

On February 8, 2018, the Department of Commerce (Commerce) published the final results of the expedited fourth sunset review of the antidumping duty order on silicomanganese from the People's Republic of China (China).[1] The *Final Results* **Federal Register** notice inadvertently identified an incorrect case number associated with the antidumping duty (AD) order on silicomanganese from China (*i.e.,* incorrect case number A–570–864). The correct case number associated with the AD order on silicomanganese from China is A–570–828. This notice serves as a correction notice.

This correction is published in accordance with sections 751(c), 752(c) and 777(i) of the Tariff Act of 1930, as amended.

Dated: March 22, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–08655 Filed 4–24–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Silicomanganese from the People's Republic of China and Ukraine: Final Results of Expedited Fourth Sunset Reviews of the Antidumping Duty Orders,* 83 FR 5609 (February 8, 2018) (*Final Results*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–883, A–588–878, and A–549–837]

Glycine From India, Japan, and Thailand: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 17, 2018.

FOR FURTHER INFORMATION CONTACT: Edythe Artman at (202) 482–3931 or Kent Boydston at (202) 482–5649 (India); Madeline Heeren at (202) 482–9179 or John McGowan at (202) 482–3019 (Japan); and Brian Smith at (202) 482–1766 or Jesus Saenz at (202) 482–8184 (Thailand); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On March 28, 2018, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) Petitions concerning imports of glycine from India, Japan, and Thailand, and countervailing duty (CVD) Petitions concerning imports of glycine from the People's Republic of China, India, and Thailand filed in proper form on behalf of GEO Specialty Chemicals, Inc., and Chattem Chemicals, Inc. (the petitioners).[1] The petitioners are domestic producers of glycine.[2]

On April 2, 6, and 10, 2018, Commerce requested supplemental information pertaining to certain areas of the Petitions.[3] The petitioners filed responses to these requests on April 4, 5, 9, 10, and 11, 2018.[4] On April 10,

[1] *See* the petitioners' letter, ''Glycine from the People's Republic of China, India, Japan and Thailand: Petitions for Imposition of Antidumping and Countervailing Duties,'' dated March 28, 2018 (the Petitions). For the purposes of the instant notice, all references to 'the Petitions,' herein, refer specifically to the AD Petitions.

[2] *See* Volume I of the Petitions, at 4–5.

[3] *See* Commerce's letters, ''Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Glycine from the People's Republic of China, India, Japan, and Thailand: Supplemental Questions'' (General Issues Supplemental Questionnaire); ''Petition for the Imposition of Antidumping Duties on Imports of Glycine from India: Supplemental Questions'' (India AD Supplemental Questionnaire); ''Petition for the Imposition of Antidumping Duties on Imports of Glycine from Japan: Supplemental Questions'' (Japan AD Supplemental Questionnaire); and ''Petition for the Imposition of Antidumping Duties on Imports of Glycine from Thailand: Supplemental Questions'' (Thailand AD Supplemental Questionnaire). All four of these documents are dated April 2, 2018. *See also* ''Petition for the Imposition of Antidumping Duties on Imports of Glycine from India: Supplemental Questions;'' ''Petition for the Imposition of Antidumping Duties on Imports of Glycine from Thailand: Additional Supplemental Questions;'' and Commerce's memorandum, ''Petition for the Imposition of Antidumping Duties on Glycine from Thailand: Phone Call with Counsel to the Petitioners.'' All four of these documents are dated April 6, 2018. *See also* Commerce's memoranda, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Glycine from the People's Republic of China, India, Japan, and Thailand,'' dated April 10, 2018; and ''Petition for the Imposition of Antidumping Duties on Imports of Glycine from Japan,'' dated April 11, 2018.

[4] *See* the petitioners' separate letters regarding General Issues, India, Japan and Thailand, each entitled, ''Petitions for the Imposition of Antidumping Duties on Imports of Glycine from India, Japan and Thailand, and Countervailing Duties on Imports from the People's Republic of China, India and Thailand: Responses to Supplemental Questions'' (General Issues Supplement), dated April 4, 2018; ''Glycine from India: Responses to Supplemental Questions'' (India AD Supplement), dated April 5, 2018; ''Glycine from Japan: Responses to Supplemental Questions'' (Japan AD Supplement), dated April 5, 2018; and ''Glycine from Thailand: Responses to Supplemental Questions'' (Thai AD Supplement), dated April 5, 2018. *See also* the petitioners' separate letters regarding ''Glycine from Thailand: Submission of Missing Declaration,'' and ''Glycine from Japan: Additional Responses to Supplemental Questions.'' These two documents are dated April 5, 2018. *See also* the petitioners' separate letters regarding ''Glycine from India: Response to Second Supplemental Questionnaire'' (Second India AD Supplement); and ''Glycine from Thailand: Response to Second Supplemental Questionnaire'' (Second Thailand AD Supplement). These two documents are dated April 9, 2018. *See also* the petitioners' separate letters regarding ''Petitions for the Imposition of Antidumping Duties on Imports of Glycine from India, Japan and Thailand, and Countervailing Duties on Imports from the People's Republic of China, India and Thailand: Revised

Continued

2018, the petitioners submitted certain revisions to the scope.[5] On April 16, 2018, the petitioners submitted a revised publicly summarized affidavit and attachment to the Second AD Thailand Supplement in response to Commerce's request.[6]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of glycine from India, Japan, and Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing glycine in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigations that the petitioners are requesting.[7]

Period of Investigation

Because the Petitions were filed on March 28, 2018, the period of investigation (POI) for each of the investigations is January 1, 2017, through December 31, 2017.[8]

Scope of the Investigations

The product covered by these investigations is glycine from India, Japan, and Thailand. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Comments on Scope of the Investigations

During our review of the Petitions, Commerce issued questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the product for which the domestic industry is seeking relief.[9] As a result of these exchanges, the scope of the Petitions was modified to clarify the description of merchandise covered by the Petitions. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[10] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[11] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on May 7, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 17, 2018, which is 10 calendar days from the initial comments deadline.[12]

Commerce requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must be filed on the records of each of the concurrent AD and CVD investigations, in accordance with the filing requirements, discussed immediately below.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[13] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

Commerce requests comments from interested parties regarding the appropriate physical characteristics of glycine to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe glycine, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

Scope'' (Revised Scope Submission), dated April 10, 2018; and ''Glycine from Japan: Additional Calculations'' (Second Japan AD Supplement), dated April 11, 2018.

[5] *See* Memorandum, ''Phone Call with Counsel to the Petitioners,'' dated April 10, 2018; *see also* Petitioners' Letter, ''Petitions for the Imposition of Antidumping Duties on Imports of Glycine from India, Japan and Thailand, and Countervailing Duties on Imports from the People's Republic of China, India and Thailand: Revised Scope,'' dated April 10, 2018 (Revised Scope Submission), at 1–2.

[6] *See* Memorandum, ''Phone Call with Counsel to the Petitioners,'' dated April 13, 2018; and the petitioners' letter, ''Glycine from Thailand: Revised Bracketing,'' dated April 16, 2018.

[7] *See* the ''Determination of Industry Support for the Petitions'' section, *infra.*

[8] *See* 19 CFR 351.204(b)(1).

[9] *See* General Issues Supplemental Questionnaire, at 3–5 and General Issues Supplement at 3–8; *see also* Revised Scope Submission.

[10] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[11] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[12] *See* 19 CFR 351.303(b).

[13] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on May 7, 2018. Any rebuttal comments must be filed by 5:00 p.m. ET on May 14, 2018. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the records of the India, Japan, and Thailand less-than-fair-value investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[16] Based on our analysis of the information submitted on the record, we have determined that glycine, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the Appendix to this notice. To establish industry support, the petitioners provided their own production of the domestic like product in 2017.[18] The petitioners state that there are no other known producers of glycine in the United States; therefore, the Petitions are supported by 100 percent of the U.S. industry.[19]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[20] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[21] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[22] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[23] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the AD investigations that they are requesting that Commerce initiate.[24]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[25]

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[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[16] *See* Volume I of the Petitions, at 7.

[17] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: Glycine from India (India AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Glycine from the People's Republic of China, India, Japan, and Thailand (Attachment II); Antidumping Duty Investigation Initiation Checklist: Glycine from Japan (Japan AD Initiation Checklist), at Attachment II; and Antidumping Duty Investigation Initiation Checklist: Glycine from Thailand (Thailand AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[18] *See* Volume I of the Petitions, at 2.

[19] *Id.,* at 6; *see also* General Issues Supplement, at 8 and Exhibit GEN–S4. For further discussion, *see* India AD Initiation Checklist, Japan AD Initiation Checklist, and Thailand AD Initiation Checklist, at Attachment II.

[20] *Id.*

[21] *Id.; see also* section 732(c)(4)(D) of the Act.

[22] *See* India AD Initiation Checklist, Japan AD Initiation Checklist, and Thailand AD Initiation Checklist, at Attachment II.

[23] *Id.*

[24] *Id.*

[25] *See* Volume I of the Petitions, at 38–39; *see also* General Issues Supplement, at 8 and Exhibit GEN–S5.

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports, reduced market share, underselling and price depression or suppression, decline in the domestic industry's shipments, production, and capacity utilization, decline in the domestic industry's financial performance, and lost sales and revenues.[26] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[27]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which Commerce based its decision to initiate AD investigations of imports of glycine from India, Japan, and Thailand. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

Export Price

For India, Japan, and Thailand, the petitioners based export price (EP) on pricing information for glycine produced in, and exported from, those countries and sold or offered for sale in the United States.[28] For Thailand, the petitioners also based EP on the average unit value of publicly available import data.[29]

Where appropriate, the petitioners made deductions from U.S. price consistent with the terms of sale, as applicable.[30]

Normal Value

For India, Japan and Thailand, the petitioners obtained home market prices but demonstrated that these prices were below the cost of production (COP) during the proposed POI. Therefore, the petitioners calculated NV based on constructed value (CV) pursuant to section 773(a)(4) of the Act. *See* the section ''Normal Value Based on Constructed Value'' below.[31]

Normal Value Based on Constructed Value

As noted above, for India, Japan, and Thailand, the petitioners were able to obtain home market prices but demonstrated that these prices were below the COP during the POI; therefore, the petitioners based NV on CV pursuant to section 773(a)(4) of the Act. Pursuant to section 773(b)(3) of the Act, CV consists of the cost of manufacturing (COM); selling, general and administrative (SG&A) expenses; financial expenses; profit; and packing expenses.

For India, the petitioners calculated the COM based on a domestic producer's own input factors of production and usage rates for raw materials, energy, and packing.[32] The input factors of production were valued using publicly available data on costs specific to India, during the proposed POI.[33] Specifically, the prices for raw material and packing inputs were based on publicly available import data for India.[34] Labor and energy costs were valued using publicly available sources for India.[35] The petitioners calculated factory overhead, SG&A (including financial expenses) and profit based on the experience of an Indian producer of glycine.[36]

For Japan, the petitioners calculated the COM based on a domestic producer's own input factors of production and usage rates for raw materials, energy, and packing.[37] The input factors of production were valued using publicly available data on costs specific to Japan, during the proposed POI.[38] Specifically, the prices for raw material and packing inputs were based on publicly available import or export data for Japan.[39] Labor and energy costs were valued using publicly available sources from Japan.[40] The petitioners calculated factory overhead, SG&A (including financial expenses) and profit based on the experience of a Japanese producer of glycine.[41]

For Thailand, the petitioners calculated the COM based on a domestic producer's own input factors of production and usage rates for raw materials, labor, energy, and packing.[42] The input factors of production were valued using publicly available data on costs specific to Thailand, during the proposed POI.[43] Specifically, the prices for raw material and packing inputs were based on publicly available import data for Thailand.[44] Labor and energy costs were valued using publicly available sources for Thailand.[45] The petitioners calculated factory overhead, SG&A (including financial expenses), and profit for Thailand based the experience of a Thai producer of glycine.[46]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of glycine from India, Japan, and Thailand are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for glycine for each of the countries covered by this initiation are as follows: (1) India—80.49 percent;[47] (2) Japan—86.22 percent;[48] and (3) Thailand—176.00 to 227.17 percent.[49]

Initiation of Less-Than-Fair-Value Investigations

Based upon the examination of the Petitions, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of glycine from India, Japan, and Thailand are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no

[26] *Id.*, at 1–3, 33–49 and Exhibits GEN–2 and GEN–4 through GEN–6; *see also* General Issues Supplement, at 1, 8–9 and Exhibits GEN–S1 and GEN–S5.

[27] *See* India AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Glycine from the People's Republic of China, India, Japan, and Thailand (Attachment III); *see also* Japan AD Initiation Checklist, at Attachment III; *see also* Thailand AD Initiation Checklist, at Attachment III.

[28] *See* India AD Initiation Checklist, Japan AD Initiation Checklist, and Thailand AD Initiation Checklist.

[29] *See* Thailand AD Initiation Checklist.

[30] *See* India AD Initiation Checklist, Japan AD Initiation Checklist, and Thailand AD Initiation Checklist.

[31] In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the CV and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. Commerce no longer requires a COP allegation to conduct this analysis.

[32] *See* India AD Initiation Checklist.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *See* Japan AD Initiation Checklist.

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *See* Thailand AD Initiation Checklist.

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *See* India AD Initiation Checklist.

[48] *See* Japan AD Initiation Checklist.

[49] *See* Thailand AD Initiation Checklist.

later than 140 days after the date of this initiation.

Respondent Selection

In the Petitions, the petitioners named ten companies in India, nine companies in Japan, and one company in Thailand, as producers/exporters of glycine.[50] With regard to India and Japan, following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of glycine from India and Japan during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigations,'' in the Appendix.

We also intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO on the record within five business days of publication of this **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven calendar days after the placement of the CBP data on the record of these investigations. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for the initial comments. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo.*

Although Commerce normally relies on import data from CBP to determine whether to select a limited number of producers/exporters for individual examination in AD investigations involving market economy countries, the petitioners identified only one company as a producer/exporter of glycine in Thailand, Newtrend Food Ingredient (Thailand) Co., Ltd., and the petitioners provided information from independent sources as support.[51] Furthermore, we currently know of no additional producers/exporters of subject merchandise from Thailand. Accordingly, Commerce intends to examine all known producers/exporters in the Thailand AD investigation (*i.e.,* Newtrend Food Ingredient (Thailand) Co., Ltd.). We invite interested parties to comment on this issue. Parties wishing to comment on respondent selection for Thailand must do so within three business days of the publication of this notice.

All respondent selection comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully, in its entirety, by Commerce's electronic records system, ACCESS, no later than 5:00 p.m. ET on the dates noted above. We intend to make our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of India, Japan, and Thailand *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of glycine from India, Japan, and/or Thailand are materially injuring, or threatening material injury to, a U.S. industry.[52] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[53] Otherwise, the investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (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). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[54] 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.[55] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we 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, we 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. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[56] Parties must use the certification formats provided in 19 CFR

[50] *See* Volume I of the Petitions, at 23–28.

[51] *See* Volume I of the Petitions, at Exhibit GEN–6; *see also* General Issues Supplement, at 2 and Exhibit GEN–S2.

[52] *See* section 733(a) of the Act.

[53] *Id.*

[54] *See* 19 CFR 351.301(b).

[55] *See* 19 CFR 351.301(b)(2).

[56] *See* section 782(b) of the Act.

351.303(g).[57] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 17, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of these investigations if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56–40–6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2018–08664 Filed 4–24–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Enforcement and Compliance, International Trade Administration Department of Commerce.

DATES: Applicable April 25, 2018.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230, telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (Commerce) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish quarterly updates to the type and amount of those subsidies. We hereby provide Commerce's quarterly update of subsidies on articles of cheese that were imported during the periods October 1, 2017, through December 31, 2017.

Commerce has developed, in consultation with the Secretary of Agriculture, information on subsidies, as defined in section 702(h) of the Act, being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. Commerce will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

Commerce encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Ave., NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: April 19, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] Subsidy ($/lb)	Net [2] Subsidy ($/lb)
28 European Union Member States [3]	European Union Restitution Payments	$ 0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	0.44	0.44
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 28 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[57] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[FR Doc. 2018–08675 Filed 4–24–18; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes From Thailand: Amended Final Results of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending its final results of the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes (pipes and tubes) from Thailand. The period of review (POR) is March 1, 2015, through February 29, 2016. The amended final weighted-average dumping margin is listed below in the section entitled, ''Amended Final Results.''

DATES: Applicable April 25, 2018.

FOR FURTHER INFORMATION CONTACT: Toni Page, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1398.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 2017, Commerce published the *Final Results* of the 2015–2016 administrative review in the **Federal Register**.[1] Wheatland Tube LLC (petitioner) and respondent Saha Thai Steel Pipe Public Co., Ltd. (Saha Thai) timely filed ministerial error allegations concerning the *Final Results* and requested, pursuant to 19 CFR 351.224, that Commerce correct the alleged ministerial errors.[2]

Scope of the Order

The products covered by the antidumping order are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches.[3]

Ministerial Errors

Section 751(h) of the Tariff Act of 1930, as amended (the Act), defines ''ministerial errors'' as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.''[4] After analyzing the parties' comments, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), that ministerial errors were made in our calculation of Saha Thai's margin for the *Final Results.* For a detailed discussion of these ministerial errors, as well as Commerce's analysis of these errors, *see* the Ministerial Error Memorandum.[5]

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results.*[6] The revised weighted-average dumping margin is detailed below.

Amended Final Results

As a result of correcting for these ministerial errors, we determine the following margin exists for the period March 1, 2015, through February 29, 2016:

Exporter or producer	Weighted-average dumping margin (percent)
Saha Thai Steel Pipe Public Co., Ltd	0.69

Disclosure

Commerce intends to disclose the calculations performed for these amended final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these amended final results in the **Federal Register**. For Saha Thai, we will base the assessment rate for the corresponding entries on the margin listed above.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the October 10, 2017, the date of publication of the *Final Results* of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Saha Thai Steel Pipe Public Co., Ltd. will be equal to the weighted-average dumping margin established in these amended final results of review; (2) for previously reviewed or investigated companies, including those for which Commerce may have determined they had no shipments during the POR, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the ''all-others'' rate of 15.67 percent established in the less-than-fair-value investigation.[7] 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 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[1] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016,* 82 FR 46961 (October 10, 2017) (*Final Results*), and accompanying Memorandum, ''Circular Welded Carbon Steel Pipes and Tubes from Thailand: Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2015–2016,'' (Issues and Decision Memorandum).

[2] *See* Saha Thai Steel Pipe Public Co., Ltd.'s October 6, 2017 Ministerial Error Correction Request; and Petitioner's October 10, 2017 Ministerial Error Allegation.

[3] A full written description of the scope of the order is contained in the Issues and Decision Memorandum.

Commerce is not making any changes to the scope of the order for these amended final results.

[4] *See also* 19 CFR 351.224(f).

[5] *See* Memorandum, ''2015–2016 Administrative Review of the Antidumping Duty Order on Circular Welded Steel Pipes and Tubes from Thailand: Ministerial Error Memorandum,'' (April 18, 2018) (Ministerial Error Memorandum).

[6] *Id.*

[7] *See Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 51 FR 8341 (March 11, 1986).

Administrative Protective Orders

This notice also 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 the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These amended final results and notice are issued and published in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: April 18, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–08657 Filed 4–24–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC) Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of an Open Meeting of a Federal Advisory Committee.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Tuesday, May 15, 2018 from 8:30 a.m.—3:30 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register or to submit written comments for dissemination prior to the meeting is 5:00 p.m. EDT on Monday, May 7, 2018. The deadline for members of the public to request auxiliary aids is 5:00 p.m. EDT on Monday, May 7, 2018.

ADDRESSES: The meeting will take place at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, Room 6057–59. The address to register and obtain call-in information; submit comments; or request auxiliary aids is: Ms. Tracy Gerstle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 28018, 1401 Constitution Avenue NW, Washington, DC 20230 or email: *tracy.gerstle@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Gerstle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 28018, 1401 Constitution Avenue NW, Washington, DC 20230 (Phone: 202–482–0810; Fax: 202–482–5665; email: *tracy.gerstle@trade.gov*).

SUPPLEMENTARY INFORMATION: The meeting will take place on May 15 from 8:30 a.m. to 3:30 p.m. EDT. The general meeting is open to the public and time will be permitted for public comment from 3:00—3:30 p.m. EDT. Members of the public seeking to attend the meeting are required to register in advance. Those interested in attending must provide notification by Monday, May 7, 2018 at 5:00 p.m. EDT, via the contact information provided above. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–0810 no less than one week prior to the meeting. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Monday, May 7, 2018 at 5:00 p.m. EDT to ensure transmission to the members before the meeting. Minutes will be available within 30 days of this meeting.

Topic to be considered: During the May 15, 2018 meeting, the ETTAC will present to the Secretary of Commerce its final recommendations for this charter period as deliberated and adopted at its April 30, 2018 teleconference meeting, Topics to be deliberated at the April 30, 2018 meeting include optimizing the U.S. Government's trade promotion programs, identifying market access barriers, pros and cons of existing trade agreements, and discussing foreign procurement policy, including issues with financing mechanisms, localization requirements and non-tariff barriers. The ETTAC's subcommittees will present the recommendations to the Secretary. The subcommittees are: Trade Promotion and Export Market Development, Professional Services and Infrastructure Advancement, and Trade Policy and American Competitiveness. The Office of Energy & Environmental Industries will post the final agenda on its Office website *https://www.trade.gov/td/energy/* at least one week prior to the meeting.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was originally chartered in May of 1994. It was most recently re-chartered until August 2018.

Dated: April 16, 2018.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2018–08560 Filed 4–24–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–884, C–570–081, C–549–838]

Glycine From India, the People's Republic of China, and Thailand: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 17, 2018.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold at (202) 482–1121 (the People's Republic of China (China)), Chelsey Simonovich at (202) 482–1979 (India), and George Ayache at (202) 482–2623 (Thailand), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On March 28, 2018, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) Petitions concerning imports of glycine from China, India, and Thailand, and antidumping duty (AD) Petitions concerning imports of glycine from India, Japan, and Thailand filed in proper form on behalf of GEO Specialty Chemicals, Inc. and Chattem Chemicals, Inc. (the petitioners).[1] The petitioners are domestic producers of glycine.[2]

On April 2, 2018, Commerce requested supplemental information pertaining to certain areas of the Petitions.[3] The petitioners filed responses to these requests on April 4 and 5, 2018.[4] On April 10, 2018, the petitioners submitted certain revisions to the scope.[5]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of China (GOC), the Government of India (GOI), and the Royal Thai Government (RTG) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of glycine in China, India, and Thailand, respectively, and imports of such products are materially injuring, or threatening material injury to, the domestic glycine industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the CVD investigations that the petitioners are requesting.[6]

Period of Investigation

Because the Petitions were filed on March 28, 2018, the period of investigation for each of the investigations is January 1, 2017, through December 31, 2017.[7]

Scope of the Investigations

The product covered by these investigations is glycine from China, India, and Thailand. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Comments on Scope of the Investigations

During our review of the Petitions, Commerce issued questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the product for which the domestic industry is seeking relief.[8] As a result of these exchanges, the scope of the Petitions was modified to clarify the description of merchandise covered by the Petitions. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on May 7, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 17, 2018, which is 10 calendar days from the initial comments deadline.[11]

Commerce requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must be filed on the records of each of the concurrent AD and CVD investigations, in accordance with the filing requirements, discussed immediately below.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[12] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the Governments of China, India and Thailand of the receipt of the Petitions, and provided them the opportunity for consultations with

[1] *See* Petitioners' letter, ''Glycine from the People's Republic of China, India, Japan and Thailand: Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated March 28, 2018 (the Petitions). For the purposes of the instant notice, all references to 'the Petitions,' herein, refer specifically to the CVD Petitions.

[2] *See* Volume I of the Petitions, at 4–5.

[3] *See* Commerce's letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Glycine from India, Japan, and Thailand, and Countervailing Duties on Imports from the People's Republic of China, India, and Thailand: Supplemental Questions'' (General Issues Supplemental Questionnaire); ''Petition for the Imposition of Countervailing Duties on Imports of Glycine from the People's Republic of China: Supplemental Questions;'' ''Petition for the Imposition of Countervailing Duties on Imports of Glycine from India: Supplemental Questions;'' and ''Petition for the Imposition of Countervailing Duties on Imports of Glycine from Thailand: Supplemental Questions.'' All of these documents are dated April 2, 2018.

[4] *See* Petitioners' Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Glycine from India, Japan and Thailand, and Countervailing Duties on Imports from the People's Republic of China, India and Thailand: Responses to Supplemental Questions,'' dated April 4, 2018 (General Issues Supplement); ''Glycine from the People's Republic of China: Response to Supplemental Questions,'' dated April 5, 2018 (China CVD Supplement); '' Glycine from India: Responses to Supplemental Questions,'' dated April 5, 2018 (India CVD Supplement); and ''Glycine from Thailand: Response to Supplemental Questions,'' dated April 4, 2018 (Thailand CVD Supplement).

[5] *See* Memorandum, ''Phone Call with Counsel to the Petitioners,'' dated April 10, 2018; *see also* Petitioners' Letter, ''Petitions for the Imposition of Antidumping Duties on Imports of Glycine from India, Japan and Thailand, and Countervailing Duties on Imports from the People's Republic of China, India and Thailand: Revised Scope,'' dated April 10, 2018 (Revised Scope Submission), at 1–2.

[6] *See* ''Determination of Industry Support for the Petitions'' section, *infra.*

[7] *See* 19 CFR 351.204(b)(2).

[8] *See* General Issues Supplemental Questionnaire, at 3–5 and General Issues Supplement, at 3–8; *see also* Revised Scope Submission.

[9] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See* 19 CFR 351.303(b).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). *See also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx,* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

respect to the CVD Petitions.[13] Commerce held consultations with the Governments of Thailand and India on April 5, 2018,[14] and April 12, 2018, respectively.[15] As the Government of China did not request consultations prior to the initiation of this investigation, none were held.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[16] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[17]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[18] Based on our analysis of the information submitted on the record, we have determined that glycine, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[19]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the Appendix to this notice. To establish industry support, the petitioners provided their own production of the domestic like product in 2017.[20] The petitioners state that there are no other known producers of glycine in the United States; therefore, the Petitions are supported by 100 percent of the U.S. industry.[21]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[22] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[23] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[24] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[25] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the CVD investigations that they are requesting that Commerce initiate.[26]

Injury Test

Because China, India, and Thailand are ''Subsidies Agreement Countries''

[13] *See* Letter from Kathleen Marksberry, Program Manager, Office VIII, to the Embassy of China, ''Countervailing Duty Petition on Glycine from the People's Republic of China: Invitation for Consultations,'' dated March 28, 2018; Letter from Erin Kearney, Program Manager, Office VI, to the Embassy of India, ''Countervailing Duty Petition on Glycine from India: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated March 29, 2018; and Letter from Kathleen Marksberry, Program Manager, Office VIII, to the Royal Thai Embassy, ''Countervailing Duty Petition on Glycine from Thailand: Invitation for Consultations,'' dated March 28, 2018.

[14] *See* Memorandum, ''Countervailing Duty Petition on Glycine from Thailand: Consultations with Officials from the Royal Thai Government,'' dated April 5, 2018.

[15] *See* Memorandum, ''Countervailing Duty Petition on Glycine from India: Consultations with Officials from the Government of India,'' dated April 13, 2018.

[16] *See* section 771(10) of the Act.

[17] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[18] *See* Volume I of the Petitions, at 7.

[19] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Glycine from the People's Republic of China (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petition Covering Glycine from the People's Republic of China, India, Japan, and Thailand (Attachment II); *see also* Countervailing Duty Investigation Initiation Checklist: Glycine from India (India CVD Initiation Checklist), at Attachment II; *see also* Countervailing Duty Investigation Initiation Checklist: Glycine from Thailand (Thailand CVD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically *via* ACCESS. Access to documents filed *via* ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[20] *See* Volume I of the Petitions, at 2.

[21] *Id.,* at 6; *see also* General Issues Supplement, at 8 and Exhibit GEN–S4. For further discussion, *see* China CVD Initiation Checklist, at Attachment II; India CVD Initiation Checklist, at Attachment II; and Thailand CVD Initiation Checklist, at Attachment II.

[22] *Id.*

[23] *Id.; see also* section 702(c)(4)(D) of the Act.

[24] *See* China CVD Initiation Checklist, at Attachment II; India CVD Initiation Checklist, at Attachment II; and Thailand CVD Initiation Checklist, at Attachment II.

[25] *Id.*

[26] *Id.*

within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from China, India, and Thailand materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[27] In CVD petitions, section 771(24)(B) of the Act provides that imports of subject merchandise from developing and least developed countries must exceed the negligibility threshold of four percent. The petitioners also demonstrate that subject imports from India and Thailand, which have been designated as least developed and developing countries under sections 771(36)(A) and 771(36)(B) of the Act, respectively, exceed the negligibility threshold of four percent.[28]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports, reduced market share, underselling and price depression or suppression, decline in the domestic industry's shipments, production, and capacity utilization, decline in the domestic industry's financial performance, and lost sales and revenues.[29] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[30]

[27] *See* Volume I of the Petitions, at 38–39; *see also* General Issues Supplement, at 8 and Exhibit GEN–S5.

[28] *Id.*

[29] *Id.* at 1–3, 33–49 and Exhibits GEN–2 and GEN–4 through GEN–6; *see also* General Issues Supplement, at 1, 8–9 and Exhibits GEN–S1 and GEN–S5.

[30] *See* China CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petition Covering Glycine from the People's Republic of China, India, Japan, and Thailand (Attachment III); *see also* India CVD Initiation Checklist, at Attachment III; *see also* Thailand CVD Initiation, at Attachment III.

Initiation of CVD Investigations

Based on the examination of the Petitions, we find that the Petitions meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of glycine from China, India, and Thailand benefit from countervailable subsidies conferred by the GOC, GOI, and RTG, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of this initiation.

China

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 21 of the 22 alleged subsidy programs. For a full discussion of the basis for our decision to initiate on each program, *see* China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

India

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 38 of the 40 alleged subsidy programs.[31] For a full discussion of the basis for our decision to initiate on each program, *see* India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Thailand

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all ten alleged subsidy programs. For a full discussion of the basis for our decision to initiate on each program, *see* Thailand CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petitions, the petitioners named 29 companies in China,[32] ten companies in India,[33] and one company in Thailand,[34] as producers/exporters of glycine. Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. With respect to China and India, in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of glycine from China and India during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigations,'' in the Appendix.

On April 9 and 10, 2018, Commerce released CBP data from China and India, respectively, under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of these CVD investigations.[35] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo.*

Although Commerce normally relies on import data from CBP to determine whether to select a limited number of producers/exporters for individual examination in CVD investigations, the petitioners identified only one company as a producer/exporter of glycine in Thailand, Newtrend Food Ingredient (Thailand) Co., Ltd., and the petitioners provided information from independent sources as support.[36] Furthermore, we currently know of no additional producers/exporters of subject merchandise from Thailand. Accordingly, Commerce intends to examine all known producers/exporters in the Thailand CVD investigation (*i.e.,* Newtrend Food Ingredient (Thailand) Co., Ltd.). We invite interested parties to comment on this issue. Parties wishing to comment on respondent selection for Thailand must do so within three

[31] *See* India CVD Initiation Checklist for details on initiated sub-programs.

[32] *See* Volume II of the Petitions, at Exhibit CC1; *see also* China CVD Supplement, at 18–19.

[33] *See* Volume I of the Petitions, at 24–26.

[34] *Id.* at 28.

[35] *See* Memorandum, ''Glycine from the People's Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,'' dated April 9, 2018; and Memorandum, ''Glycine from India Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,'' dated April 10, 2018.

[36] *See* Volume I of the Petitions, at Exhibit GEN–6; *see also* General Issues Supplement, at 2 and Exhibit GEN–S2.

business days of the publication of this notice.

All respondent selection comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by Commerce's electronic records system, ACCESS, no later than 5:00 p.m. ET on the date noted above. We intend to make our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petitions have been provided to the GOC, GOI, and RTG *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of glycine from China, India, and Thailand are materially injuring, or threatening material injury to, a U.S. industry.[37] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[38] Otherwise, the investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (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). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [39] 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.[40] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we 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, we 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. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[41] Parties must use the certification formats provided in 19 CFR 351.303(g).[42] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: April 17, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56–40–6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.4300. Sodium glycinate is classified in the HTSUS under 2922.49.8000. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2018–08665 Filed 4–24–18; 8:45 am]

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[37] *See* section 703(a)(2) of the Act.

[38] *See* section 703(a)(1) of the Act.

[39] *See* 19 CFR 351.301(b).

[40] *See* 19 CFR 351.301(b)(2).

[41] *See* section 782(b) of the Act.

[42] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Papahanaumokuakea Marine National Monument Mokupapapa Discovery Center Exhibit Evaluation

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 25, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *pracomments@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Andy Collins, at (808) 933–8181 or *Andy.Collins@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. Mokupapapa Discovery Center (Center) is an outreach arm of Papahanaumokuakea Marine National Monument that reaches 65,000 people each year in Hilo, Hawaiʻi. The Center was opened fifteen years ago to help raise support for the creation of a National Marine Sanctuary in the Northwestern Hawaiian Islands. Since that time, the area has been proclaimed a Marine National Monument and the main messages we are trying to share with the public have changed to better reflect the new monument status, UNESCO World Heritage status and the joint management by the three co-trustees of the Monument. We therefore are seeking to find out if people visiting our Center are receiving our new messages by conducting an optional exit survey.

II. Method of Collection

Surveys will be conducted by in-person interview as people exit the Center. Interviewers will record responses on paper, and later transfer them to an electronic database.

III. Data

OMB Control Number: 0648–0582.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 250.

Estimated Time Per Response: 7 minutes.

Estimated Total Annual Burden Hours: 29.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

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 agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–08633 Filed 4–24–18; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG143

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Ecosystem Workgroup (EWG) will hold a meeting via webinar, which is open to the public.

DATES: The webinar meeting will be held on Tuesday, May 22, 2018, starting at 9:30 a.m. and lasting approximately three hours.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join by visiting this link *http://www.gotomeeting.com/online/webinar/join-webinar,* (2) enter the Webinar ID: 393–004–851, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number +1 (213) 929–4232 (not a toll-free number), (2) enter the attendee phone audio access code 654–274–790, and (3) then enter your audio phone pin (shown after joining the webinar). **Note:** We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps*). You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: Two primary topics will be discussed by the EWG during this webinar. First, the EWG will discuss and finalize comments on the Pacific Council's draft 2018 Research and Data Needs document. This report communicates the Pacific Council's research and data needs through 2023, fulfilling the Council's responsibilities under section 302(h)(7) of the Magnuson-Stevens Fishery Conservation and Management Act. The Pacific Council will review the draft document and consider comments from its advisory bodies and the public at its June 8–13, 2018 meeting. Second, the EWG will discuss the Fishery Ecosystem Plan Climate and Communities Initiative. The EWG may also review and discuss items on the June 7–13, 2018, Council meeting agenda and other ecosystem-related topics on future Council meeting agendas.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820–2411 at least 10 business days prior to the meeting date.

Dated: April 20, 2018.

Rey Israel Marquez,

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

[FR Doc. 2018–08703 Filed 4–24–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG184

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of telephonic meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Observer Advisory Committee Subgroup will meet May 11, 2018.

DATES: The meeting will be held on Friday, May 11, 2018, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held telephonically. Teleconference line: (907) 271–2896.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Elizabeth Figus, Council staff; telephone: (907)–271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Friday, May 11, 2018

The agenda will include: A discussion of the Observer Program Fee Analysis draft, including an outline, alternatives, and discussion of monitoring objectives.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/observer-program/.*

Public Comment

Public comment letters will be accepted and should be submitted either electronically to Elizabeth Figus, Council staff: *Elizabeth.figus@noaa.gov.* or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252. In-person oral public testimony will be accepted at the discretion of the chair.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 20, 2018.

Rey Israel Marquez,

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

[FR Doc. 2018–08702 Filed 4–24–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG186

North Pacific 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 North Pacific Fishery Management Council (Council) Observer Advisory Committee (OAC) will meet May 16 through May 17, 2018.

DATES: The meeting will be held on Wednesday, May 16, 2018, from 8:15 a.m. to 5:30 p.m. and on Thursday, May 17, 2018, from 8:15 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held in the Traynor Room, Building 4 at the Alaska Fisheries Science Center, 7700 Sand Point Way NE, Seattle, WA 98115. Teleconference available upon request.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave, Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Elizabeth Figus, Council staff; telephone: (907) 271–2801.

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, May 16 and Thursday, May 17, 2018

The agenda will include: (a) An update on the EM Workgroup status and Council priorities; (b) review of the NMFS Cost Allocation Policy Directive document; (c) discussion of Observer Program Review Documents; (d) discussion of the Fee Analysis outline and objectives; (e) a review of the Observer Analytical Task status document; (f) a briefing on the observer safety report; and, (g) discussion of scheduling and other issues. The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/observer-program/.*

Public Comment

Public comment letters will be accepted and should be submitted either electronically to Elizabeth Figus, Council staff: *Elizabeth.figus@noaa.gov* or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave, Suite 306, Anchorage, AK 99501–2252. In-person oral public testimony will be accepted at the discretion of the chair.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 20, 2018.

Rey Israel Marquez,

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

[FR Doc. 2018–08701 Filed 4–24–18; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Request for Input on LabCFTC Prize Competitions

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for input.

SUMMARY: In May 2017, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') launched a new initiative, LabCFTC, to spearhead the CFTC's effort to facilitate the development and implementation of market-enhancing financial technologies (''FinTech''). As part of that effort, CFTC staff are exploring opportunities to play a constructive role to stimulate innovation and leverage FinTech solutions that can enhance our regulated markets and help make the Commission more effective and efficient in satisfying its mission. The Science Prize Competition Act (''SPCA'') authorizes the CFTC to invest federal funds in science and early-stage technology research and development as well as in science, technology, engineering, and mathematics education. Under this authority, the CFTC may implement a competition and award prizes to stimulate innovation designed to advance the CFTC's mission. Accordingly, the Science Prize Competition Act may offer a useful mechanism to further the goals of LabCFTC and the CFTC's mission. This Request for Input solicits feedback on focus areas for potential prize competitions, and how competitions could best be structured and administered. The Commission welcomes all public comments.

DATES: Comments must be received on or before July 24, 2018.

ADDRESSES: You may submit comments, identified by the title, ''LabCFTC Prize RFI,'' by any of the following methods:

- *CFTC Website: https://comments.cftc.gov.* Follow the instructions to Submit Comments through the website.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Please submit comments by only one of these methods.

All comments should be submitted in English or accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in the Commission's regulations at 17 CFR 145.9.[1] The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse, or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Request for Information will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Daniel Gorfine, Director of LabCFTC and Chief Innovation Officer, (202) 418–5625; Brian Trackman, Counsel on FinTech and Innovation, Office of General Counsel, (202) 418–5163; Jorge Herrada, Senior Technical Data Specialist, Office of Data and Technology, (202) 418–5346; or *LabCFTC@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. LabCFTC

In May 2017, the CFTC launched the LabCFTC initiative to further the CFTC's goal of evolving as a 21st century regulator and keeping pace with technological innovation. LabCFTC is dedicated to understanding and facilitating market-enhancing financial technology (''FinTech'') innovation, promoting fair market competition, and ensuring proactive regulatory excellence. LabCFTC is designed to make the CFTC more accessible to FinTech and regulatory technology (''RegTech'') innovators, and to inform the Commission's understanding of emerging technologies and their regulatory implications.

Further to that effort, LabCFTC seeks to spur innovation and innovative applications of FinTech through prize competitions as described further below. By focusing attention on aspects of CFTC operations or regulated markets that could benefit from FinTech and actively encouraging development of innovative solutions, LabCFTC can act as a catalyst to drive progress.

B. FinTech and RegTech Opportunity

Technology-driven innovation is rapidly transforming the markets CFTC oversees, and the way market participants operate and interact. Examples include automated trading, which now constitutes up to 70 percent of trading on regulated futures markets,[2] ''big data'' capability to enable more sophisticated data analysis and interpretation,[3] machine learning and artificial intelligence to guide highly dynamic trade execution,[4] ''smart'' contracts that value themselves and calculate payments in real-time,[5] behavioral biometrics that can detect and combat online fraud,[6] and blockchain and distributed ledger technologies.[7] Shared ledger systems,

[1] 17 CFR 145.9. All Commission regulations cited herein are set forth in chapter I of Title 17 of the Code of Federal Regulations.

[2] J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission ''Remarks at the Singapore FinTech Festival,'' November 15, 2017 (citing a March 2015 report of the CFTC's Office of the Chief Economist ''Automated Trading in Futures Markets'' that reviewed over 1.5 billion transactions across over 800 products on the Chicago Mercantile Exchange over a two-year period, available at *http://www.cftc.gov/idc/groups/public/@economicanalysis/documents/file/oce_automatedtrading.pdf*). *See also* McKinsey & Company and Greenwich Associates study reprinted in Bank for International Settlements, Markets Committee, Electronic Trading in Fixed Income Markets, January 2016, *http://www.bis.org/publ/mktc07.pdf.*

[3] Trevir Nath, ''How Big Data Has Changed Finance,'' Investopedia, April 9, 2015, *http://www.investopedia.com/articles/active-trading/040915/how-big-data-has-changed-finance.asp;* Central Banking Focus Report, Big Data in Central Banks, Central Banking Journal, November 13 2017, *https://www.centralbanking.com/content-hub/big-data-in-central-banks-focus-report-2017-3315066;* Ciara O'Brien, Irish Firm Siren raises 3m in funding for data investigation technology, The Irish Times, February 8 2018, *https://www.irishtimes.com/business/technology/irish-firm-siren-raises-3m-in-funding-for-data-investigation-technology-1.3383335;* Andrew Zolli, ''After Big Data: The Coming Age of 'Big Indicators''', Stanford Social Innovation Review, January 22, 2018, *https://ssir.org/articles/entry/after_big_data_the_coming_age_of_big_indicators.*

[4] Tom Upchurch, ''Technology: AI and the Spectre of Automation,'' Euromoney, August 2016, *http://www.euromoney.com/Article/3575461/Technology-AI-and-the-spectre-of-automation.html.*

[5] Nigel Farmer, ''Making Contracts Smarter,'' TabbForum, May 3, 2016, *http://tabbforum.com/opinions/making-contracts-smarter?print_preview=true&single=true&ticket=ST-14742885819637-OxE2RQ6CSK3LXd6HsvaWwJ8v3ewjlyh208guDvuC;* Jay Cassano, What Are Smart Contracts? Cryptocurrency's Killer App, Fast Company, September 17, 2014, *https://www.fastcompany.com/3035723/app-economy/smart-contracts-could-be-cryptocurrencys-killer-app.*

[6] Anna Irrera, Experian enlists behavioral biometrics startup to combat fraudsters, Reuters, April 7, 2017, *http://www.reuters.com/article/us-experian-fraud-idUSKBN1792XT.*

[7] Oscar Williams-Grut, WEF: Blockchain Will Become the 'Beating Heart' of Finance, Business

Continued

which hold promise in increasing operational efficiencies (*e.g.,* identity confirmation, KYC/AML compliance, and trade lifecycle management), may also help facilitate real-time, standardized, and lower-cost regulatory reporting, which benefits both market stakeholders and CFTC. Application of self-executing machine logic, often called ''smart contracts'' could result in the potential decrease of execution risks, more efficient use of trade-related margin and collateral, and the incorporation of automated regulatory compliance provisions into the contract code.

For market participants, new technologies can improve operational efficiencies, create better workflows, increase transparency, and strengthen compliance. Indeed, emerging financial technologies ranging from blockchain to machine learning to predictive data analytics are already changing the way financial markets operate. And, importantly, for regulators too, including the CFTC, RegTech can help drive more effective and efficient internal operations, as well as surveillance and oversight of regulated markets.[8]

C. Science Prize Competition Act [9]

The SPCA authorizes the Chairman of the CFTC to carry out a program to award prizes competitively to stimulate innovation that has the potential to advance the mission of the agency.[10] Generally, the subject of the prize competition, eligibility rules to participate, registration process, conduct of the competition, prize, and winner selection criteria must be published in advance.[11] Notice must be given on a publicly available Government website such as *challenge.gov*.[12] The head of an agency is required to advertise a prize competition widely to encourage broad participation.[13]

A competition may have a cash prize purse or a non-cash prize award.[14] To win a cash award, an individual or entity must comply with the competition requirements and be U.S.-based.[15] Individuals must be U.S. citizens or a permanent resident of the U.S.[16] Private entities must be incorporated in and maintain a primary place of business in the U.S.[17] While eligibility to win cash awards is limited to individuals and entities that are U.S. based, as described above, there is no limitation on participation in a competition or eligibility to win a non-cash prize award.

The SPCA includes guidelines concerning liability and insurance,[18] intellectual property rights,[19] prize competition judges,[20] administering the competition,[21] and funding.[22] Competitions under the SPCA are not intended to be a substitute for the standard procurement process. Rather, they are aimed at developing solutions to challenges where the solution is not yet well-defined or developed.

Beyond the basic requirements specified in the SPCA, the Commission has a great deal of flexibility in defining and structuring a competition.[23] For example, the competition could be scheduled for a day or two, or instead extend over several weeks. The competition may have one single prize, or interim stages of selection. The competition need not be run in the CFTC's IT environment. Participants could create their submissions in their own environments. Participant submissions in prize competitions could be designated fully public or kept confidential, in whole or part. And the Commission is free to determine the prize, whether to offer a cash prize purse or non-cash prize award. In that regard, the Commission notes that it does not, at this time, anticipate offering a cash purse prize.

II. Request for Input

The Commission believes that science prize competitions offer an exciting opportunity to encourage and spotlight innovation that can benefit the quality, transparency, and integrity of our markets, the market participants who depend on them, the operations and activities of the CFTC, and broader American public. The Commission has begun considering potential competition topics and potential ways to structure competitions under the auspices of its LabCFTC initiative. The SPCA encourages broad consultation in and outside of government when selecting topics.[24] Accordingly, to develop its ideas further and help ensure that competitions achieve their objective of facilitating market-enhancing innovation, the Commission is issuing this Request for Input to gather feedback on potential competition topics as well as on the structure and administration of its prize competitions, *i.e.,* what approach would be most effective. The Commission welcomes any comments, including potential competition topics not discussed here or any other element that a commenter believes should be considered.

A. Potential Prize Competition Topics

FinTech is rapidly evolving, and there are many areas where innovation and technology have the potential for significant impact. Accordingly, because the scope of FinTech is so broad, the range of potential FinTech prize competitions is expansive. The Commission would like to identify specific challenges and use cases where a prize competition is especially suited to spur the creation and demonstration of innovative solutions. Ideally, a prize competition would both highlight how new technology can benefit the CFTC as well as the derivatives markets we oversee, and also lead to actionable next

Insider, August 12, 2016, *http://www.businessinsider.com/world-economic-forum-potential-of-blockchain-in-financial-services-2016-8; see generally* William Mougayar, The Business Blockchain: Promise, Practice, and Application of the Next internet Technology (Wiley 2016).

[8] Remarks of J. Christopher Giancarlo at the Singapore FinTech Festival, May 17, 2017, *http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo32*.

[9] Section 401 of the American Innovation and Competitiveness Act, Public Law 114–329 updated previous authority to sponsor prize competitions under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719), subsequently known as the America Competes Act, and renamed the law to be ''Science Prize Competition Act.''

[10] *See* 15 U.S.C. 3719(b).

[11] *See* 15 U.S.C. 3719(f).

[12] *See id.*

[13] *See* 15 U.S.C. 3719(e).

[14] *See* 15 U.S.C. 3719(f)(4). To the extent a competition includes a cash prize, the competition may not commence until the funds to pay out the amount have been appropriated or committed in writing. *See* 15 U.S.C. 3719(m)(3)(A). The amount of a cash prize purse, if offered, is up to the sponsoring agency; there is no specific amount required.

[15] *See* 15 U.S.C. 3719(g).

[16] *See* 15 U.S.C. 3719(g)(3).

[17] *See id.* Awards may not be won by federal entities or employees acting within the scope of their employment. *See* 15 U.S.C. 3719(g)(4).

[18] *See* 15 U.S.C. 3719(i).

[19] *See* 15 U.S.C. 3719(j).

[20] *See* 15 U.S.C. 3719(k). Judges may come from within or outside the federal government, including the private sector. 15 U.S.C. 3719(k)(1). A judge may not have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a competition, or have a familial or financial relationship with an individual who is a registered participant. 15 U.S.C. 3719(k)(2). Also, any committee, board, commission, panel, task force, or similar entity, created solely for the purpose of judging prize competitions is exempted from the Federal Advisory Committee Act (5 U.S.C. App.) under 15 U.S.C. 3719(k)(4).

[21] *See* 15 U.S.C. 3719(l).

[22] *See* 15 U.S.C. 3719(m).

[23] The Commission notes that it does not currently anticipate that a competition would involve the use or release of any confidential regulatory or market oversight data. To the extent such types of data might be relevant to a competition, the participants would likely use either alternate, publicly available data sets, fully anonymized, aggregated data, or substitute data.

[24] *See* 15 U.S.C. 3719(d) (''In selecting topics for prize competitions, the head of an agency shall consult widely both within and outside the Federal Government, and may empanel advisory committees.'').

steps, which could include further use case development, additional research or investment, proofs of concept, and implementation.

The Commission has given some preliminary consideration to several topics, described below, that may satisfy its stated objectives. These examples are just that: examples. There are many other potential areas where a prize competition or series of competitions under the SPCA might advance the development of beneficial solutions, which could improve market participants' ability to serve the needs of clients, enable the CFTC to better fulfill its mission, or enhance the overall quality and integrity of our markets. Therefore, in addition to feedback on any of the potential competition topics described below, the Commission would appreciate suggestions for additional competition topics.

The Commission emphasizes that, as noted, this Request for Input is meant to stimulate thinking about potential prize competitions. The Commission is not endorsing any particular topic, nor is the Commission committing to pursue a prize competition or engage in follow-on procurement to implement specific solutions.

(1) Transaction, Position, and Margin Data and Analysis

Several potential topics relate to challenges around market data: transaction reporting by market participants, data dissemination by the CFTC, data management and analysis, and data cleansing and harmonization. In each case, innovation driven by new technology has the potential greatly to improve current processes and ''output,'' enabling both market participants and regulators to engage with data more effectively.

For example, standardization of forms and processes, simplified reporting mechanisms, shared, comprehensive data ontologies, and new modes of reporting all offer the potential to greatly enhance the accessibility, quality, and utility of market data that is reported to, and disseminated by, the CFTC. Disseminating data reports in machine readable format, new techniques in data visualization or new ways of combining data streams could help make sense of market activity, educate the public on the role of derivatives markets in the broader economy, identify opportunity and risks, and improve the overall quality of our markets. Likewise with respect to data management,[25] cleansing,[26] and analysis, new technology could help the agency and stakeholders make good use of available market data to gain insight about market interactions, risk flows, and aggregate exposures. A prize competition in any of these areas could thus be useful.

(2) Enhancing Market Transparency and Oversight

FinTech innovation may enhance market transparency and oversight in a number of ways. Already, the Internet of Things (IoT) is making new kinds of information available that may be relevant to pricing derivatives and assessing market risks. A prize competition could address, for example, how FinTech can be deployed in the derivatives markets to detect behavior or information that may assist the Commission in detecting fraud or abuse.

A more ambitious competition topic could address leveraging FinTech innovation to enhance the availability of accurate, timely transactional data, including trade prices. Commentators have noted that new technologies have the potential to improve market transparency and oversight at a lower cost.[27]

(3) Systemic Risk Analysis

The Commission believes it is critical to its core function to successfully monitor and prevent the build-up of systematic risk.[28] New technologies can help the Commission discharge this vital responsibility by providing new ways to track and assess risk. Using distributed ledgers, Cloud-based storage, machine learning, and other new technologies could enable new methods for conducting stress tests, for example, and gauging the impact(s) of unforeseen events on the financial system as a whole.

(4) Improving the Accessibility of CFTC Regulations

A longstanding critique of regulatory frameworks is their complexity. Over time, as regulations continue to evolve, rulesets tend to become more intricate. Updates may be difficult to track and engender unintended consequences. For regulated entities this presents a tremendous compliance challenge. Each entity must know which rules apply to it, understand what those rules require, structure an appropriate compliance program, and keep the program up to date. These challenges may be even more significant for relatively young or lean entities looking to scale their activities in an increasingly fast-moving market. For other market participants, regulators, and the public more broadly, complex regulations can obscure straightforward regulatory goals and impede meaningful review of the overall regulatory framework.

The Commission believes that technology may offer meaningful opportunities to make the regulatory framework more accessible, reduce burdens and enhance overall compliance.[29] There are a variety of potential approaches, including:

- Coding rules to make them machine readable,
- Creating common ontologies to make rules more understandable and

[25] Data management is a broad discipline that defines and governs how an organization makes use of data. It includes such areas as data governance, data architecture, data security management, data quality, reference and master data, meta data, and data transformation.

[26] Data cleansing is vital to making use of data resources. It refers to the process of preparing data for analysis. The CFTC handles numerous data sets that range in complexity. In many cases, the utility of the dataset is reduced because the quality of the data is imperfect. Entries in fields may not be consistent in form or format. Data requirements may be interpreted differently by different respondents (or even within different divisions of the same firm), resulting in different types of entries. Data elements may be entered improperly or inadvertently omitted. Manual data cleansing, however, cannot scale.

[27] *See, e.g.,* Dong He et al. IMF Staff Discussion Note, Fintech and Financial Services: Initial Considerations (June 2017), *http://www.imf.org/~/media/files/publications/sdn/2017/sdn1705.ashx;* ''Capital Markets: innovation and the FinTech landscape,'' Report of Innovate Finance and EY (2016), *http://www.ey.com/Publication/vwLUAssets/EY-capital-markets-innovation-and-the-finTech-landscape/$FILE/EY-capital-markets-innovation-and-the-fintech-landscape.pdf;* Jo Ann Barefoot, ''Reglabs: Time for a major regulatory experiment?'' July 13, 2017, *http://www.bankingexchange.com/blogs-3/unconventional-wisdom/item/6940-reglabs-time-for-a-major-regulatory-experiment* (''Today's technology is creating a possibility that has never before existed—the opportunity to improve the public policy results of financial regulation, and reduce the costs of achieving them, at the same time.'').

[28] Excessive systemic risk is understood to have been a significant contributing factor to the financial crisis. *See, e.g.,* Ian Goldin and Chris Kutarna, ''Risk and Complexity,'' Finance and Development September 2017, *http://www.imf.org/external/pubs/ft/fandd/2017/09/pdf/goldin.pdf;* Chairman Ben S. Bernanke, ''Causes of the Recent Financial and Economic Crisis,'' Testimony Before the Financial Crisis Inquiry Commission, Washington DC, September 2, 2010, *https://www.federalreserve.gov/newsevents/testimony/bernanke20100902a.htm.*

[29] Other regulatory authorities are already exploring these possibilities. For example, the UK Financial Conduct Authority hosted an event where participants demonstrated technology to link regulatory obligations to internal policies in a cost effective, automated and auditable fashion. *See* Yaa Asare, ''JWG and ClauseMatch Launch Next Generation Regulatory Policy Management Solution,'' *https://regtechfs.com/jwg-and-clausematch-launch-next-generation-regulatory-policy-management-solution/.*

highlight where rules may be inconsistent or diverge,

• Creating visual, interactive representations of the regulatory framework, that enable linking of related rules and mapping of regulatory requirements to specific function, teams and individuals within a regulated entity, and

• Developing machines that ''digest'' rules to determine data and other requirements, as well as ideal compliance approaches for specific entities.

(5) Strengthening CFTC's Administrative Process

Technology-based solutions geared to address regulation, regulatory process, and the day-to-day operations of market regulators present the CFTC a meaningful opportunity to leverage innovative FinTech directly. For example, as a market regulator the CFTC's rulemaking process is of vital importance. A key element of that process is the opportunity for public comment. But when the CFTC puts out a rule proposal, the agency may receive hundreds, sometime thousands, of comment letters. While the Commission currently uses some technology solutions, the review process remains labor intensive and could benefit from automation. How can innovative technology make the notice-and-comment process ''smarter,'' more dynamic, and more effective?

B. Administration of Prize Competitions

In addition to comment on potential competition topics, the Commission also seeks public input on the administration of any prize competition. The SPCA provides significant flexibility to agencies in how a prize competition is conducted. The Commission wishes to structure prize competitions to attract broad interest, to be fair to all participants, and to encourage market-enhancing innovation. Broadly, the Commission is interested in how these goals can best be accomplished through a prize competition. We are particularly interested in the following areas:

(1) Eligibility

The SPCA requires that prize competition winners be, in the case of entities, U.S. based or, in the case of individuals, U.S. citizens. The Commission seeks input on what additional requirements, if any, should govern participation in a CFTC-sponsored FinTech prize competition.

(2) Format

Prize competitions may take many forms. Hackathons, for example, may take place over a short period: one or perhaps a few days.[30] During that time, competitors come together to create and submit a solution that meets the challenge presented. By contrast, a FinTech prize competition could be structured to permit competitors to work at their own pace over a longer period, and then submit their solution by a stated deadline. In the case of a CFTC-sponsored FinTech prize competition, the Commission seeks public input on what format may be most suitable.

(3) Conditions of Participation

The Commission is considering what, if any, conditions of participation it should impose around a potential prize competition.

(4) Advertising

The Commission is interested in reaching the widest range of potential participants that it can in regard to CFTC-sponsored FinTech prize competitions.

(5) Evaluation Standards

Once entries are submitted as part of a competition, they must be reviewed and evaluated to determine a prize winner. The Commission seeks public input on the evaluation process and appropriate standards of evaluation (*e.g.,* how easily might a proposed solution be scaled, how robust is a proposed solution, how resilient, how adaptable to market changes or changes to the regulatory framework, etc.).

(6) Judges

As part of a prize competition, judges must be selected to evaluate entries and select the winner(s). The Commission seeks input on the judge selection process and the appropriate mix of judges from among various stakeholder groups: financial market participants, commercial end-users, researchers and academics, FinTech innovators, specialists and experts (*e.g.,* data scientists, technologists, etc.), financial and technology press, government officials, CFTC staff, and members of the general public.

(7) Prize

The Commission seeks feedback on the selection of a suitable prize. For example, the Commission could offer a ''CFTC Market Innovator of the Year'' award to recognize select competition participants. Generally, the Commission seeks input on what type of prize may best encourage meaningful participation that results in real-world solutions relevant to the competition topic. As noted, the Commission does not at this time anticipate providing a cash purse, but notes that under the SPCA, an agency may partner with outside entities which may sponsor cash awards.[31]

Specific Questions for Input

As noted, the Commission seeks feedback on candidate prize competition topics and on the administration of a prize competition. The Commission's broad goal is to stimulate thinking and highlight efforts to apply new technology in ways that may enhance our markets. In addition to any general input, the Commission is interested in responses to the following:

Regarding prize competition topic selection:

1. Are there subject matter areas or specific topics that the Commission should particularly consider or focus on for a potential prize competition?

▪ In each case, what is the relevant challenge to be addressed?

▪ In what ways can FinTech innovation potentially address this challenge?

▪ How would a prize competition spur development, interest, or broader adoption? Please be specific as possible or provide examples where appropriate.

2. What criteria should the Commission use to select prize competition topics?

3. Are there subject matter areas or specific topics that are not suitable for a prize competition? Please be specific as possible or provide examples where appropriate.

4. What competition topics may help illuminate areas where new technology can reduce costs or improve services for market participants and end-users who depend on these markets to manage risk?

5. What competition topics may highlight areas where the regulatory framework could work better or needs significant revision to accommodate market-enhancing FinTech?

6. Which existing regulatory compliance or regulatory reporting processes do you feel would most

[30] Generally, a hackathon is an event typically of short duration at which participants engage in collaborative computer programming, often to address a coding challenge or to develop a solution to an identified problem. Federal agencies such as the Department of Health and Human Services have sponsored successful hackathons, for example, the HHS Opioid Code-a-Thon in December 2017, *https://www.challenge.gov/challenge/hhs-opioid-code-a-thon/.*

[31] *See* 15 U.S.C. 3719(m).

benefit from RegTech? Please be specific as possible or provide examples where appropriate.

Regarding administration of a prize competition:

7. What ground rules should govern participation in a CFTC-sponsored FinTech prize competition?

▪ For example, are there particular eligibility requirements that the agency should adopt?

▪ Should competition entries be designated ''open source,'' or should each participant retain full control of its entry and any decision about its availability?

▪ Should any different rules apply to winning entries?

8. How should prize competition judges be selected?

▪ Should the Commission select a single judge or panel to evaluate prize competition submissions?

▪ If a panel, how large?

▪ And what is the appropriate mix of stakeholders?

▪ What additional requirements, if any, should apply to judges?

9. What general evaluation standards or criteria may be appropriate in the context of a CFTC-sponsored FinTech prize competition? Regarding the evaluation process, are there models or protocols that the Commission might adapt with regard to prize competitions it sponsors?

10. What type of prize is likely to encourage the greatest participation from a broad range of innovators? What factors should the Commission consider? If the prize is other than a cash purse, what type of prize may be suitable?

11. Generally, are there any rules, policies, or practices that the Commission should adopt to facilitate a prize competition or encourage participation? For example, what modes of advertising and publicity may be most effective? And, likewise, are there any rules, policies, or practices that could impede participation in a prize completion?

In providing your responses, please be as specific as possible, and offer examples where appropriate. The Commission encourages all relevant comments; commenters need not address every item.

III. Conclusion

The Commission appreciates your time and effort responding to this Request for Input on potential CFTC-sponsored FinTech prize competitions. The information provided by stakeholders will help us refine our understanding and future approach, and identify how the Commission can best structure prize competitions to maximize their positive impact.

More broadly, the input from this request will further aid the Commission in identifying FinTech trends and areas where emerging technologies and innovation may offer significant potential benefit.

In that respect, we look forward to continuing to engage proactively with the innovator community and market participants to promote market-enhancing FinTech, to identify opportunities to update our regulatory framework, and to implement new technology-based approaches to fulfill the CFTC's mission on behalf of the American people.

Issued in Washington, DC, on April 20, 2018, by the Commission.

Christopher Kirkpatrick,
Secretary of the Commission.

Appendix To Request for Input on LabCFTC Prize Competitions—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz and Behnam voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2018–08673 Filed 4–24–18; 8:45 am]

BILLING CODE 6351–01–P

DENALI COMMISSION

Denali Commission Fiscal Year 2019 Draft Work Plan

AGENCY: Denali Commission.

ACTION: Notice.

SUMMARY: The Denali Commission (Commission) is an independent Federal agency based on an innovative federal-state partnership designed to provide critical utilities, infrastructure and support for economic development and training in Alaska by delivering federal services in the most cost-effective manner possible. The Commission was created in 1998 with passage of the October 21, 1998 Denali Commission Act (Act). The Act requires that the Commission develop proposed work plans for future spending and that the annual work plan be published in the **Federal Register**, providing an opportunity for a 30-day period of public review and written comment. This **Federal Register** notice serves to announce the 30-day opportunity for public comment on the Denali Commission Draft Work Plan for Federal Fiscal Year 2019 (FY 2019).

DATES: Comments and related material to be received by May 31, 2018.

ADDRESSES: Submit comments to the Denali Commission, Attention: Corrine Eilo, 510 L Street, Suite 410, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Corrine Eilo, Denali Commission, 510 L Street, Suite 410, Anchorage, AK 99501. Telephone: (907) 271–1414. Email: *ceilo@denali.gov*.

Background

The Denali Commission's mission is to partner with tribal, federal, state, and local governments and collaborate with all Alaskans to improve the effectiveness and efficiency of government services, to build and ensure the operation and maintenance of Alaska's basic infrastructure, and to develop a well-trained labor force employed in a diversified and sustainable economy.

By creating the Commission, Congress mandated that all parties involved partner together to find new and innovative solutions to the unique infrastructure and economic development challenges in America's most remote communities. Pursuant to the Act, the Commission determines its own basic operating principles and funding criteria on an annual federal fiscal year (October 1 to September 30) basis. The Commission outlines these priorities and funding recommendations in an annual work plan. The FY 2019 Work Plan was developed in the following manner.

• A workgroup comprised of Denali Commissioners and Commission staff developed a preliminary draft work plan.

• The preliminary draft work plan was published on Denali.gov for review by the public in advance of public testimony.

• A public hearing was held to record public comments and recommendations on the preliminary draft work plan.

• Written comments on the preliminary draft work plan were accepted for another ten days after the public hearing.

• All public hearing comments and written comments were provided to Commissioners for their review and consideration.

• Commissioners discussed the preliminary draft work plan in a public meeting and then voted on the work plan during the meeting.

• The Commissioners forwarded their recommended work plan to the Federal Co-Chair, who then prepared the draft work plan for publication in the **Federal Register** providing a 30-day period for public review and written comment. During this time, the draft work plan will also be disseminated to Commission program partners including, but not limited to, the Bureau of Indian Affairs (BIA), the Economic Development Administration (EDA), Department of Agriculture—Rural Utilities Service (USDA/RUS), and the State of Alaska.

• At the conclusion of the **Federal Register** Public comment period Commission staff provides the Federal Co-Chair with a summary of public comments and recommendations, if any, on the draft work plan.

• If no revisions are made to the draft, the Federal Co-Chair provides notice of approval of the work plan to the Commissioners, and forwards the work plan to the Secretary of Commerce for approval; or, if there are revisions the Federal Co-Chair provides notice of modifications to the Commissioners for their consideration and approval, and upon receipt of approval from Commissioners, forwards the work plan to the Secretary of Commerce for approval.

• The Secretary of Commerce approves the work plan.

• The Federal Co-Chair then approves grants and contracts based upon the approved work plan.

FY 2019 Appropriations Summary

The Commission has historically received federal funding from several sources. The two primary sources at this time include the Energy & Water Appropriation Bill (''base'' or ''discretionary'' funds) and an annual allocation from the Trans-Alaska Pipeline Liability (TAPL) fund. The proposed FY 2019 Work Plan assumes the Commission will receive $15,000,000 of base funds, which is the amount referenced in the reauthorization of the Commission passed by Congress in 2016 (ref: Pub. L. 114–322), and a $1,900,000 TAPL allocation based on discussions with the Office of Management and Budget (OMB). Approximately $4,000,000 of the base funds will be used for administrative expenses and non-project program support, leaving $11,000,000 available for program activities. The total base funding shown in the Work Plan also includes an amount typically available from project closeouts and other de-obligations that occur in any given year. Approximately $200,000 of the TAPL funds will be utilized for administrative expenses and non-project program support, leaving $1,700,000 available for program activities. Absent any new specific direction or limitations provided by Congress in the current Energy & Water Appropriations Bill, these funding sources are governed by the following general principles, either by statute or by language in the Work Plan itself:

• Funds from the Energy & Water Appropriation are eligible for use in all programs.

• TAPL funds can only be used for bulk fuel related projects and activities.

• Appropriated funds may be reduced due to Congressional action, rescissions by OMB, and other federal agency actions.

• All Energy & Water and TAPL investment amounts identified in the work plan, are ''up to'' amounts, and may be reassigned to other programs included in the current year work plan, if they are not fully expended in a program component area or a specific project.

• Energy & Water and TAPL funds set aside for administrative expenses that subsequently become available, may be used for program activities included in the current year work plan.

DENALI COMMISSION FY2019 FUNDING SUMMARY

Source	Available for program activities
Energy & Water Funds:	
FY 2019 Energy & Water Appropriation [1]	$11,000,000
Prior Year Funds	1,000,000
Subtotal	12,000,000
TAPL Funds:	
FY 2019 Annual Allocation	1,700,000
Grand Total	13,700,000

Notes: 1. If the final appropriation is less than $15 million the Federal Co-Chair shall reduce investments to balance the FY 2019 Work Plan.

Program and type of investment	Energy & Water	TAPL	Total
Energy Reliability and Security:			
Diesel Power Plants	$3,800,000		$3,800,000
Audits, TA, Community Energy Efficiency Improvements	500,000		500,000
RPSU Maintenance and Improvement Projects	2,200,000		$2,200,000
Improve Administrative and Operation and Maintenance Practices	300,000		300,000
Subtotal	6,800,000		6,800,000
Bulk Fuel Safety and Security:			
New/Refurbished Facilities		$1,200,000	1,200,000
Maintenance and Improvement Projects		300,000	300,000
Improve Administrative and Operation & Maintenance Practices	200,000	200,000	400,000
Subtotal	200,000	1,700,000	1,900,000
Village Infrastructure Protection:			
Mertarvik	3,000,000		3,000,000
Shishmaref	500,000		500,000
Shaktoolik	500,000		500,000
Kivalina	500,000		500,000

Program and type of investment	Energy & Water	TAPL	Total
Program Development and Support for other Vulnerable Communities	500,000	....	500,000
Subtotal	5,000,000	....	5,000,000
Totals	12,000,000	1,700,000	13,700,000

Energy and Bulk Fuel Programs

FY 2019 Denali Commission investments in Energy and Bulk Fuel may include:

- Remote Power System Upgrade (RPSU) projects at locations selected based on need in consultation with the Alaska Energy Authority (AEA) and Alaska Village Electric Cooperative (AVEC)
- Bulk Fuel Upgrade (BFU) projects at locations selected based on need in consultation with AEA and AVEC
- Rural power system and bulk fuel facility Maintenance and Improvement (M&I) projects at locations selected based on need in consultation with AEA and AVEC
- Continued support of the rural power system and bulk fuel facility operator training programs managed by AEA
- Continued support of the Sanitation Energy Efficiency Program at the Alaska Native Tribal Health Consortium (ANTHC)

Village Infrastructure Protection Program

In order to fulfill its role as lead federal coordinating agency the Commission staff, in consultation with State, Federal, and other partners, and the referenced communities in particular, proposes the following investments in support of the new Village Infrastructure Protection (VIP) Program. United States Government Accountability Office (GAO) Report 09–551 (*http://www.gao.gov/products/GAO-09-551*) has been instrumental in charting prospective Commission investments under this program.

Mertarvik

The community of Newtok has initiated its relocation to Mertarvik and has started building infrastructure at Mertarvik. The Commission funds summarized above may be used for the following activities:

- Continued support for the existing Community Relocation Coordinator
- Continued support for professional project management and contracting services
- Infrastructure development at Mertarvik

Shishmaref

Shishmaref has voted to relocate and is now working to select a new site. The Commission funds summarized above may be used for the following activities:

- Continued support for the existing Community Relocation Coordinator
- New town-site planning and design
- Professional project management services

Shaktoolik

The community of Shaktoolik has decided to protect the community in place for now. The Commission funds summarized above may be used for the following activities:

- Continued support for the existing Community Relocation Coordinator
- Administrative support
- Match/gap funds for other related activities

Kivalina

Kivalina is considering relocation and has selected a site for a new school. The Commission funds summarized above may be used for the following activities:

- Continued support for the existing Community Relocation Coordinator
- Administrative support
- Match/gap funds for other related activities

Program Development and Support for Other Vulnerable Communities

The $500,000 referenced above for this line item in the Workplan may be used for activities such as the following.

- Continued support for the ETC (Environmentally Threatened Communities) Grant Writing Center of Excellence at the Alaska Native Tribal Health Consortium
- Hazard Mitigation Plan related initiatives and projects
- Data/threat analyses related to erosion, flooding and permafrost degradation
- VIP related coordination, outreach and partner support

Joel Neimeyer,

Federal Co-Chair.

[FR Doc. 2018–08632 Filed 4–24–18; 8:45 am]

BILLING CODE 3300–01–P

DEPARTMENT OF EDUCATION

Notice Announcing Availability of Funds and Application Deadlines; Hurricane Education Recovery

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice announcing availability of funds and application deadlines for the Temporary Emergency Impact Aid for Displaced Students (Emergency Impact Aid) and the Assistance for Homeless Children and Youth programs under the Division B, Subdivision 1, Title VIII, ''Hurricane Education Recovery,'' of Public Law 115–123, the ''Bipartisan Budget Act of 2018.''

DATES: Applications Available: April 25, 2018.

Deadline for Transmittal of State educational agency (SEA) Application for the Emergency Impact Aid program: May 25, 2018.

Deadline for Transmittal of State educational agency (SEA) Application for the Homeless Children and Youth program: May 25, 2018.

Deadline for local educational agencies (LEAs) to submit applications to SEAs under the Emergency Impact Aid program: May 15, 2018.

Deadline for LEAs to submit applications to SEAs under the Assistance for Homeless Children and Youth program: There is no statutory deadline for LEA applications under this program. Each eligible SEA will set a reasonable deadline for the submission of LEA applications.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: For additional information on the Emergency Impact Aid program, please contact Francisco Ramirez. Telephone (202) 260–1541. Email:

K12EmergencyImpactAid@ed.gov. For additional information on the Assistance for Homeless Children and Youth program, please contact Peter Eldridge. Telephone (202) 260–2514. Email: *HurricaneHomeless@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Programs: Under the Emergency Impact Aid program, we will award grants to eligible SEAs to enable them to make emergency impact aid payments to eligible LEAs and eligible Bureau of Indian Education (BIE)—funded schools for the cost of educating during the 2017–2018 school year public and non-public school students displaced by Hurricanes Harvey, Irma, and Maria, or the 2017 California wildfires for which a major disaster or emergency has been declared under sections 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 and 5190) (covered disaster or emergency). Under the Assistance for Homeless Children and Youth program, we will award grants to eligible SEAs to enable them to provide financial assistance to LEAs serving homeless children and youth displaced by a covered disaster or emergency in order to address the educational and related needs of these students in a manner consistent with section 723 of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act) and with section 106 of title IV of division B of Public Law 109–148.

Background: This notice announces availability of funds and application deadlines for eligible applicants for two programs: (1) Emergency Impact Aid (CFDA number 84.938C) and (2) the Assistance for Homeless Children and Youth program (CFDA number 84.938B). The amounts awarded under each program will be based on demand and specific data received from eligible applicants.

Exemption from Rulemaking: These programs are exempt from the rulemaking requirements in section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232) and section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), as established in Division B, Subdivision 1, Title VIII, ‘‘Hurricane Education Recovery’’ paragraph (6), of Public Law 115–123, the ‘‘Bipartisan Budget Act of 2018.’’ 132 Stat. 98.

Program Authority: Division B, Subdivision 1, Title VIII of Public Law 115–123, the ‘‘Bipartisan Budget Act of 2018.’’

Note: An SEA seeking funding under Emergency Impact Aid and Assistance for Homeless Children and Youth programs must submit a separate application for each program. The data that the SEA provides in each application will be used by the Department to determine allocations under the respective programs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply for these programs.

II. Award Information

Estimated Available Funds under Emergency Impact Aid program (CFDA number 84.938C): Congress appropriated a combined amount of approximately $2.5 billion for both the Immediate Aid to Restart School Operations (CFDA number 84.938A) and Emergency Impact Aid programs. The amounts awarded under each program will be based on demand and on specific data received from eligible applicants.

Available Funds under the Assistance for Homeless Children and Youth program (CFDA number 84.938B): $25 million.

Period of Funding Availability under the Emergency Impact Aid program: SEAs, LEAs, and BIE-funded schools must obligate funds received under this program by December 31, 2018 for expenses incurred during the 2017–2018 school year. SEAs must return to the Department any funds that are not obligated by SEAs, LEAs, or BIE-funded schools by this deadline.

Period of Funding Availability under the Assistance for Homeless Children and Youth program: Grantees must expend funds within 24 months of the award date. We strongly encourage SEAs to make these funds available to LEAs at the earliest possible date and for LEAs to obligate the funds in a timely fashion to address the immediate needs of homeless students displaced by a covered disaster or emergency.

III. Eligibility Information

1. *Eligible Applicants:* SEAs in any State, including the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

2. *Cost Sharing or Matching:* These programs do not require cost sharing or matching.

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Intergovernmental Review:* These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2018.

V. Application Review Information

1. *Student Enrollment Data for the Emergency Impact Aid program:* In the Emergency Impact Aid application for SEA funding, we request quarterly data on the numbers of displaced students enrolled in public, non-public, and BIE-funded schools as of four different count dates. SEAs must report separate counts of displaced students with disabilities, displaced English learners without disabilities, and all other displaced students. The Department has identified four suggested quarterly count dates for identifying numbers of eligible displaced students: October 1, 2017; December 1, 2017; February 1, 2018; and April 1, 2018. SEAs may use these dates or select count dates that fall within a 21-day range for each of the quarters, that is, within 10 calendar days before or after these dates. Each SEA must select four specific dates for the quarterly counts and use those dates consistently for all applicants within the SEA.

SEAs must submit enrollment data for all four quarters of the 2017–18 school year, which may include estimated data for the fourth quarter, in their initial Emergency Impact Aid applications. SEAs that meet the initial deadline must provide any updated enrollment data generally and any unreported fourth quarter data for the 2017–18 school year by June 29, 2018.

We will use the enrollment data that are included in the SEA applications to make initial payments under the Emergency Impact Aid program.

We also are aware that it may take some time for SEAs and LEAs to count, retroactively for all four quarters of the 2017–18 school year, all eligible students, including students who subsequently may have moved to other States or LEAs. Therefore, SEAs and LEAs are encouraged to provide their best available estimates of eligible students for each count date in their initial applications, and, in the event that they collect more satisfactory data that were not available at the time of their initial application, to amend their applications if they need to make upward or downward revisions to their initial child counts. The Secretary will make appropriate upward or downward revisions to subsequent payments, or request a refund for any overpayment, based on the final data provided by an SEA. SEAs must submit any application amendments affecting allocations under the Emergency Impact Aid program to the Department no later than June 29, 2018.

2. *Student Enrollment Data for the Assistance for Homeless Children and Youth program:* In the Assistance for Homeless Children and Youth SEA application, we request data on: (1) The total number of displaced children and youth, as defined in the authorizing statute, enrolled in public schools in the State during the 2017–2018 school year; (2) the total number of displaced students enrolled in public school who are also homeless, as defined in section 725(2) of the McKinney-Vento Act; and (3) additional information on demonstrated need for funding, including data on the total number of homeless children and youth, as defined in section 725(2) of the McKinney-Vento Act, who were enrolled in public schools in the State during the 2017–18 school year, whose primary nighttime residence changed as a result of the covered disaster or emergency, and who do not meet the definition of displaced student.

We will use the data included in the SEA application to determine funding amounts.

3. *Other Requirements for Emergency Impact Aid:*

LEAs must make Emergency Impact Aid payments to accounts on behalf of displaced non-public school students within 14 calendar days of receiving payments from their SEAs.

The Secretary may solicit from any applicant at any time additional information needed to process an application for either program.

4. *Special Funding Rule for Emergency Impact Aid:*

In calculating funding under the Impact Aid Basic Support Payments program, authorized under section 7003 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703) for an eligible LEA that receives an Emergency Impact Aid payment, the Secretary shall not count displaced students served by such agency for whom an Emergency Impact Aid payment is received under this section, nor shall such students be counted for the purpose of calculating the total number of children in average daily attendance at the schools served by such agency as provided in section 7003(b)(3)(B)(i) of such Act (20 U.S.C. 7703(b)(3)(B)(i)).

5. *Risk Assessment and Grant Conditions:* Consistent with 2 CFR 200.205, before awarding grants under these programs the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

6. *Additional Monitoring:* The ''Bipartisan Budget Act of 2018'' designates this program to be ''susceptible to significant improper payments'' for purposes of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note). See Public Law 115–123, the ''Bipartisan Budget Act of 2018,'' Division B, Subdivision 1, Title XII, § 21208(a), Feb. 9, 2018; 132 Stat. 108. Under the statute, once any of these programs expends more than $10,000,000, it will result in additional requirements for grantees under the program, including making expenditure information and documentation available for review by the Department, starting with the Fiscal Year 2019 reporting period. We will provide additional information about this requirement after we make awards, providing advanced notice to ensure grantees understand their responsibilities for documenting all expenditures of Emergency Impact Aid and Homeless Children and Youth funds. We further note that, in general, these documentation requirements are identical to those ordinarily required for all Federal education program expenditures; the primary impact of the Improper Payments Information Act will be increased review of this documentation.

VI. Award Administration Information

1. *Award Notices:* If you receive a grant award under the Emergency Impact Aid or Assistance for Homeless Children and Youth program, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may also notify you informally.

2. *Reporting:* (a) If you apply for a grant under these programs, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access to the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 20, 2018.

Jason Botel,

Principal Deputy Assistant Secretary Delegated the Authority to Perform the Functions and Duties of Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2018–08700 Filed 4–24–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA submitted an information collection request for extension as required by the Paperwork Reduction Act of 1995. The information collection requests a three-year extension, with no changes, of its *Uranium Data Program,* OMB Control Number 1905–0160. The *Uranium Data Program* collects data on domestic uranium supply and demand activities, including production, exploration and development, trade, purchases and sales available to the U.S. The users of these data include Congress, Executive Branch agencies, the nuclear and uranium industry, electric power industry, and the public.

DATES: Comments on this information collection must be received no later than May 25, 2018. If you anticipate any difficulties in submitting your comments by the deadline, contact the DOE Desk Officer at 202–395–4718.

ADDRESSES: Written comments should be sent to DOE Desk Officer: James Tyree, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 9249, 735 17th Street NW, Washington, DC 20503, *James.N.Tyree@omb.eop.gov* and to Tim Shear, U.S. Department of Energy, U.S. Energy Information Administration, 1000 Independence Ave. SW, Washington, DC 20585, *Uranium2018@eia.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions, send your request to Tim Shear at 202–586–0403 or email it to *Tim.Shear@eia.gov*. You can view Form EIA–851A *Domestic Uranium Production Report (Annual),* Form EIA–851Q *Domestic Uranium Production Report (Quarterly),* and Form EIA–858 *Uranium Marketing Annual Survey* online at *https://www.eia.gov/survey.*

SUPPLEMENTARY INFORMATION:

This information collection request contains:

(1) *OMB No.* 1905–0160;

(2) *Information Collection Request Title:* Uranium Data Program;

(3) *Type of Request:* Three-year extension;

(4) *Purpose:* The *Uranium Data Program* includes three forms. Form EIA–851A collects annual data from the U.S. uranium industry on uranium milling and processing, uranium feed sources, uranium mining, employment, drilling, expenditures, and uranium reserves. Form EIA–851Q collects monthly data from the U.S. uranium industry on uranium production and sources (mines and other) and is published on a quarterly basis. Form EIA–858 collects annual data from the U.S. uranium market on uranium contracts and deliveries, inventories, enrichment services purchased, uranium in fuel assemblies, feed deliveries to enrichers, and existing unfilled market requirements for the current year and the following ten years.

(5) *Annual Estimated Number of Respondents:* 124;

(6) *Annual Estimated Number of Total Responses:* 169;

(7) *Annual Estimated Number of Burden Hours:* 1,200;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The cost of the burden hours is estimated to be $90,828 (1,200 burden hours times $75.69 per hour). EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified as 15 U.S.C. 772(b) and the DOE Organization Act of 1977, Pub. L. 95–91, codified at 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC, on April 17, 2018.

Nanda Srinivasan

Director, Office of Survey Development and Statistical Integration U. S. Energy Information Administration.

[FR Doc. 2018–08696 Filed 4–24–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation
Member Representatives Committee and Board of Trustees Meetings
Board of Trustees Corporate Governance and Human Resources Committee, Finance and Audit Committee, Compliance Committee, and Technology and Security Committee Meetings

The Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

May 9 (8:00 a.m.–5:00 p.m. eastern time) and May 10 (8:30 a.m.–12:00 p.m. eastern time), 2018

Further information regarding these meetings may be found at: *http://www.nerc.com/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RR17–6, North American Electric Reliability Corporation

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov*.

Dated: April 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–08672 Filed 4–24–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–40–000, CP17–40–001]

Spire STL Pipeline, LLC; Notice Granting Late Interventions

On February 6, 2017, in Docket No. CP17–40–000, the Commission issued public notice of Spire STL Pipeline, LLC's (Spire) application requesting approval to construct and operate a pipeline project, which would include: (i) The construction of approximately 59 miles of a new greenfield, 24-inch diameter pipeline; (ii) the acquisition of approximately seven miles of existing

Line 880, currently owned by Spire Missouri Inc. (Spire Missouri); [1] and (iii) minor modifications to Line 880 after it is acquired. This notice set February 27, 2017, as the deadline for motions to intervene.

On May 1, 2017, in Docket No. CP17–40–001, the Commission issued public notice of Spire's amendment to its application to propose a route alternative. Instead of acquiring and refurbishing Spire Missouri's Line 880, Spire's amended application proposes to construct a new six-mile, 24-inch diameter pipeline for the final segment of its proposal (referred to as the North County Extension). This notice set May 22, 2017, as the deadline for motions to intervene.

Multiple motions to intervene out of time were filed between the intervention deadlines and December 19, 2017. Here, because the deadline for filing a timely intervention passed before the Commission announced its new policy governing late interventions in *Tennessee Gas Pipeline Company, L.L.C.,*[2] the late motions to intervene are granted.[3]

Dated: April 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–08671 Filed 4–24–18; 8:45 am]

BILLING CODE 6717–01–P

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[1] Spire Missouri Inc. was formerly known as Laclede Gas Company.

[2] *Tennessee Gas Pipeline Co., L.L.C.,* 162 FERC 61,167, at P 51 (2018).

[3] 18 CFR 385.214(d) (2017).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR17–60–001; PR17–60–002]

Atmos Pipeline-Texas; Notice of Technical Conference

Take notice that an informal technical conference concerning the above-captioned proceedings will be convened by phone on May 2, 2018, at 2:00 p.m. (EDT). The purpose of the teleconference will be to discuss comments filed in the proceeding.

All interested parties are invited to participate by phone. Please email Deirdra Archie at *deirdra.archie@ferc.gov* or call (202) 502–6819 by Tuesday, May 1, 2018, to RSVP and to receive specific instructions on how to participate.

Dated: April 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–08613 Filed 4–24–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–9–000]

Commission Information Collection Activities (FERC–725x); Comment Request

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–725X (Mandatory Reliability Standards: Voltage and Reactive (VAR) Standards) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** requesting public comments. The Commission received no comments on the FERC–725X and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by May 25, 2018.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0278, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–8528.

A copy of the comments should also be sent to the Commission, in Docket No. IC18–9–000, by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725X, Mandatory Reliability Standards: Voltage and Reactive (VAR) Standards.

OMB Control No.: 1902–0278.

Type of Request: Three-year extension of the FERC–725X information collection requirements with no changes to the reporting requirements.

Abstract: Pursuant to Section 215 of the Federal Power Act (FPA), NERC established the Voltage and Reactive (VAR) group of Reliability Standards, which consists of two continent-wide Reliability Standards, VAR–001–4 and VAR–002–3.[1] These two standards were designed to maintain voltage stability on the Bulk-Power System, protect transmission, generation, distribution, and customer equipment, and support the reliable operation of the Bulk-Power System. Voltage stability is the ability of a power system to maintain acceptable voltage levels throughout the system under normal operating conditions and following a disturbance. Failure to maintain acceptable voltage levels (*i.e.,* voltage levels become too high or too low) may cause violations of System Operating Limits (SOLs) and Interconnection Reliability Operating Limits (IROLs), resulting in damage to Bulk-Power System equipment, and thereby threaten the reliable operation of the Bulk-Power System.

Reliability Standard VAR–001–4 [2]

Reliability Standard VAR–001–4 contains the following requirements:

- Specify a system-wide voltage schedule (which is either a range or a target value with an associated tolerance band) as part of its plan to operate within SOLs and IROLs, and to provide the voltage schedule to its Reliability Coordinator and adjacent Transmission Operators upon request (Requirement R1);

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[1] FERC approved these standards in the Order in Docket No. RD14–11–000 (issued on 8/1/2014).

[2] Applies to generation operators only.

• Schedule sufficient reactive resources to regulate voltage levels (Requirement R2);

• Operate or direct the operation of devices to regulate transmission voltage and reactive flows (Requirement R3);

• Develop a set of criteria to exempt generators from certain requirements under Reliability Standard VAR–002–3 related to voltage or Reactive Power schedules, automatic voltage regulations, and notification (Requirement R4);

• Specify a voltage or Reactive Power schedule (which is either a range or a target value with an associated tolerance band) for generators at either the high or low voltage side of the generator step-up transformer, provide the schedule to the associated Generator Operator, direct the Generator Operator to comply with that schedule in automatic voltage control mode, provide the Generator Operator the notification requirements for deviating from the schedule, and, if requested, provide the Generator Operator the criteria used to develop the schedule (Requirement R5); and

• Communicate step-up transformer tap changes, the time frame for completion, and the justification for these changes to Generator Owners (Requirement R6).

Reliability Standard VAR–002–3 [3]

Reliability Standard VAR–002–3 contains the following requirements:

• Operate each of its generators connected to the interconnected transmission system in automatic voltage control mode or in a different control mode as instructed by the Transmission Operator, unless the Generator Operator (1) is exempted pursuant to the criteria developed under VAR–001–4, Requirement R4, or (2) makes certain notifications to the Transmission Operator specifying the reasons it cannot so operate (Requirement R1);

• Maintain the Transmission Operator's generator voltage or Reactive Power schedule, unless the Generator Operator (1) is exempted pursuant to the criteria developed under VAR–001–4, Requirement R4, or (2) complies with the notification requirements for deviations as established by the Transmission Owner pursuant to Requirement R5 in VAR–001–4 (Requirement R2);

• Notify the Transmission Operator of a change in status of its voltage controlling device within 30 minutes, unless the status is restored within that time period (Requirement R3);

• Notify the Transmission Operator of a change in reactive capability due to factors other than those described in VAR–002–3, Requirement R3 within 30 minutes unless the capability has been restored during that time period (Requirement R4).

• Provide information on its step-up transformers and auxiliary transformers within 30 days of a request from the Transmission Operator or Transmission Planner (Requirement R5); and

• Comply with the Transmission Operator's step-up transformer tap change directives unless compliance would violate safety, an equipment rating, or applicable laws, rules or regulations (Requirement R6).

Type of Respondents: Generator operators and transmission operators.

Estimate of Annual Burden: [4] The Commission estimates the annual public reporting burden for the information collection as:

FERC–725X, MANDATORY RELIABILITY STANDARDS: VOLTAGE AND REACTIVE (VAR) STANDARDS

	Number of respondents [5] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average Burden & Cost per response [6] (4)	Total annual burden hours & total annual Cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
VAR–001–4 (Requirement R1–R6).	181 (TOP)	1	181	160 hrs.; $10,899.20	28,960 hrs.; $1,972,755	$10,899.20
VAR–002–3 (Requirement R1).	944 (GOP)	1	944	80 hrs.; 5,449.60	75,520 hrs.; $5,144,422	5,449.60
VAR–002–3 (Requirement R2–R6).	944 (GOP)	1	944	120 hrs.; $8,174.40	113,280 hrs.; $7,716,634	8,174.40
Total			2,069		217,760 hrs.; $14,833,811	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

Dated: April 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–08670 Filed 4–24–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL18–1–000]

Certification of New Interstate Natural Gas Facilities

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of Inquiry.

SUMMARY: In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks information and stakeholder perspectives to help the

[3] Applies to transmission operators only.

[4] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[5] TOP = transmission operator; GOP = generator operators.

[6] The estimate for hourly cost is $68.12/hour. This figure is the average salary plus benefits for an electrical engineer (Occupation Code: 17–2071) from the Bureau of Labor Statistics at *https://www.bls.gov/oes/current/naics2_22.htm.*

Commission explore whether, and if so how, it should revise its approach under its currently effective policy statement on the certification of new natural gas transportation facilities to determine whether a proposed natural gas project is or will be required by the present or future public convenience and necessity, as that standard is established in section 7 of the Natural Gas Act.

DATES: Comments are due June 25, 2018.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- *Electronic Filing* through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Thomas Chandler (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, 202–502–6699.

Maggie Suter (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, 202–502–6463.

Caroline Wozniak (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, 202–502–8931.

Brian White (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, 202–502–8332.

SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry, the Commission seeks information and stakeholder perspectives to help the Commission explore whether, and if so how, it should revise its approach under its currently effective policy statement on the certification of new natural gas transportation facilities (Policy Statement) [1] to determine whether a proposed natural gas project is or will be required by the present or future public convenience and necessity, as that standard is established in section 7 of the Natural Gas Act (NGA).[2] Specifically, the Commission seeks input on whether, and if so how, the Commission should adjust: (1) Its methodology for determining whether there is a need for a proposed project, including the Commission's consideration of precedent agreements and contracts for service as evidence of such need; (2) its consideration of the potential exercise of eminent domain and of landowner interests related to a proposed project; and (3) its evaluation of the environmental impact of a proposed project. Finally, the Commission seeks input on whether there are specific changes the Commission could consider implementing to improve the efficiency and effectiveness of its certificate processes including pre-filing, post-filing, and post-order issuance.

2. Nineteen years have passed since the Commission issued the Policy Statement to describe the criteria and analytical steps that the Commission uses to balance a proposed natural gas pipeline project's public benefits against its potential adverse consequences. That period has seen significant changes, such as: (1) A revolution in natural gas production technology leading to dramatic increases in production; (2) new areas of major natural gas production; (3) flows on pipeline systems becoming bidirectional or reversing; (4) customers routinely entering into long-term precedent agreements for firm service during the formative stage of potential projects and the use of those precedent agreements as applicants' principal evidence of the need for their projects; (5) the increased use of natural gas as a fuel source for electric generation, resulting in a closer relationship between natural gas transportation and natural gas-fired electric generation; (6) increased concerns expressed by landowners and communities potentially affected [3] by proposed projects; (7) an increased interest regarding the Commission's evaluation of the impact that greenhouse gas (GHG) emissions associated with a proposed project have on global climate change; (8) an increased focus on environmental concerns within the NGA public interest determination; and (9) a desire to generally expand or limit the Commission's evaluation under the National Environmental Policy Act of 1969 (NEPA).[4]

3. The Commission's aim in this proceeding is the same as in the Policy Statement: ''to appropriately consider the enhancement of competitive transportation alternatives, the possibility of over building, the avoidance of unnecessary disruption of the environment, and the unneeded exercise of eminent domain.'' [5] In issuing this Notice of Inquiry, the Commission seeks information to examine the Policy Statement and its application, as well as the structure and scope of the Commission's environmental analysis of proposed natural gas projects. Further, it is the Commission's desire to improve the transparency, timing, and predictability of the Commission's certification process. To these ends, we encourage commenters to identify, with specificity, any perceived issues with the Commission's current analytical and procedural approaches and to provide detailed recommendations to address these issues.

4. During the pendency of this proceeding, the Commission intends to continue to process natural gas facility matters before it consistent with the Policy Statement, and to make determinations on the issues raised in those proceedings on a case-by-case basis.[6] Should the Commission decide to generally revise its procedures as a result of this proceeding, it will address at that time how and when those changes will be implemented. The Commission will decide any next steps with regard to this review of the Policy Statement after the Commission has reviewed the comments filed in response to this Notice of Inquiry.

I. Background

A. The Natural Gas Act of 1938

5. The NGA declares ''that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of

[1] *Certification of New Interstate Natural Gas Pipeline Facilities,* 88 FERC ¶ 61,227 (1999), *clarified,* 90 FERC ¶ 61,128, *further clarified,* 92 FERC ¶ 61,094 (2000) (Policy Statement).

[2] 15 U.S.C. 717f.

[3] The total miles of interstate natural gas pipeline authorized by the Commission on an annual basis has fluctuated over time, but in recent years reached a high of 2,739 miles in 2017. *See generally* Federal Energy Regulatory Commission, 2017 State of the Markets Report, at 4 (Apr. 2018), *www.ferc.gov/market-oversight/market-oversight.asp* (providing the number of approved pipelines projects and miles for 2017).

[4] 42 U.S.C. 4332–4370f.

[5] Policy Statement, 88 FERC ¶ 61,227 at 61,737.

[6] The Commission is aware that some of the issues raised in this Notice of Inquiry may overlap with issues raised in pending matters. In this Notice of Inquiry proceeding, the Commission will consider only generic issues, and will not consider any comments that refer to open, contested Commission proceedings.

natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.'' [7] NGA section 7(c) requires that any person seeking to construct or operate a facility for the transportation of natural gas in interstate commerce must obtain a certificate of public convenience and necessity from the Commission.[8] Under NGA section 7(e), the Commission shall issue a certificate to any qualified applicant upon finding that the construction and operation of the proposed project—whether pipeline, storage, or liquefaction facilities—''is or will be required by the present or future public convenience and necessity.'' [9] The Commission's regulations provide for public notice and the opportunity to intervene in certificate proceedings to comment on or protest an application, and to participate in the environmental review process.[10] If an applicant receives a certificate from the Commission, NGA section 7(h) authorizes the certificate holder to acquire the property rights necessary to construct and operate its project by use of eminent domain if it cannot reach a voluntary agreement with a landowner.[11]

6. The public convenience and necessity standard encompasses all factors bearing on the public interest.[12] The words ''public interest,'' however, are ''not a broad license to promote the general public welfare.'' [13] The Supreme Court has stated that:

> in order to give content and meaning to the words 'public interest' as used in the [Federal] Power and [Natural] Gas Acts, it is necessary to look to the purposes for which the Acts were adopted. In the case of the Power and Gas Acts it is clear that the principal purpose of those Acts was to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.[14]

7. As part of its decision-making process, the Commission, in accord with the Policy Statement, determines whether there is a need for a proposed project. This analysis is distinct from that required by the Council on Environmental Quality (CEQ) regulations, which specify that environmental documents contain a ''purpose and need statement'' used to determine the objectives of the proposed action and then to identify and consider reasonable alternative actions.[15] Under the NGA, the Commission will take into account all information in the record from the applicant, parties to the proceeding, commenters, and the environmental document to determine whether a proposed project is required by the public convenience and necessity.[16]

8. The Commission's powers under NGA section 7 are limited. The Commission can issue a certificate for a proposed project, subject to ''such reasonable terms and conditions as the public convenience and necessity may require.'' [17] The Commission can deny an application if, and only if, a balancing of all of the factors weighs against authorization of the proposed project.[18] The Policy Statement explains that relevant factors reflecting the need for the project might include, but would not be limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market while adverse effects include economic, competitive, environmental, or other effects on the relevant interests.[19] We note the Commission only has authority over facilities for the transportation of natural gas in interstate commerce. The Commission has no authority to certificate intrastate facilities or facilities for the production, gathering, or local distribution of natural gas.[20] Nor does the Commission have jurisdiction over facilities used for the generation of electric energy.[21]

B. The National Environmental Policy Act of 1969

9. The Commission's consideration of an application triggers environmental review under NEPA.[22] NEPA and its implementing regulations require that before taking a major action, such as action on an application for a natural gas project, an agency must take a ''hard look'' at the environmental consequences of the proposed action and at alternatives, and disclose its analysis to the public.[23] Regulations issued by the CEQ to implement NEPA [24] require agencies, including the Commission, to consider the environmental impacts of a proposed action, generally by preparing either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).[25] The requirements of NEPA are procedural: They are intended to disclose impacts and allow for informed decision-making, but do not mandate a particular result or give preeminent weight to environmental considerations.[26]

10. An agency's environmental document must include a statement to ''briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.'' [27] Agencies use the purpose and need statement to define the objectives of a proposed action and then to identify and consider reasonable alternatives.[28] Agencies consider alternatives ''that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.'' [29] An agency need only evaluate alternatives that can satisfy the purpose and need of the proposed project, and the evaluation is shaped by the application and the function that the agency plays in the decisional process.[30] Alternatives that are not environmentally preferable, not able to

[7] 15 U.S.C. 717(a).

[8] *Id.* 717f(c)(1)(A).

[9] *Id.* 717f(e).

[10] *See generally* 18 CFR 157.1–157.22 (regulations governing applications); *id.* pt. 380 (implementing NEPA, the Endangered Species Act, and the National Historic Preservation Act, and prescribing environmental reports for Natural Gas Act applications).

[11] 15 U.S.C. 717f(h).

[12] *Atl. Refining Co.* v. *Pub. Serv. Comm'n of N.Y.,* 360 U.S. 378, 391 (1959).

[13] *NAACP* v. *Fed. Power Comm'n,* 425 U.S. 662, 669–70 (1976).

[14] *Id.*

[15] 40 CFR 1502.13.

[16] *Fed. Power Comm'n* v. *Transcontinental Gas Pipe Line Corp.,* 365 U.S. 1, 23 (1961).

[17] 15 U.S.C. 717f(e).

[18] *See, e.g., Transcontinental Gas Pipe Line Corp.,* 365 U.S. at 17 (the Commission ''can only exercise a veto power over proposed transportation and it can only do this when a balance of all the circumstances weighs against certification'').

[19] Policy Statement, 88 FERC ¶ 61,227 at 61,747.

[20] NGA section 1(b) states that Commission authority applies to interstate transportation of natural gas and sales for resale, ''but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.'' 15 U.S.C. 717(b).

[21] Section 201 of the Federal Power Act states, the Commission ''shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy.'' 16 U.S.C. 824.

[22] 42 U.S.C. 4332(2)(C).

[23] *Baltimore Gas & Elec. Co.* v. *Nat. Res. Defense Council, Inc.,* 462 U.S. 87, 97 (1983) (discussing the twin aims of NEPA).

[24] 40 CFR 1500.1–1508.28.

[25] *Id.* 1501.4 (detailing when to prepare an EA versus an EIS).

[26] *Robertson* v. *Methow Valley Citizen's Council,* 490 U.S. 332, 350 (1989); *see also Baltimore Gas & Elec. Co.,* 462 U.S. at 97 (citing *Stryckers' Bay Neighborhood Council* v. *Karlen,* 444 U.S. 223, 227 (1980)).

[27] 40 CFR 1508.9 (describing requirements for an EA).

[28] *Colo. Envtl. Coal.* v. *Dombeck,* 185 F.3d 1162, 1175 (10th Cir. 1999).

[29] *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* 46 FR 18026, 18027 (Mar. 23, 1981).

[30] *Citizens Against Burlington, Inc.* v. *Busey,* 938 F.2d 190, 195, 199 (DC Cir. 1991).

provide equivalent services, uneconomic, speculative ventures as opposed to planned projects, or otherwise inadequate to function as a serviceable alternative to the proposed project may be eliminated so long as the agency briefly discusses the reasons for the elimination.[31]

11. Commission documents under NEPA first address the scope of the project (*i.e.,* ''the range of actions, alternatives, and impacts to be considered'')[32], then address the environmental impacts of the proposed action, connected actions, and cumulative actions.[33] Commission documents under NEPA may also address similar actions if a combined analysis would be the best way to adequately assess combined impacts.[34] These NEPA documents disclose and evaluate the direct, indirect, and cumulative impacts of the project on various environmental resources in the context of temporary, short-term, long-term, and permanent impacts, and then consider practical measures to avoid, minimize, or mitigate those impacts. Direct impacts are caused by the proposed action and occur at the same time and place. Indirect impacts are ''caused by the [proposed] action and are later in time or farther removed in distance, but are still reasonably foreseeable.''[35] Cumulative impacts are defined as ''the impact on the environment which results from the incremental impact of the [proposed] action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such actions.''[36] The impacts of these other actions must occur within the same geographic area and same time period in which the proposed project's impacts will occur.[37]

C. Conditions and Considerations Leading to the Development of the Policy Statement

12. Historically, the Commission established prices for natural gas sales and transportation, and there was little competition for gas supply or transportation capacity. Interstate pipelines, operating as merchants, produced and/or purchased natural gas at the wellhead, transported it to a city gate, and sold it to a local distribution company (LDC) at a Commission-regulated price that reflected combined (*i.e.,* bundled) commodity and transportation costs. Congress and the Commission introduced increasingly competitive elements into this merchant model. The Natural Gas Policy Act of 1978 began the process of decontrolling wellhead natural gas prices and eased barriers between intrastate and interstate markets.[38] The Commission issued Order No. 436, which initiated open access transportation to allow downstream gas users, such as LDCs and industrial customers, to buy gas directly from producers or merchants and transport their gas on interstate pipelines.[39] The Wellhead Decontrol Act of 1989 lifted remaining price controls on wellhead sales as of January 1, 1993.[40] In 1992, the Commission issued Order No. 636 to ''reflect and finally complete the evolution to competition in the natural gas industry initiated by [the above-cited statutory and regulatory revisions] so that all natural gas suppliers, including the pipeline as merchant, will compete for gas purchasers on an equal footing.''[41] As a result, natural gas markets have changed from being highly regulated to being largely driven by competition and market forces. Instead of merchant pipelines delivering natural gas to customers at a Commission-regulated bundled price, most natural gas pipelines have exited the merchant business and now provide unbundled transportation and storage services. As a result, shippers are able to purchase natural gas at the wellhead or from gas marketers, trade gas among themselves, and purchase pipeline and storage capacity from marketers and other shippers in the secondary market as well as directly from the pipeline. These changes have benefitted natural gas consumers by providing a wider range of options in pipeline services.

13. As natural gas commodity and transportation markets were becoming more competitive, the 1990s saw significant growth in natural gas consumption in the industrial and electric generation segments. This prompted jurisdictional natural gas companies to urge the Commission to expeditiously authorize new projects to meet anticipated growth in demand. Due to the lower capital costs and shorter construction times of advanced combined-cycle gas-fired plants in comparison with conventional coal-fired plants, and the relative environmental benefits of natural gas compared to coal combustion, industry forecasts at the time showed natural gas-fired electric generation demand tripling in the following twenty years and overall gas demand reaching 32 Trillion Cubic Feet (Tcf) by 2020.[42]

14. In addition, in the 1990s, many LDCs were going through significant changes as they implemented retail unbundling programs, also known as customer choice programs, on their systems. Prior to retail unbundling, LDCs, similar to interstate pipelines, provided a composite bundled service to customers that included the bundled price of the gas and associated pipeline capacity and the price of the distribution service. Retail unbundling programs provided residential and commercial customers with access to competitive markets through the ability to purchase gas supplies from retail marketers that may be different from their LDCs. As a result, LDCs were not certain to what degree they would continue to be responsible for purchasing gas supplies and pipeline capacity in order to provide service for their core retail customers. Because of

[31] 40 CFR 1502.14(a). *See, e.g., Bradwood Landing LLC,* 126 FERC ¶ 61,035, at P 158 (2009); *Broadwater Energy LLC,* 124 FERC ¶ 61,225, at PP 187–189 (2008) (rejecting alternatives that were not technically and economically feasible and practical, or did not offer significant environmental advantages over the proposed project or its components, or were unavailable and/or incapable of being implemented, or do not meet the applicants' stated project objectives).

[32] 40 CFR 1508.25.

[33] *Id.* 1508.25(a)(1)–(2).

[34] *Id.* 1508.25(a)(3).

[35] *Id.* 1508.8(b).

[36] *Id.* 1508.7.

[37] ''[A] consideration of cumulative impacts must also consider '[c]losely related and proposed or reasonably foreseeable actions that are related by timing or geography.''' *O'Reilly* v. *U.S. Army Corps of Engineers,* 477 F.3d 225 at 234 (5th Cir. 2007) (quoting *Vieux Carre Prop. Owners, Residents, & Assocs., Inc.* v. *Pierce,* 719 F.2d 1272, 1277 (5th Cir. 1983)); *see also* CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act,* at 12–16 (Jan. 1997), *https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G–CEQ-ConsidCumulEffects.pdf.*

[38] 15 U.S.C. 3301–3432.

[39] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* FERC Stats. & Regs. ¶ 30,665 (1985), *vacated and remanded, Associated Gas Distribs.* v. *FERC,* 824 F.2d 981 (D.C. Cir. 1987), *readopted on an interim basis,* Order No. 500, FERC Stats. & Regs. ¶ 30,761 (1987), *remanded, Am. Gas Ass'n* v. *FERC,* 888 F.2d 136 (D.C. Cir. 1989), *readopted,* Order No. 500–H, FERC Stats. & Regs. ¶ 30,867 (1989), *reh'g granted in part and denied in part,* Order No. 500–I, FERC Stats. & Regs. ¶ 30,880 (1990), *aff'd in part and remanded in part, Am. Gas Ass'n* v. *FERC,* 912 F.2d 1496 (D.C. Cir. 1990), *order on remand,* Order No. 500–J, FERC Stats. & Regs. ¶ 30,915, *order on remand,* Order No. 500–K, FERC Stats. & Regs. ¶ 30,917, *reh'g denied,* Order No. 500–L (1991).

[40] Public Law 101–60, 103 Stat. 157 (1989).

[41] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 636, FERC Stats. & Regs. ¶ 30,939, at 30,391 (footnote omitted), *order on reh'g,* Order No. 636–A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g,* Order No. 636–B, *61 FERC ¶ 61,272 (1992), order on reh'g, 62 FERC ¶ 61,007 (1993), aff'd in part and remanded in part sub nom. United Dist. Cos.* v. *FERC, 88 F.3d 1105* (D.C. Cir. 1996), *order on remand,* Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[42] Energy Information Administration (EIA), *Natural Gas 1998: Issues and Trends,* DOE/EIA–0560(98), at 71, 109, 115 (Apr. 1999).

this uncertainty, many LDCs sought to reduce their firm contract commitments with interstate pipelines, both in terms of the duration and quantity of firm service (this reduction in service is referred to as capacity turnback). In light of the capacity turnback situation and potential stranded cost issues that arose on certain pipelines following restructuring, many LDCs were concerned about the impact any new pipeline expansion construction could have on the value of their existing pipeline capacity contracts, and the potential rate implications of overbuilding.[43] These concerns were exacerbated by the fact that the Commission's pricing policy for new construction prior to the Policy Statement called for expansion project costs to be rolled into existing system costs to derive rolled-in rates in a future NGA section 4 rate case.[44] At that time, the Commission generally ruled in favor of rolled-in rates when the cost impact of the expansion project, spread across the pipeline's system, resulted in a rate impact on existing customers of five percent or less and the expansion provided operational and/or financial benefits to the system.[45] All shippers bore some burden of the expansion project's cost, whether they benefitted from the project or not, without being allowed to adjust their contracted volumes. LDCs and other parties believed that this pricing policy sent the wrong price signals by masking the real costs of an expansion project and could result in overbuilding of capacity and subsidization of an expansion by a pipeline's existing shippers.

D. Proceedings Leading to the Policy Statement, Purpose of the Policy Statement, and the Issues It Sought To Address

15. In response to the concerns described above, the Commission issued the Notice of Proposed Rulemaking (NOPR), *Regulation of Short-Term Natural Gas Transportation Services,*[46] and the Notice of Inquiry, *Regulation of Interstate Natural Gas Transportation Services,*[47] to explore issues related to its policies on certification and pricing of new construction projects. In the NOPR, the Commission asked questions relating to many of the issues that have arisen in recent certificate proceedings including: Whether the Commission should look behind the precedent agreements or contracts presented as evidence of market demand to assess independently the market's need for additional gas service; whether the Commission should apply a different standard to precedent agreements or contracts with affiliates than with non-affiliates; whether the Commission should, in an effort to check overbuilding and capacity turnback, take a harder look at proposals that are designed to compete for existing market share rather than bring service to a new customer base; and whether the Commission should apply a different standard to project sponsors who do not plan to use either federal or state-granted rights of eminent domain to acquire right-of-way.[48]

16. Information received in these proceedings, as well as experience evaluating proposals for new pipeline construction, persuaded the Commission to revisit its policy for certificating new construction.[49] The Commission issued the Policy Statement intending that it would provide the natural gas industry with guidance as to how the Commission would evaluate applications for new natural gas projects. The Commission sought ''to foster competitive markets, protect captive customers, and avoid unnecessary environmental and community impacts while serving increasing demands for natural gas.'' [50]

17. These objectives were realized primarily by a shift from rolled-in pricing to incremental pricing. Under incremental pricing, existing customers using existing facilities do not contribute to, and thereby do not subsidize, the cost of constructing and operating new projects.[51] Applicants can recover the costs of the new facilities only from shippers who use them, and are fully at risk for the cost of the new facilities and will bear the financial burden of any unsubscribed capacity. In the Policy Statement, the Commission reasoned that incremental pricing would send the proper price signals for new construction and indicate whether a project is financially viable.[52]

18. The Policy Statement stated that the Commission will approve an application for a new project only if its public benefits outweigh its residual adverse effects.[53] The Policy Statement described this balancing of benefits and adverse effects as an economic test.[54] In addition to the economic screen established by the Policy Statement, the Commission simultaneously considers the environmental impacts of a proposed project and imposes mitigation measures to address potential environmental impacts.

E. Changed Circumstances Since Issuance of the Policy Statement

19. Over the last decade, the United States has seen an unprecedented change in the dynamics of the natural gas market and the supply and demand forces driving it. Led by advancements in production technologies, primarily in accessing shale reserves, natural gas supplies have increased dramatically. Domestic natural gas production has increased from 21.3 Tcf in 2010 to 26.9 Tcf in 2017.[55] The Energy Information Administration's (EIA) *Annual Energy Outlook 2018* forecasts continued supply growth over the next 25 years, increasing to nearly 39 Tcf by 2035 and 43 Tcf by 2050.[56] In addition, driven by liquefied natural gas (LNG) exports, increased pipeline exports to Mexico, and reduced imports from Canada, the EIA shows that the United States became a net exporter of natural gas in 2017.[57]

20. As natural gas production has increased, so has demand, rising from

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[43] *See, e.g.,* Policy Statement, 88 FERC ¶ 61,227 at 61,741 (summarizing comments from the American Gas Association, Baltimore Gas and Electric Company, and Philadelphia Gas Works requesting that pipelines not be allowed to impose the costs of unsubscribed capacity created through the construction of excess capacity on existing shippers).

[44] *Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines,* 71 FERC ¶ 61,241 (1995), *order on reh'g,* 75 FERC ¶ 61,105 (1996).

[45] *Id.,* 71 FERC ¶ 61,241 at 61,916–61,917.

[46] *Regulation of Short-Term Natural Gas Transportation Services,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,533 (1998) (cross-referenced at 84 FERC ¶ 61,085).

[47] *Regulation of Interstate Natural Gas Transportation Services,* Notice of Inquiry, FERC. Stats. & Regs. ¶ 35,533 (1998) (cross-referenced at 84 FERC ¶ 61,087).

[48] NOPR, FERC Stats. & Regs. ¶ 32,533 at 33,489–90.

[49] Policy Statement, 88 FERC ¶ 61,227 at 61,737.

[50] *Id.* at 61,743. These same aims apply to this Notice of Inquiry.

[51] The Policy Statement recognized there may be instances where expansion project costs should be rolled into the rates of existing customers; for example, when inexpensive expansibility is made possible because of earlier, costly construction. In such a case, ''because the existing customers bear the cost of the earlier, more costly construction in their rates, incremental pricing could result in the new customers receiving a subsidy from the existing customers because the new customers would not face the full cost of the construction that makes their new service possible.'' Policy Statement, 88 FERC ¶ 61,227 at 61,746.

[52] *Id.*

[53] *Id.* at 61,745.

[54] *Id.*

[55] EIA, *Natural Gas Summary* (Mar. 30, 2018) (in table see row labeled ''Dry Production;'' click link in the final column to view history) (*Natural Gas Summary*), *https://www.eia.gov/dnav/ng/ng_sum_lsum_dcu_nus_a.htm.*

[56] EIA, *Annual Energy Outlook 2018,* at tbl.13 (Feb. 6, 2018) (in table see row labeled ''Dry Gas Production'' under the reference case) (*Annual Energy Outlook 2018*), *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2018&cases=ref2018&sourcekey=0.*

[57] *Natural Gas Summary* (in table compare rows labeled ''Imports'' and ''Exports'').

24.1 Tcf in 2010 to 27.1 Tcf in 2017, driven in part by an increase in gas-fired electric generation.[58] The EIA's *2018 Annual Energy Outlook* projects continued growth in domestic demand to over 31.4 Tcf by 2035 and nearly 35 Tcf by 2050.[59]

21. Increases in both domestic and international demand for natural gas produced in the United States, combined with the availability of competitively-priced gas from shale reserves and associated gas extracted in tandem with oil, have reduced prices and price volatility and shifted the emphasis of the types of proposed natural gas infrastructure projects from storage to transportation and exports, leading to the Commission receiving and approving an increased number of pipeline and LNG export terminal applications since 2010.[60] Much of the increased production is attributable to Appalachian shale deposits, predominately the Marcellus and Utica, located in Pennsylvania, West Virginia, Ohio, and New York.[61] Although these areas have historically produced natural gas, the volumes had been relatively small and much of the infrastructure in the area was built to deliver natural gas to traditional regional markets and was not able to transport the burgeoning supply volumes to more distant markets without significant system expansions. In response to this take-away bottleneck, the Commission received a host of applications proposing either to construct greenfield pipelines[62] to transport gas out of the region or to increase the capacity of existing infrastructure through the addition of compression and pipeline looping.[63] Other producing areas have also experienced a dramatic growth in output starting in the mid-2000s, from traditional oil and gas fields in the Permian Basin in West Texas to the more recently developed Bakken Shale Formation in North Dakota. This increased production has also prompted applications to add capacity to transport gas to consumers.

22. In addition, contracting patterns are changing significantly as a result of the supply growth. In the past, LDCs contracted for a large percentage of the total interstate pipeline capacity, transporting supplies from the production area to their customers. Increasingly, however, LDCs are purchasing gas supplies further downstream at market area pooling points or their citygates as other parties increasingly contract for pipeline capacity. Natural gas producers are now contracting for an increasing amount of firm pipeline capacity on expansion projects in an effort to provide a secured commercial outlet for their supplies. For many of these projects, producers are interested in transporting their natural gas to the nearest pooling point on the pipeline system, where the gas can be sold to other parties serving downstream markets. Therefore, an increasing number of projects are being designed to transport gas to a point of distribution on the interstate pipeline grid, which may not correspond to a defined market or end use.

F. Executive Order 13807, ''Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects''

23. On August 15, 2017, President Trump issued Executive Order 13807 ''Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects'' to ''ensure that the Federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent.''[64] Executive Order 13807 states that inefficiencies in the project decision-making process, including the management of environmental reviews and permit decisions or authorizations, ''have delayed infrastructure investments, increased project costs, and blocked the American people from enjoying improved infrastructure that would benefit our economy, society, and environment.''[65] Executive Order 13807 sets forth several components of its policy, including to ''ensure that Federal authorities make informed decisions concerning the environmental impacts of infrastructure projects,'' ''provide transparency and accountability to the public regarding environmental review and authorization decisions,'' and ''make timely decisions with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years.''[66] The Commission is committed to carrying out the goals of Executive Order 13807 to improve the efficiency, timing, and overall predictability of the Commission's certification process.[67]

G. The Commission's Evaluation Under the Policy Statement

24. The Policy Statement explained that the Commission will consider whether a proposed project's anticipated public benefits outweigh its residual adverse effects on economic interests. If so, the Commission will then complete an analysis of the project's environmental impacts and incorporate those findings in reaching a conclusion on whether a project is required by the public convenience and necessity. If not, an application will be denied and there will be no reason to consider environmental impacts.[68]

25. Because the NEPA review typically takes longer than the review of the non-environmental aspects of a proposed project, in practice the Commission often initiates its study of environmental impacts at the applicant's request during pre-filing and before an application is filed. Also, most natural gas projects require approvals from numerous other federal, state, and local agencies or federally recognized Indian tribes.[69] Coordinating with other agencies and ensuring that NEPA documents adequately address the

[58] *Id.* (in table see row labeled ''Total Consumption;'' click link in the final column to view history).

[59] *Annual Energy Outlook 2018,* at tbl.13 (in table see row labeled ''Consumption by Sector'' under the reference case).

[60] In 2010, the Commission authorized about 24 pipeline projects comprising 9.2 billion cubic feet (Bcf) per day, 20 storage projects comprising 149 Bcf per day capacity with 5.6 Bcf per day deliverability, and no LNG import/export facilities. In 2017, the Commission authorized about 49 pipeline projects comprising 30.8 Bcf per day and 2 storage projects comprising no new capacity but increased deliverability. Between 2014 and 2017 the Commission also authorized 13 LNG import/export projects for 16 Bcf per day deliverability.

[61] New York's shale reserves remain undeveloped due to a prohibition on high-volume hydraulic fracturing in effect since 2008.

[62] A greenfield pipeline is defined as a new pipeline system that is operated as a separately regulated company with its own rates and tariff. For example, the NEXUS Project is a greenfield pipeline. *NEXUS Gas Transmission, LLC,* 160 FERC ¶ 61,022 (2017).

[63] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity. For example, Southern Natural Gas Company, L.L.C.'s Fairburn Expansion Project includes a 1.6-mile-long, 30-inch-diameter pipeline loop to add capacity to the system. *S. Nat. Gas Co., L.L.C.,* 162 FERC ¶ 61,122 (2018).

[64] Exec. Order No. 13807, 82 FR 40463, 40463 (Aug. 15, 2017).

[65] *Id.*

[66] *Id.* Executive Order 13807 defines ''major infrastructure project'' as ''an infrastructure project for which multiple authorizations by Federal agencies will be required to proceed with construction, the lead Federal agency has determined that it will prepare an environmental impact statement'' under NEPA ''and the project sponsor has identified the reasonable availability of funds sufficient to complete the project.'' *Id.* 40464.

[67] The Commission is a signatory to the Memorandum of Understanding Implementing the One Federal Decision under Executive Order 13807, which is available at *https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2.pdf.*

[68] *E.g., Turtle Bayou Gas Storage Co., LLC,* 135 FERC ¶ 61,233 (2014) (*Turtle Bayou*).

[69] For example, projects may require Clean Water Act section 401 water quality certifications, Clean Air Act permits, and concurrence letters or Biological Opinions from the National Marine Fisheries Service or United States Fish and Wildlife Service.

concerns of agencies, federally recognized tribes,[70] and stakeholders can extend the time needed to complete the NEPA review process.

H. Applying the Policy Statement

1. Threshold Requirement

26. The Policy Statement's threshold requirement is that an applicant financially support the project without relying on subsidization from its existing customers.[71] For greenfield projects, this is the case by definition, as these new projects have no existing customers.[72] For existing jurisdictional natural gas companies, the Policy Statement's adoption of incremental rates as the default pricing mechanism for new capacity ensures that the project sponsor and its expansion customers bear all the economic risks of constructing and operating new facilities, without subsidization from the company's existing customers.[73] When an existing natural gas company proposes to use its existing system rates as initial recourse rates for an expansion, the natural gas company is required to demonstrate that the incremental revenue received would exceed the incremental cost of the new project before being granted approval to roll the costs of the expansion into its system rates, thereby ensuring existing customers will not subsidize the expansion.[74]

2. Factors To Be Balanced in Assessing the Need for a New Project

(a) Potential Adverse Effects on Affected Interests

27. When the no-subsidy threshold requirement is met, the next step in the Commission's analysis is to determine whether the applicant has eliminated or minimized any residual adverse effects the project might have on: (1) The applicant's existing customers, (2) existing pipelines in the market and their captive customers, and (3) landowners and communities affected by the proposed project.[75]

28. The Policy Statement recognized that the interests of an applicant's existing customers may be adversely affected if the proposed expansion results in a degradation in service for existing customers.[76] Furthermore, the interests of an existing pipeline in the same market area and its captive customers may be adversely affected by a new competitor because, under the Commission's current rate model, customer rates on an existing pipeline can rise to cover the costs of any capacity that goes unsubscribed due to volumes (*i.e.,* customers) migrating to a new competing pipeline.

29. The Commission has historically taken a pro-competitive approach in approving new projects, believing that potential adverse impacts on existing competitors through the potential future loss of load are likely to be outweighed by the economic and reliability benefits to natural gas consumers that come from increased access to new supply sources of competitively-priced natural gas.[77] The Commission's longstanding policy has been to allow companies to compete for markets and to uphold the results of that competition absent a showing of anticompetitive or unfair competition.[78] There have been few instances where companies or their customers have raised concerns over the impact that the construction of a new project would have on an existing pipeline system or its captive customers. In those instances, competitor pipelines have argued that their captive shippers would be burdened with stranded costs or discount adjustments.[79] The Commission has historically not been persuaded by the objections, finding that a new pipeline would benefit consumers through increased competition.[80]

30. Finally, under the Policy Statement, the Commission looks at adverse impacts on landowners and communities affected by a proposed project. The Policy Statement noted that ''[t]raditionally, the interests of the landowners and the surrounding community have been considered synonymous with the environmental impacts of a project,'' but explains that ''[l]andowner property rights issues are different in character from other environmental issues considered under [NEPA].'' [81] Since issuance of the Policy Statement, the Commission's environmental analyses have come to adopt a more expansive consideration of property rights issues, so issues that previously might not have been routinely reviewed in the environmental document—*e.g.,* a project's potential impact on property values, community development, employment, tax revenue, and disadvantaged populations—now are. Thus, these issues are, in effect, considered twice, once in the context of the Policy Statement assessment focusing on economic impacts, and again in the NEPA review focusing on environmental impacts. Economic impacts on landowners and surrounding communities can be, and often are, mitigated, for example, through alternative routing of the proposed rights-of-way, co-location with existing utility corridors, and negotiating the purchase of rights-of-way.[82]

(b) Public Benefits

31. The Policy Statement identified various public benefits including: (1) Meeting unserved demand (2) eliminating bottlenecks; (3) providing access to new supplies; (4) lowering costs to consumers; (5) providing new interconnects that improve the interstate pipeline network; (6) providing competitive alternatives; (7) increasing electric reliability; and (8) advancing clean air objectives.[83] As evidence of unserved demand following issuance of the Policy Statement, applicants have most often presented precedent agreements with prospective customers for long-term firm service.[84]

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[70] The Commission consults with potentially affected federally recognized Indian tribes as set forth in our tribal consultation policy statement. *Policy Statement on Consultation with Indian Tribes in Commission Proceedings,* Order No. 635, FERC Stats. & Regs. ¶ 31,148 (2003) (cross-referenced at 104 FERC ¶ 61,108).

[71] Policy Statement, 88 FERC ¶ 61,227 at 61,746.

[72] *E.g., Sierrita Gas Pipeline, LLC,* 147 FERC ¶ 61,192 (2014).

[73] *Trailblazer Pipeline Co.,* 95 FERC ¶ 61,258 (2001); *see also E. Tenn. Nat. Gas LLC,* 154 FERC ¶ 61,161 (2016).

[74] The Policy Statement also allows projects that are designed to improve service to existing customers (*i.e.,* by replacing existing capacity or improving reliability) to be rolled into system rates. The Policy Statement explained that increasing the rates of the existing customers to pay for these improvements is not a subsidy. Policy Statement, 88 FERC ¶ 61,227 at 61,746 n.12.

[75] *Id* at 61,745.

[76] As part of the certification process the Commission confirms through engineering analyses that the proposed facilities are appropriately designed to provide the proposed new services and verifies that the proposed project will not adversely affect the services the applicant is obligated to provide to its existing customers. *See, e.g., Tex. Gas Transmission, LLC,* 152 FERC ¶ 61,160 (2015).

[77] *E.g., Ruby Pipeline, L.L.C.,* 128 FERC ¶ 61,224, at PP 37–39 (2009); *Guardian Pipeline, L.L.C.,* 91 FERC ¶ 61,285, at 61,976–61,977 (2000).

[78] *Ruby Pipeline,* 128 FERC ¶ 61,224 at P 35; *Guardian Pipeline,* 91 FERC ¶ 61,285 at 61,977.

[79] *Ruby Pipeline,* 128 FERC ¶ 61,224 at PP 22–26; *Guardian Pipeline,* 91 FERC ¶ 61,285 at 61,974–61,975.

[80] *Ruby Pipeline,* 128 FERC ¶ 61,224 at P 37; *Guardian Pipeline,* 91 FERC ¶ 61,285 at 61,976–61,977.

[81] Policy Statement, 88 FERC ¶ 61,227 at 61,748.

[82] For example, Columbia Gas Transmission, LLC, incorporated eight route variations between issuance of the draft EIS and final EIS of its Leach XPress Project to address landowner requests. Final EIS, at 2–5 (Sept. 1, 2016) (Docket No. CP15–514–000). Also, Algonquin Gas Transmission, LLC, collocated 93 percent of its Algonquin Incremental Market Project pipeline facilities within or adjacent to existing right-of-ways, including its own pipelines, public roadways, railways and electric transmission line corridors. Final EIS, at 2–12 (Jan. 23, 2014) (Docket No. CP14–96–000).

[83] Policy Statement, 88 FERC ¶ 61,227 at 61,748.

[84] In the order authorizing a new project, the Commission requires that prior to construction, the certificate-holder must file a written statement affirming that it has executed contracts that reflect

(c) Balancing Public Benefits and Adverse Effects

32. The Policy Statement recognized that, in the context of balancing public benefits against adverse effects, it is difficult to construct bright line standards or tests, as such tests are unlikely to be flexible enough to resolve specific cases and to allow the Commission to take into account different relevant interests. The Policy Statement described a sliding scale approach where the ''more interests adversely affected or the more adverse impact a project would have on a particular interest, the greater the showing of public benefits from the project required to balance the adverse impact.'' [85]

33. The Policy Statement provided two examples of the sliding scale approach. First, if an applicant is able to acquire all or substantially all of the necessary rights-of-way by negotiation prior to filing the application, and the proposal is to serve a new, previously unserved market, it would not adversely impact the applicant's existing shippers, competing companies or their existing shippers, or affected landowners and communities.[86] Under these circumstances, landowners would not be subject to eminent domain proceedings, and because the proposed project would be new, there would be no existing customers who might be called upon to subsidize the project. In the second example, the Policy Statement recognized that an applicant may not be able to acquire all the necessary rights-of-way by negotiation prior to filing the application.[87] Therefore, the applicant might minimize the effect of the project on landowners by negotiating to acquire as much of the rights-of-way as possible. In this case, the applicant may be called upon to present some evidence of market demand, but under the sliding scale approach, the benefits that would need to be shown would be less than in a case where no rights-of-way had been previously acquired by negotiation. If an applicant had precedent agreements with multiple parties for most of the new capacity, this would be strong evidence of market demand and potential public benefits that could outweigh the inability to negotiate right-of-way agreements with some landowners.

34. The Policy Statement observed that a few holdout landowners cannot veto a project if the applicant provides evidence of project benefits sufficient to justify a finding of public convenience and necessity and issuance of a certificate.[88] The strength of the benefit showing will need to be proportional to the applicant's anticipated reliance on eminent domain to acquire necessary property rights. If the Commission finds project benefits will outweigh adverse impacts on economic interests, it then proceeds to consider the results of its NEPA review in reaching a decision on whether the proposed project is required by the public convenience and necessity.[89]

I. Commission Precedent and the Evolution of the Implementation of the Policy Statement

35. Prior to adopting the Policy Statement, the Commission required applicants to show that some percentage of proposed capacity was subscribed under long-term firm service agreements.[90] The Policy Statement adopted a new approach, under which the Commission would allow an applicant to rely on a variety of operational, economic, and environmental factors to demonstrate need.[91] In practice, applicants have generally elected to present, and the Commission has accepted, customer commitments as the principal factor in demonstrating project need.[92] Today, many proposed projects are fully, or nearly fully, subscribed under long-term firm service agreements that the Commission accepts as strong evidence that there is market demand for a proposed project.[93] The Commission has not looked beyond contracts for a further determination of market or supply need since the adoption of incremental pricing and the resultant shifting of the risk of constructing new capacity to the pipeline and the expansion shippers. In instances where an applicant has neither entered into any precedent agreements for its project nor submitted other evidence to show need, and the project will cause adverse effects, the Commission has declined to issue a certificate.[94]

36. Stakeholders in some proceedings have raised questions as to whether precedent agreements continue to be an appropriate indicator of project need and whether the Commission should reconsider its approach to examining project need. This includes both the question of the overall need for the proposed project within the energy marketplace, as well as the need for the capacity of individual project shippers. Specific concerns raised have included: (1) Whether existing infrastructure can accommodate the incremental service to be provided by proposed project; (2) whether anticipated demand in the project's markets will truly materialize; (3) the potential for renewable energy to meet future demand for electricity generation and its potential impacts on projects designed to serve natural gas-fired generators; (4) the need for the Commission to evaluate the new natural gas pipeline infrastructure on a region-wide basis; and (5) whether agreements with affiliates constitute a showing of market need.

II. The Commission's NEPA Review

37. Since the early 2000s, the Commission has encouraged jurisdictional natural gas companies to use a voluntary pre-filing program for natural gas pipeline projects.[95] During the pre-filing process, applicants can coordinate with Commission staff and other agencies to identify and resolve major environmental issues on a project before filing an application.[96] Proposed

the service commitments described in precedent agreements.

[85] Policy Statement, 88 FERC ¶ 61,227 at 61,749.

[86] *Id.*

[87] *Id.*

[88] Policy Statement, 88 FERC ¶ 61,227 at 61,749.

[89] In practice the environmental document is prepared concurrently with the analysis of the economic considerations. However, as described above, if a project's anticipated public benefits fail to outweigh its residual adverse effects on economic interests, the proposal will be denied and there will be no need to consider what the environmental impacts of the project would have been.

[90] *E.g., El Paso Nat. Gas Co.,* 65 FERC ¶ 61,276, at 61,270–61,271 (1993) (requiring applicant to submit ''long-term'' contracts or precedent agreements for a ''substantial amount'' of proposed firm transportation capacity); *Tex. E. Transmission Corp.,* 82 FERC ¶ 61,238, at 61,915–61,917 (1998) (explaining that a minimum level of 25 percent evolved after *El Paso Natural Gas*).

[91] Policy Statement, 88 FERC ¶ 61,227 at 61,747 (''the Commission will consider all relevant factors reflecting on the need for the project. These might include, but would not be limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.'').

[92] *See, e.g., PennEast Pipeline Co., LLC,* 162 FERC ¶ 61,053, at PP 27–36 (2018) (*PennEast*); *Atlantic Coast Pipeline, LLC,* 161 FERC ¶ 61,042, at PP 56–63 (2017) (*Atlantic Coast*).

[93] Policy Statement, 88 FERC ¶ 61,227 at 61,743; *see, e.g., PennEast,* 162 FERC ¶ 61,053 (990,000 Dth/d of 1,107,000 Dth/d capacity subscribed); *Mountain Valley Pipeline, LLC,* 161 FERC ¶ 61,043 (2017) (2,000,000 Dth/d fully subscribed); *Atlantic Coast,* 161 FERC ¶ 61,042 (1,440,000 Dth/d of 1,500,000 Dth/d capacity subscribed); *Rover Pipeline LLC,* 158 FERC ¶ 61,109, at P 44 (2017) (3,100,000 Dth/d of 3,250,000 Dth/d capacity subscribed).

[94] *See, e.g., Jordan Cove Energy Project, L.P.,* 154 FERC ¶ 61,190, *reh'g denied,* 157 FERC ¶ 61,194 (2016); *Turtle Bayou,* 135 FERC ¶ 61,233.

[95] In addition, in response to the Energy Policy Act of 2005, the Commission established pre-filing regulations, which are mandatory for LNG terminal facilities. 18 CFR 157.21.

[96] The Kern River 2003 Expansion Project (Docket No. CP01–422–000) was the first project to use the Commission's Pre-filing Process.

projects that would typically benefit from this pre-filing process have opted to use it. The pre-filing process allows applicants and staff to engage in enhanced and early outreach efforts with stakeholders, and often results in major and minor route modifications prior to the applicant submitting an application to avoid or minimize impacts on sensitive environmental resources identified by Commission staff, other agencies, federally recognized tribes, and affected landowners.[97] In addition to enhanced outreach efforts, during the pre-filing process Commission staff performs site visits, consults other agencies and federally recognized tribes, reviews drafts of an applicant's environmental resource reports, and provides comments to applicants regarding alternatives, siting concerns, inaccuracies, additional surveys or studies, and needed mitigation plans to improve the quality of an application. These efforts routinely result in improvements and changes to the proposed projects compared to the applicants' initial plan when initiating the pre-filing process. In conducting its assessment of the economic effects of a proposed project after an application is filed, the Commission can include relevant information about residual adverse effects developed in the pre-filing process or during a concurrent environmental review.[98]

38. In reviewing an application, the Commission currently performs a lengthy NEPA review, including numerous opportunities for public involvement, consultation with other federal, state, and local agencies, and an independent evaluation of the environmental impacts of a proposed project. In July 2015, the Commission issued guidance on best practices for stakeholder outreach programs for natural gas projects.[99] This guidance identifies the various opportunities for public engagement by project applicants and Commission staff throughout the pre-filing and NEPA review process, including project briefings to elected officials, open houses, scoping sessions, agency meetings, site visits, and NEPA document comment periods.

39. Commission staff performs a thorough independent review of the environmental impacts of a proposed project through verifying submitted information and comments, issuing information requests to clarify inaccuracies or obtain additional information, and consulting with federal, state, and local agencies and federally recognized tribes. Commission NEPA documents address impacts on various environmental resources, including geology, soils, groundwater, surface water, wetlands, aquatic resources, vegetation, wildlife, special status species, cultural resources, land use, recreation, aesthetics, socioeconomics, air quality, climate change, noise, and reliability and safety.

40. Over the past decade there has been a marked increase in the involvement of federally recognized tribes, affected landowners, and environmental organizations in proposed natural gas project proceedings. Concerns raised have primarily focused on the need for new projects, alternatives, cumulative impacts, and the effects related to the production and consumption of natural gas (particularly the contribution of GHG emissions to global climate change).

A. Alternatives

41. The Commission's NEPA documents address a wide variety of alternatives. These include the no-action alternative (*i.e.,* the status quo), system alternatives (using existing, modified, or other proposed gas facilities), design alternatives (using a different pipeline diameter, looping versus compression, and electric-driven versus gas-driven compressor equipment), and route and siting alternatives that could satisfy the purpose and need of the proposed project. Alternatives considered include those contemplated by the applicant and those proposed by agencies, federally recognized tribes, stakeholders, and Commission staff.

42. Should the Commission find that there is insufficient support for the need for a project, it could select the no-action alternative by rejecting the proposed project. However, the Commission has neither authority to require the construction of any alternative other than the project proposed, nor does it have authority to require the development of nonjurisdictional actions or projects (*e.g.,* renewable projects or energy conservation measures). When an alternative is not reasonable, *i.e.,* when it cannot function as a substitute for the proposed project, the Commission does not consider it in its NEPA analysis.

B. GHG Emissions and Climate Change

43. GHG emissions are unique in that, unlike other environmental impacts studied in pipeline proceedings that have localized effects, emissions from around the globe accumulate in the atmosphere and contribute to climate change impacts worldwide.[100] In 2010, CEQ issued its first draft guidance on how federal agencies can consider the effects of GHG emissions and climate change under NEPA.[101] CEQ revised the draft guidance in 2014,[102] and issued final guidance in 2016.[103] Throughout the guidance's evolution, CEQ consistently advised agencies to quantify GHG emissions and consider both the extent to which a proposed project's GHG emissions would contribute to climate change and also how a changing climate may impact the proposed project in their NEPA documents. In April 2017, CEQ rescinded its 2016 final guidance as directed by Executive Order 13783

[97] For example, after participating in the pre-filing process and holding over 200 meetings with public officials, as well as 15 ''informational sessions'' for impacted landowners, PennEast incorporated 70 of 101 identified route variations into its final proposed route. *PennEast,* 162 FERC ¶ 61,053 at P 39.

[98] The early elimination or refinement of proposals before and during Commission review leads to a high rate of project certification, subject to protective conditions. This does not demonstrate a bias in favor of certification, as past participants have claimed. *See, e.g., NO Gas Pipeline* v. *FERC,* 756 F.3d 764, 770 (DC Cir. 2014) (''Presumably under most regulatory schemes, by the time applicants and their expert counsel have worked through changes, adaptations, and amendments, they are not likely to pursue many certificates that are hopeless. The fact that they generally succeed in choosing to expend their resources on applications that serve their own financial interests does not mean that an agency which recognizes merit in such applications is biased.''); *Minisink Residents for Envtl. Pres. and Safety* v. *FERC,* 762 F.3d 97, 108 n.7 (DC Cir. 2014) (*Minisink*) (same).

[99] FERC, *Suggested Best Practices for Industry Outreach Programs to Stakeholders,* (2015), *https://www.ferc.gov/industries/gas/enviro/guidelines/stakeholder-brochure.pdf.* See also FERC, *Guidelines for Reporting on Cultural Resources Investigations for Natural Gas Projects* (2017), *https://www.ferc.gov/industries/gas/enviro/guidelines/cultural-guidelines-final.pdf.*

[100] On December 15, 2009, the Environmental Protection Agency (EPA) defined air pollution to include the mix of six long-lived and directly emitted GHGs, finding that the presence of GHGs in the atmosphere may endanger public health and welfare through climate change. *Endangerment Finding and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act,* 74 FR 66496 (Dec. 15, 2009).

[101] CEQ, *Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions,* (Feb. 18, 2010), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf.*

[102] *Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews,* 79 FR 77802 (Dec. 18, 2014) (Revised Draft GHG Guidance).

[103] CEQ, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews,* (Aug. 1, 2016) (Final GHG Guidance), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf.*

Promoting Energy Independence and Economic Growth.[104]

44. Since CEQ issued its initial draft guidance, Commission staff has addressed climate change in its NEPA documents. Over the past seven years, Commission staff has expanded its efforts to address GHG emissions and climate change by including GHG emission estimates from project construction (*e.g.,* tailpipe emissions from construction equipment) and operation (*e.g.,* fuel combustion from compressor stations and gas venting and leaks). The Commission's NEPA documents also currently include any mitigation measures the applicant will employ to reduce GHG emissions, including mitigation of methane leaks. Such measures predominantly take the form of best practices and specific technologies developed under the EPA's Natural Gas STAR Program.[105] Further, the Commission's NEPA documents discuss the regulations under the Clean Air Act applicable to GHG emissions, recognize that natural gas infrastructure projects contribute GHG emissions that affect global climate change, identify the existing and projected climate change impacts occurring in a project's geographic region, and explain the impacts that climate change may have on a specific project (*e.g.,* future sea level rise and storm surge).[106] Current and projected regional climate change impacts are based on the most recently issued *National Climate Assessment*[107] by the United States Global Change Research Program.[108] The current assessment provides a regional analysis of climate change for eight defined United States regions: Northeast, Southeast, Northwest, Southwest, Midwest, Great Plains, Coasts, and Alaska.

45. To the extent there exist relevant federal, regional, state, tribal, or local plans, policies, or laws for GHG emissions reductions or climate adaptations, the Commission's NEPA documents address the consistency of a proposed project's direct impacts (*e.g.,* compressor station emissions) with those known climate goals. Individual plans may range in scope and specificity from, for example, general commitments to reduce GHG emissions, to particular plans to reduce GHG emissions by sector, as well as plans to adapt to a changing climate.

46. Historically, CEQ recognized the difficulty in identifying the extent to which a specific action or project may contribute to overall climate change, given that climate change results from the cumulative buildup of carbon dioxide and other GHGs, rather than from the incremental emissions of any one project. Additionally, there is no standard established by international or federal policy, or by a recognized scientific body that the Commission could rely on in determining whether project-specific GHG emissions are significant. Thus, the Commission has stated that, given the information available to date, any attempt by the Commission to create a significance threshold would be arbitrary.[109] CEQ's revised draft and final guidance cautioned agencies about calculating a proposed project's emissions as a percentage of sector, nationwide, or global emissions in determining significance, ''unless the agency determines that such information would be helpful to decision makers and the public to distinguish among alternatives and mitigations. . . . .''[110] Generally, this percentage would be too low to be considered meaningful because project emissions would be miniscule compared to nationwide or global emissions. CEQ's past guidance also stated that agencies need not undertake new research or analysis of potential climate change in the proposed project area, but may instead summarize and incorporate by reference the relevant scientific literature.[111]

47. In recent years, commenters began raising GHG issues on an increasingly frequent basis in Commission proceedings and on appellate review, with emphasis on upstream and downstream GHG emissions.[112] Some commenters suggest that the Commission's current analyses of GHG emissions and climate change are inadequate. They argue that all projects relying on fossil fuels should be considered to cause a significant impact on climate change. Commenters also request that the Commission employ the Social Cost of Carbon tool[113] to monetize climate change impacts from estimated GHG emissions.

48. The Commission has generally declined to consider the upstream or downstream GHG emissions impacts of natural gas production or end use as indirect impacts of the proposed project because the Commission found no requisite causation and/or because the impacts of such production or end use were speculative and unknown, and therefore not reasonably foreseeable.[114] With respect to the cumulative impacts analysis in which causation is not relevant, no analysis of GHG emissions from upstream and downstream activities was included except where identified upstream production wells (new) or end-use facilities (existing or proposed) were within the geographic and temporal scope of the proposed project's direct and indirect impacts.[115]

49. In late 2016 the Commission began providing the public with additional information, beyond the requirements of NEPA and its implementing regulations, regarding potential impacts associated with upstream unconventional natural gas production and downstream natural gas combustion even where the criteria of causation and reasonable foreseeability

[104] Exec. Order No. 13783, 82 FR 16576 (Apr. 5, 2017).

[105] EPA's Natural Gas STAR program is a voluntary partnership between the EPA and industry to ''encourage oil and natural gas companies to adopt cost-effective technologies and best practices that improve operational efficiency and reduce methane emissions.''

[106] 42 U.S.C. 7401–7671q.

[107] The current report is the *Third National Climate Assessment,* issued in May 2014. *https://nca2014.globalchange.gov/.* The United States Global Change Research Program anticipates releasing the Fourth National Climate Assessment in late 2018.

[108] The United States Global Change Research Program consists of 13 federal agencies and is overseen by the Subcommittee on Global Change Research of the National Science and Technology Council's Committee on Environment, Natural Resources and Sustainability, and the White House Office of Science and Technology Policy. The federal agencies are the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Interior, State, and Transportation, as well as the EPA, the National Aeronautics and Space Administration, the National Science Foundation, the Smithsonian Institution, and the United States Agency for International Development.

[109] *Fla. Se. Connection, LLC,* 162 FERC ¶ 61,233, at PP 26–27 (2018) (LaFleur and Glick, Comm'rs, dissenting).

[110] Revised Draft GHG Guidance, 79 FR at 77808; *accord* Final GHG Guidance at 11, 15–16.

[111] Final GHG Guidance at 22.

[112] *See, e.g., Atlantic Coast,* 161 FERC ¶ 61,042; *Transcontinental Gas Pipe Line Co., LLC,* 158 FERC ¶ 61,125, *order amending certificate,* 159 FERC ¶ 62,181, *order on reh'g,* 161 FERC ¶ 61,250 (2017), *order denying reh'g,* 162 FERC ¶ 61,192 (2018).

[113] *See generally* Interagency Working Group on Social Cost of Carbon, United States Government, *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866* (Aug. 2016), *https://www.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf.*

[114] *See, e.g., Cent. N.Y. Oil & Gas Co.,* 137 FERC ¶ 61,121, at PP 95–105, *on reh'g,* 138 FERC ¶ 61,104, at PP 46–48 (2012), *aff'd sub nom. Coal. For Responsible Growth & Res. Conservation* v. *FERC,* 485 F. App'x 472 (2d Cir. 2012) (unpublished opinion).

[115] For example, in the EIS for the proposed Aguirre Offshore GasPort, a jurisdictional floating storage regasification unit and subsea pipeline to deliver gas to an existing non-jurisdictional generating complex, Commission staff disclosed the expected emissions, including GHG emissions, from both the jurisdictional project and non-jurisdictional generating station. Final EIS for the Aquirre Offshore GasPort Project,— at 4–221, tbl.4.12.2–1 (Feb. 20, 2015) (Docket No. CP13–193–000).

were absent.[116] Recent studies identify, on a generic, high-level basis, potential environmental impacts associated with natural gas production and natural gas-fired power generation.[117] In Commission orders for projects intended to transport gas produced from the Marcellus and Utica shales, the Commission used this information to provide general estimates of production-related GHG emissions, such as methane released from wells and gathering facilities, and production-related land disturbance and water consumption.[118] The Commission estimated downstream GHG emissions by assuming the full combustion of the total volume of gas capable of being transported by the project, typically as part of the cumulative impact analysis.[119] The Commission described the full combustion estimate as a worst-case scenario that is unlikely to reflect actual impacts.[120] However, in a recent order, *DTE Midstream Appalachia, LLC*,[121] the Commission did not include information on upstream, production-related impacts, stating that ''[a] broad analysis, based on generalized assumptions rather than specific information, will not provide meaningful assistance to the Commission in its decision making, *e.g.*, evaluating potential alternatives to a specific proposal.'' [122]

50. As for the use of the Social Cost of Carbon tool, the Commission has found that although this tool is appropriate to use as part of cost-benefit analyses associated with certain rulemakings, it is not useful or appropriate to apply in its NEPA documents.[123]

III. Request for Comments

51. As part of ensuring that the Commission continues to meet its statutory obligations, the Commission, on occasion, engages in public inquiry to gauge whether there is a need to add to, modify, or eliminate certain policies or regulatory requirements. In this proceeding, the Commission seeks comments on potential modifications to its approach to determining whether a proposed project is required by the public convenience and necessity. The Commission has identified four general areas of examination in this inquiry: (1) The reliance on precedent agreements to demonstrate need for a proposed project; (2) the potential exercise of eminent domain and landowner interests; (3) the Commission's evaluation of alternatives and environmental effects under NEPA and the NGA; and (4) the efficiency and effectiveness of the Commission's certificate processes. The Commission seeks comment on the questions set forth below, organized according to these four broad categories. Commenters need not answer every question enumerated below.

A. Potential Adjustments to the Commission's Determination of Need

52. In practice, the Commission does not look ''behind'' or ''beyond'' precedent agreements when making a determination about the need for new projects or the needs of the individual shippers. The United States Court of Appeals for the District of Columbia Circuit recently found ''nothing in the policy statement or in any precedent construing it to suggest that it requires, rather than permits, the Commission to assess a project's benefits by looking beyond the market need reflected by the applicant's existing contracts with shippers.'' [124]

53. In retail gas distribution markets, state regulators review LDC commodity and capacity purchases. State regulators also may review electric distribution company fuel purchases. Thus, in these regions, state regulators may review the purchases to determine the prudence of expenditures by the utilities they regulate. For parties purchasing interstate transportation capacity who are not subject to state regulatory oversight, the fact that a purchaser is fully at risk for the cost of the capacity and cannot directly pass through the costs to another party has lessened the need to scrutinize such agreements.

To date, the Commission has not distinguished between affiliate and non-affiliate precedent agreements in considering the need for a proposed project.[125]

54. However, recent changes in the gas industry, whereby producers are contracting for an increasing amount of transportation capacity as well as an increase in the number of shippers that are affiliated with the pipeline companies, have raised questions among some entities as to whether precedent agreements remain an appropriate indicator of need and whether the Commission should examine additional information in evaluating the need for proposed pipeline infrastructure projects. Accordingly, comments are requested on the following questions.

A1. Should the Commission consider changes in how it determines whether there is a public need for a proposed project?

A2. In determining whether there is a public need for a proposed project, what benefits should the Commission consider? For example, should the Commission examine whether the proposed project meets market demand, enhances resilience or reliability, promotes competition among natural gas companies, or enhances the functioning of gas markets?

A3. Currently, the Commission considers precedent agreements, whereby entities intending to be shippers on the contemplated pipeline commit contractually to such shipments, to be strong evidence that there is a public need for a proposed project. If the Commission were to look beyond precedent agreements, what types of additional or alternative evidence should the Commission examine to determine project need? What would such evidence provide that cannot be determined with precedent agreements alone? How should the Commission assess such evidence? Is there any heightened litigation risk or other risk that could result from any broadening of the scope of evidence the Commission considers during a certificate proceeding? If so, how should the Commission safeguard against or otherwise address such risks?

A4. Should the Commission consider distinguishing between precedent agreements with affiliates and non-affiliates in considering the need for a proposed project? If so, how?

A5. Should the Commission consider whether there are specific provisions or

[116] *See, e.g., Columbia Gas Transmission, LLC*, 158 FERC ¶ 61,046, at PP 116–120 (2017).

[117] *E.g.*, National Energy Technology Laboratory, U.S. Department of Energy, *Life Cycle Analysis of Natural Gas Extraction and Power Generation*, DOE/NETL–2015/1714 (2016), *https://www.netl.doe.gov/energy-analyses/temp/LifeCycleAnalysisofNaturalGasExtractionandPowerGeneration_083016.pdf*.

[118] *E.g., PennEast*, 162 FERC ¶ 61,053 at PP 193–210; *Millennium Pipeline Co., LLC*, 161 FERC ¶ 61,229, PP 151–165 (2017) (*Millennium*).

[119] This information was initially included in certificate orders (in cases where NEPA documents had already been finalized), and subsequently in new NEPA documents. Typically, the end use of the gas to be transported by a project is not known.

[120] *E.g., Millennium*, 161 FERC ¶ 61,229, at P 164 (2017) (''We note that this CO2e [carbon dioxide equivalents] estimate represents an upper bound for the amount of end-use combustion that could result from the gas transported by this project. This is because some of the gas may displace other fuels (*i.e.*, fuel oil and coal) that could result in lower total CO2e emissions. It may also displace gas that otherwise would be transported via different systems, resulting in no change in CO2e emissions, or be used as a feedstock. This estimate also assumes the maximum capacity is transported 365 days per year, which is rarely the case because many projects are designed for peak use.

Consequently, it is unlikely that this total amount of GHG emissions would occur, and emissions are likely to be significantly lower than the above estimate.'').

[121] 162 FERC ¶ 61,238 (2018) (LaFleur and Glick Comm'rs, dissenting).

[122] *Id.* at P 54 (footnote omitted).

[123] *Fla. Se. Connection*, 162 FERC ¶ 61,233 at PP 37–38 (LaFleur and Glick, Comm'rs, dissenting).

[124] *Myersville Citizens for a Rural Cmty. Inc.* v *FERC*, 783 F.3d 1301, 1311 (D.C. Cir. 2015) (citing *Minisink*, 762 F.3d at 111 n.10).

[125] *See, e.g., E. Shore Nat. Gas Co.*, 132 FERC ¶ 61,204, at P 31 (2010); *Millennium Pipeline Co., L.P.*, 100 FERC ¶ 61,277, at P 57 (2002).

characteristics of the precedent agreements that the Commission should more closely review in considering the need for a proposed project? For example, should the term of the precedent agreement have any bearing on the Commission's consideration of need or should the Commission consider whether the contracts are subject to state review?

A6. In its determinations regarding project need, should the Commission consider the intended or expected end use of the natural gas? Would consideration of end uses better inform the Commission's determination regarding whether there is a need for the project? What are the challenges to determining the ultimate end use of the new capacity a shipper is contracting for? How could such challenges be overcome?

A7. Should the Commission consider requiring additional or alternative evidence of need for different end uses? What would be the effect on pipeline companies, consumers, gas prices, and competition? Examples of end uses could include: LDC contracts to serve domestic use; contracts with marketers to move gas from a production area to a liquid trading point; contracts for transporting gas to an export facility; projects for reliability and/or resilience; and contracts for electric generating resources.

A8. How should the Commission take into account that end uses for gas may not be permanent and may change over time?

A9. Should the Commission assess need differently if multiple pipeline applications to provide service in the same geographic area are pending before the Commission? For example, should the Commission consider a regional approach to a needs determination if there are multiple pipeline applications pending for the same geographic area? Should the Commission change the way it considers the impact of a new project on competing existing pipeline systems or their captive shippers? If so, what would that analysis look like in practice?

A10. Should the Commission consider adjusting its assessment of need to examine (1) if existing infrastructure can accommodate a proposed project (beyond the system alternatives analysis examined in the Commission's environmental review); (2) if demand in a new project's markets will materialize; or (3) if reliance on other energy sources to meet future demand for electricity generation would impact gas projects designed to supply gas-fired generators? If so, how?

B. The Exercise of Eminent Domain and Landowner Interests

55. The Policy Statement described how the Commission takes into account the extent to which an applicant expects to acquire property rights by relying on eminent domain in determining whether a proposed project is needed. Although Commission authorization of a project through the issuance of a certificate of public convenience and necessity under the NGA conveys the right of eminent domain, the Commission itself does not grant the use of eminent domain across specific properties. Only after the Commission authorizes a project can the project sponsor assert the right of eminent domain for outstanding lands for which it could not negotiate an easement.

56. Recently, the Commission has been seeing more proposed projects where applicants are unable to access potential rights-of-way prior to the Commission's decision on an application, which limits the information that can be included in an application.

57. Historically, an applicant's inability to complete on-site survey work has not precluded the Commission from completing a meaningful review of a proposal since partial on-site surveys, in combination with aerial overflight and data from other sources, can provide an adequate basis for the Commission to reach an informed decision. The Commission's NEPA documents are based on the best available data at the time of development.[126] When information from other data sources is used to complete a NEPA review, the Commission routinely conditions its authorizations requiring applicants to perform on-site surveys to verify this information, prior to construction. In addition, the Commission has developed standard and effective construction mitigation, and restoration and rehabilitation procedures applicable to wetlands and waterbodies, cultural resources, and endangered, threatened, and special concern species.[127] Because project sponsors must adhere to these established procedures, if survey work is incomplete at the time a Commission certificate order is issued, these procedures assure that impacts on resources are adequately minimized during construction. The Commission invites comments on the following questions.

B1. Should the Commission consider adjusting its consideration of the potential exercise of eminent domain in reviewing project applications? If so, how should the Commission adjust its approach?

B2. Should applicants take additional measures to minimize the use of eminent domain? If so, what should such measures be? How would that affect a project's overall costs? How could such a requirement affect an applicant's ability to adjust a proposed route based on public input received during the Commission's project review?

B3. For proposed projects that will potentially require the exercise of eminent domain, should the Commission consider changing how it balances the potential use of eminent domain against the showing of need for the project? Since the amount of eminent domain used cannot be established with certainty until after a Commission order is issued, is it possible for the Commission to reliably estimate the amount of eminent domain a proposed project may use such that the Commission could use that information during the consideration of an application?

B4. Does the Commission's current certificate process adequately take landowner interests into account? Are there steps that applicants and the Commission should implement to better take landowner interests into account and encourage landowner participation in the process? If so, what should the steps be?

B5. Should the Commission reconsider how it addresses applications where the applicant is unable to access portions of the right-of-way? Should the Commission consider changes in how it considers environmental information gathered after an order authorizing a project is issued?

C. The Commission's Consideration of Environmental Impacts

58. Among the goals in the Policy Statement is the avoidance of unnecessary disruption of the environment. The Commission incorporates a proposed project's environmental impacts into the balance of factors under the public convenience and necessity standard. Although the Commission performs a comprehensive and independent NEPA review, as described above, there has been increased stakeholder interest regarding the alternatives that the Commission evaluates in its public interest determination, how the Commission addresses climate change, and the evolving science behind GHG emissions and climate change. Therefore, the Commission invites comments on the following ways that the Commission could review its environmental evaluations within the bounds of NEPA and the NGA:

[126] An agency reasonably uses ''the best information available when it [begins] its analysis and then check[s] the assumptions . . . as new information [becomes] available . . . .'' *Village of Bensenville* v. *FAA,* 457 F.3d 52, 71 (DC Cir. 2006). *See also* 40 CFR 1502.22(b)(3) (if relevant information is unavailable, ''the agency shall include . . . a summary of *existing* credible scientific evidence'') (emphasis added).

[127] The Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* establishes baseline mitigation measures that project sponsors must implement, except when specifically exempted by Commission staff, to minimize erosion and enhance revegetation associated with their proposed projects. *https://www.ferc.gov/industries/gas/enviro/plan.pdf.* The Commission's *Wetland and Waterbody Construction and Mitigation Procedures* establishes baseline mitigation measures that project sponsors must implement, except when specifically exempted by Commission staff, to minimize the extent and duration of project-related disturbance on wetlands and waterbodies. *https://www.ferc.gov/industries/gas/enviro/procedures.pdf.*

C1. NEPA and its implementing regulations require an agency to consider reasonable alternatives to the proposed action. Currently the Commission considers the no-action alternative, system alternatives, design alternatives, and route alternatives. Should the Commission consider broadening its environmental analysis to consider alternatives beyond those that are currently included? If so, what specific types of additional alternatives should the Commission consider?

C2. Are there any environmental impacts that the Commission does not currently consider in its cumulative impact analysis that could be captured with a broader regional evaluation? If so, how broadly should regions be defined (*e.g.,* which states or geographic boundaries best define different regions), and which environmental resources considered in NEPA would be affected on a larger, regional scale?

C3. In conducting an analysis of a project, should the Commission consider calculating the potential GHG emissions from upstream activities (*e.g.,* the drilling of natural gas wells)? What information would be necessary for the Commission to reliably and accurately conduct this calculation? Should the Commission also evaluate the significance of these upstream impacts? If so, what criteria would be used to determine the significance of these impacts?

C4. In conducting an analysis of a project, should the Commission consider calculating the potential GHG emissions from the downstream consumption of the gas? If so, should the Commission base this calculation on total consumption, or some other amount? What information would be necessary for the Commission to reliably and accurately conduct this calculation? Should the Commission also evaluate the significance of these downstream impacts? If so, what criteria would be used to determine the significance of these impacts?

C5. How would additional information related to the GHG impacts upstream or downstream of a proposed project inform the Commission's decision on an application? What topics or criteria should be included in this additional information?

C6. As part of the Commission's public interest determination, should the Commission consider changing how it weighs a proposed project's adverse environmental impacts against favorable economic benefits to determine whether the proposed project is required by the public convenience and necessity and still provide regulatory certainty to stakeholders?

C7. Should the Commission reconsider how it uses the Social Cost of Carbon tool in its environmental review of a proposed project? How could the Commission use the Social Cost of Carbon tool in its weighing of the costs versus benefits of a proposed project? How could the Commission acquire complete information to appropriately quantify all of the monetized costs/negative impacts and monetized benefits of a proposed project?

D. Improvements to the Efficiency of the Commission's Review Process

59. It is the Commission's desire to improve the transparency, timing, and predictability of the Commission's certification process.[128] In addition, as noted above, Executive Order 13807 encourages agencies to make timely decisions with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years. Inefficiencies in project decision-making can delay infrastructure investments, increase project costs, and block infrastructure that would benefit the economy.

60. The Commission seeks comment on the following questions regarding its certificate application review process:

D1. Should certain aspects of the Commission's application review process (*i.e.,* pre-filing, post-filing, and post-order-issuance) be shortened, performed concurrently with other activities, or eliminated, to make the overall process more efficient? If so, what specific changes could the Commission consider implementing?

D2. Should the Commission consider changes to the pre-filing process? How can the Commission ensure the most effective participation by interested stakeholders during the pre-filing process and how would any such changes affect the implementation and duration of the pre-filing process?

D3. Are there ways for the Commission to work more efficiently and effectively with other agencies, federal and state, that have a role in the certificate review process? If so, how?

D4. Are there classes of projects that should appropriately be subject to a shortened process? What would the shortened process entail?

IV. Comment Procedures

61. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due June 25, 2018. Comments must refer to Docket No. PL18–1–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

62. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word-processing formats. Documents created electronically using word-processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

63. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

64. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

V. Document Availability

65. 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*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

66. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

67. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Issued: April 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–08658 Filed 4–24–18; 8:45 am]

BILLING CODE 6717–01–P

[128] *E.g., Tenn. Gas Pipeline Co., L.L.C.,* 162 FERC ¶ 61,167, at PP 49–51 (2018) (order addressing timely intervention).

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: RP18–708–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 041718 Negotiated Rates—Consolidated Edison Energy, Inc. H–2275–89 to be effective 4/17/2018.
Filed Date: 4/17/18.
Accession Number: 20180417–5046.
Comments Due: 5 p.m. ET 4/30/18.

Docket Numbers: RP18–709–000.
Applicants: Elba Express Company, L.L.C.
Description: § 4(d) Rate Filing: Fuel Tracker Filing—2018 to be effective 6/1/2018.
Filed Date: 4/17/18.
Accession Number: 20180417–5054.
Comments Due: 5 p.m. ET 4/30/18.

Docket Numbers: RP18–710–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Newfield 18 to Sequent 1973) to be effective 4/17/2018.
Filed Date: 4/17/18.
Accession Number: 20180417–5056.
Comments Due: 5 p.m. ET 4/30/18.

Docket Numbers: RP18–711–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Amend No. 1 Neg Rate Nonconforming Mitsui Co Cameron LNG SP326297 to be effective 3/1/2018.
Filed Date: 4/17/18.
Accession Number: 20180417–5200.
Comments Due: 5 p.m. ET 4/30/18.

Docket Numbers: RP18–712–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Compliance filing Valley Lateral Project Compliance Filing—CP16–17 to be effective 6/16/2018.
Filed Date: 4/17/18.
Accession Number: 20180417–5201.
Comments Due: 5 p.m. ET 4/30/18.

Docket Numbers: RP18–713–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Newfield 18 to Sequent 1974) to be effective 4/18/2018.
Filed Date: 4/18/18.
Accession Number: 20180418–5021.
Comments Due: 5 p.m. ET 4/30/18.

Docket Numbers: RP18–714–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing April 2018 to be effective 6/1/2018.
Filed Date: 4/18/18.
Accession Number: 20180418–5044.
Comments Due: 5 p.m. ET 4/30/18.

Docket Numbers: RP18–715–000.
Applicants: Centra Pipelines Minnesota Inc.
Description: § 4(d) Rate Filing: Updated Shipper Index April 2018 to be effective 6/1/2018.
Filed Date: 4/18/18.
Accession Number: 20180418–5116.
Comments Due: 5 p.m. ET 4/30/18.

Docket Numbers: RP18–716–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Request for Waiver and Extensions of El Paso Natural Gas Company, L.L.C.
Filed Date: 4/18/18.
Accession Number: 20180418–5146.
Comments Due: 5 p.m. ET 4/30/18.

Docket Numbers: RP18–717–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Clean Up Filing—Volume 2—Table of Contents to be effective 3/24/2018.
Filed Date: 4/18/18.
Accession Number: 20180418–5235.
Comments Due: 5 p.m. ET 4/30/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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: April 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–08612 Filed 4–24–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–86–000.
Applicants: Imperial Valley Solar 2, LLC.
Description: Application of Imperial Valley Solar 2, LLC for Transfer of Jurisdictional Facilities Under Section 203 of the Federal Power Act.
Filed Date: 4/18/18.
Accession Number: 20180418–5271.
Comments Due: 5 p.m. ET 5/9/18.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–75–000.
Applicants: CED Upton County Solar, LLC.
Description: Self-Certification of EG or FC of CED Upton County Solar, LLC.
Filed Date: 4/19/18.
Accession Number: 20180419–5161.
Comments Due: 5 p.m. ET 5/10/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2984–042.
Applicants: Merrill Lynch Commodities, Inc.
Description: Notice of Non-Material Change in Status of Merrill Lynch Commodities, Inc.
Filed Date: 4/18/18.
Accession Number: 20180418–5280.
Comments Due: 5 p.m. ET 5/9/18.

Docket Numbers: ER17–351–004*; ER17–354–004; ER17–2162–003; ER17–2163–003.*
Applicants: American Falls Solar, LLC, American Falls Solar II, LLC, SunE Beacon Site 2 LLC, SunE Beacon Site 5 LLC.
Description: Notice of Change in Status of American Falls Solar, LLC, et al.
Filed Date: 4/18/18.
Accession Number: 20180418–5279.
Comments Due: 5 p.m. ET 5/9/18.

Docket Numbers: ER18–1396–000.
Applicants: NorthWestern Corporation.
Description: Tariff Cancellation: Notice of Cancellation: SA 822 Utilities Agreement with MDT (Milk River) to be effective 4/19/2018.
Filed Date: 4/18/18.
Accession Number: 20180418–5242.
Comments Due: 5 p.m. ET 5/9/18.

Docket Numbers: ER18–1397–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3294 Otter Tail Power Company NITSA and NOA Notice of Cancellation to be effective 1/1/2018.

Filed Date: 4/19/18.

Accession Number: 20180419–5124.

Comments Due: 5 p.m. ET 5/10/18.

Docket Numbers: ER18–1398–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Second Amended IFA re: City of Riverside Wilderness Substation to be effective 4/20/2018.

Filed Date: 4/19/18.

Accession Number: 20180419–5141.

Comments Due: 5 p.m. ET 5/10/18.

Docket Numbers: ER18–1399–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Cost Responsibility Agreement, Service Agreement No. 5069, NQ161 to be effective 3/28/2018.

Filed Date: 4/19/18.

Accession Number: 20180419–5164.

Comments Due: 5 p.m. ET 5/10/18.

Docket Numbers: ER18–1400–000.

Applicants: Southern California Edison Company.

Description: Tariff Cancellation: Notice of Cancellation GIA & DSA SCEBESS–003 Project SA Nos. 962–963 to be effective 7/9/2018.

Filed Date: 4/19/18.

Accession Number: 20180419–5193.

Comments Due: 5 p.m. ET 5/10/18.

Docket Numbers: ER18–1401–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: PSCo-WAPA-Multi CFA 350-Exb B 0.1.0 to be effective 6/19/2018.

Filed Date: 4/19/18.

Accession Number: 20180419–5203.

Comments Due: 5 p.m. ET 5/10/18.

Docket Numbers: ER18–1402–000.

Applicants: KCP&L Greater Missouri Operations Company.

Description: § 205(d) Rate Filing: Normal filing FERC NO 18 to be effective 5/1/2018.

Filed Date: 4/19/18.

Accession Number: 20180419–5245.

Comments Due: 5 p.m. ET 5/10/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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: April 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–08611 Filed 4–24–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2014–0738 and EPA–HQ–OAR–2010–0682; FRL–9976–29–OAR]

Notice of Requests for Approval of Alternative Means of Emission Limitation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: This action provides public notice and solicits comment on the alternative means of emission limitation (AMEL) requests from ExxonMobil Corporation; Marathon Petroleum Company, LP (for itself and on behalf of its subsidiary, Blanchard Refining, LLC); and Chalmette Refining, LLC, under the Clean Air Act (CAA), to operate flares at several refineries in Texas and Louisiana, as well as the AMEL request from LACC, LLC to operate flares at a chemical plant in Louisiana.

DATES: *Comments.* Comments must be received on or before June 11, 2018.

Public Hearing. If a public hearing is requested by April 30, 2018, then we will hold a public hearing on May 10, 2018 at the location described in the **ADDRESSES** section. The last day to pre-register in advance to speak at the public hearing will be May 8, 2018.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0738, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*, *Regulations.gov* is our preferred method of receiving comments. However, other submission methods are accepted. To ship or send mail via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2014–0738, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. Use the following Docket Center address if you are using express mail, commercial delivery, hand delivery, or courier: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statue. See the **SUPPLEMENTARY INFORMATION** section of this preamble for instructions on submitting CBI.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Public Hearing. If a public hearing is requested, it will be held at EPA Headquarters, EPA WJC East Building, 1201 Constitution Avenue NW, Washington, DC 20004. If a public hearing is requested, then we will provide details about the public hearing on our website at: *https://www3.epa.gov/ttn/atw/groundflares/groundflarespg.html.* The EPA does not intend to publish another document in the **Federal Register** announcing any updates on the request for a public hearing. Please contact Ms. Virginia Hunt of the Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–0832; email address: *hunt.virginia@epa.gov;* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether or not a public hearing will be held.

The EPA will make every effort to accommodate all speakers who arrive and register. If a hearing is held at a U.S. government facility, individuals planning to attend should be prepared to show a current, valid state- or federal-approved picture identification to the security staff in order to gain access to the meeting room. An expired form of identification will not be permitted. Please note that the Real ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by a noncompliant state, you must present an additional form of identification to enter a federal facility. Acceptable alternative forms of identification include: Federal employee badge, passports, enhanced driver's licenses, and military identification cards. Additional information on the Real ID Act is available at *https://www.dhs.gov/real-id-frequently-asked-questions.* In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Ms. Angie Carey, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards (OAQPS), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2187; fax number: (919) 541–0516; and email address: *carey.angela@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2014–0738. All documents in the docket are listed in the *Regulations.gov* index. 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. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2014–0738. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. This type of information should be submitted by mail as discussed below. The *http://www.regulations.gov* website site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2014–0738.

Acronyms and Abbreviations. We use multiple acronyms and terms in this notice. While this list may not be exhaustive, to ease the reading of this notice and for reference purposes, the EPA defines the following terms and acronyms here:

AMEL alternative means of emission limitation
BTU/scf British thermal units per standard cubic foot
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
Eqn equation
HAP hazardous air pollutants
LFL lower flammability limit
LFL_{cz} lower flammability limit of combustion zone gas
LFL_{vg} lower flammability limit of flare vent gas
LRGO linear relief gas oxidizer
MPGF multi-point ground flares
NESHAP national emission standards for hazardous air pollutants
NHV net heating value
NHV_{cz} net heating value of combustion zone gas
NHV_{vg} net heating value of flare vent gas
NSPS new source performance standards
OAQPS Office of Air Quality Planning and Standards
scf standard cubic feet
SKEC steam-assisted kinetic energy combustor
VOC volatile organic compounds

Organization of This Document. The information in this notice is organized as follows:

I. Background

A. Regulatory Flare Requirements and AMEL Requests

In this action, the U.S. Environmental Protection Agency (EPA) is soliciting comment on all aspects of these AMEL requests and the corresponding operating conditions that would demonstrate that the requested AMEL would achieve a reduction in emissions of volatile organic compounds (VOC) and hazardous air pollutants (HAP) at least equivalent to the reduction in emissions required by various standards in 40 Code of Federal Regulations (CFR) parts 60, 61, and 63 that apply to emission sources controlled by these flares. These standards incorporate the flare design and operating requirements in the parts 60 and 63 General Provisions (*i.e.,* 40 CFR 60.18(b) and 63.11(b)) into the individual new source performance standards (NSPS) and maximum achievable control technology (MACT) subparts, except for the Petroleum Refinery MACT, 40 CFR part 63, subpart CC, which specifies its flare requirements within the subpart (*i.e.,* 40 CFR 63.670). Four of the requests are for flares located at petroleum refineries, while the request from LACC, LLC is for a flare design at a chemical manufacturing facility. None of the flares located at petroleum refineries can meet the flare tip velocity limits in the Petroleum Refinery MACT, 40 CFR part 63, subpart CC. In addition, flares at these refineries and at LACC's chemical plant that are subject to other part 60 and 63 standards cannot meet the flare tip velocity limits contained in the applicable General Provisions to part 60 and 63. Based on our review of these requests and their supporting information, we conclude that, by following the conditions specified in this notice, the proposed flares will achieve at least equivalent emissions reductions as flares complying with the requirements of 40 CFR 60.18(b), 63.11(b) and/or 63.670(d), whichever is applicable.[1]

Alternative Means of Emission Limitation requests were submitted to the EPA for flares that cannot comply with the applicable flare tip velocity requirements in the Petroleum Refinery MACT, 40 CFR part 63, subpart CC and General Provisions to parts 60 and 63. These maximum flare tip velocity requirements ensure that the flame does not ''lift off'' or separate from the flare tip, which could cause flame instability and/or potentially result in a portion of the flare gas being released without proper combustion. Proper combustion for flares is considered to be 98-percent destruction efficiency or greater for organic HAP and VOC. The flares in these requests are designed to operate with tip exit velocities greater than those allowed in 40 CFR 60.18, 63.11, and 63.670 while achieving ≥96.5-percent combustion efficiency and 98-percent destruction efficiency. Requests from ExxonMobil Corporation, Marathon Petroleum Company, LP, Blanchard Refining, LLC, and Chalmette Refining, LLC were submitted to the EPA on November 7, 2017; October 7, 2016; September 20, 2017; and August 10, 2017, respectively. These requests, which seek AMEL for flares to be used at certain refineries subject to the Petroleum Refinery MACT, 40 CFR part 63, subpart CC, followed the AMEL framework specified in 40 CFR part 63, subpart CC at 40 CFR 63.670(r).[2] On May 7, 2017, LACC, LLC submitted an AMEL request for flares to be used at a chemical plant in Louisiana according to the framework for pressure assisted multi-point ground flares (MPGFs) that was published in the **Federal Register** on April 21, 2016 (*see* 81 FR 23486). The flare designs in these requests vary from a single tip design that is gas-assisted to multi-point tip designs which employ large numbers of tips at varying heights from close to ground level (these are termed multi-point ground flares [MPGF]) to an elevated multi-point design. The EPA has reviewed these requests and deemed them to be complete.

The ExxonMobil Corporation Baytown Refinery in Baytown, Texas, is seeking an AMEL to operate a gas-assisted flare during periods of startup, shutdown, upsets, and emergency events, as well as during fuel gas imbalance events. Marathon Petroleum Company, LP's Garyville, Louisiana Refinery, and Blanchard Refining, LLC's Galveston Bay Refinery (GBR) in Texas City, Texas, are seeking AMELs to operate their flares only during periods of startup, shutdown, upsets, and emergency events. Chalmette Refining, LLC in Chalmette, Louisiana, is seeking an AMEL to operate its flare during periods of upset and emergency events. LACC, LLC is seeking an AMEL to operate flares at its chemical plant in Lake Charles, Louisiana, during startups, shutdowns, upsets, and emergency events. See Table 1 for a list of regulations, by subparts, that each refinery and chemical plant has identified as applicable to the flares described above.

TABLE 1—SUMMARY OF APPLICABLE RULES THAT MAY APPLY TO STREAMS CONTROLLED BY FLARES

Applicable rules with vent streams going to control device(s)	Exxon Mobil Baytown, Texas Flare 26	Marathon Garyville, LA MPGF	Blanchard Refining GBR MPGF	Chalmette No. 1 Flare	LACC	Rule citation from Title 40 CFR that allow for use of a flare	Provisions for alternative means of emission limitation
NSPS Subpart VV		x	x			60.482–10(d)	60.484(a)–(f).
NSPS Subpart VVa		x	x		x	60.482–10a(d)	60.484a(a)–(f).
NSPS Subpart NNN		x	x	x	x	60.662(b)	CAA section 111(h)(3).
NSPS Subpart QQQ		x	x			60.692–5(c)	42 U.S.C. 7411(h)(3).
NSPS Subpart RRR		x	x		x	60.702(b)	CAA section 111(h)(3).
NSPS Subpart Kb		x	x		x	60.112b(a)(3)(ii)	60.114b.
NESHAP Subpart V		x	x		x	61.242–11(d)	40 CFR 63.6(g); 42 U.S.C. 7412(h)(3).
NESHAP Subpart J					x	61.242–11(d)	40 CFR 63.6(g); 42 U.S.C. 7412(h)(3).
NESHAP Subpart Y		x	x			61.271–(c)(2)	40 CFR 63.6(g); 40 CFR 61.273; 42 U.S.C. 7412(h)(3).
NESHAP Subpart BB		x	x			61.302(c)	40 CFR 63.6(g); 42 U.S.C. 7412(h)(3).
NESHAP Subpart FF		x	x		x	61.349(a)(2)	61.353(a); also see 61.12(d).
NESHAP Subpart F		x	x		x	63.103(a)	63.6(g); 42 U.S.C. 7412(h)(3).

[1] Per 40 CFR 63.640(s), flares that are subject to the provisions of 40 CFR 63.670 are required only to comply with 40 CFR 63.670 and not the General Provisions at 40 CFR 60.18 and 63.11.

[2] Although the Marathon, Blanchard, and Chalmette refineries are subject to other national emission standards for hazardous air pollutants (NESHAP) and NSPS (and, therefore, the General Provisions at 40 CFR 60.18 and 63.11) in addition to NESHAP subpart CC, 40 CFR 63.640(s) of subpart CC allows flares that are subject to flare requirements in both subpart CC and General Provisions to elect to comply only with the subpart CC flare requirements at 40 CFR 63.670.

TABLE 1—SUMMARY OF APPLICABLE RULES THAT MAY APPLY TO STREAMS CONTROLLED BY FLARES—Continued

Applicable rules with vent streams going to control device(s)	Exxon Mobil Baytown, Texas Flare 26	Marathon Garyville, LA MPGF	Blanchard Refining GBR MPGF	Chalmette No. 1 Flare	LACC	Rule citation from Title 40 CFR that allow for use of a flare	Provisions for alternative means of emission limitation
NESHAP Subpart G		x	x		x	63.113(a)(1)(i), 63.116(a)(2), 63.116(a)(3), 63.119(e), 63.120(e)(1) through (4), 63.126(b)(2)(i), 63.128(b), 63.139(c)(3), 63.139(d)(3), 63.145(j).	63.6(g); 42 U.S.C. 7412(h)(3).
NESHAP Subpart H		x	x		x	63.172(d), 63.180(e)	63.177; 42 U.S.C. 7412(h)(3).
NESHAP Subpart SS		x	x		x	63.982(b)	CAA section 112(h)(3).
NESHAP Subpart CC	x	x	x	x		63.643(a)(1)	63.670(r).
NESHAP Subpart UU					x	63.1034	63.1021(a)–(d).
NESHAP Subpart YY					x	Table 7 to 63.1103(e) cross-references to NESHAP subpart SS above.	63.1113.
NESHAP Subpart EEEE		x	x			63.2378(a), 63.2382, 63.2398	63.6(g); 42 U.S.C. 7412(h)(3).

The provisions in each NSPS and NESHAP cited above, which ensure that flares meet certain specific operating requirements when used to satisfy the requirements of the NSPS or NESHAP were established as work practice standards pursuant to CAA sections 111(h)(1) or 112(h)(1). For standards established according to these provisions, CAA sections 111(h)(3) and 112(h)(3) allow the EPA to permit the use of an AMEL by a source if, after notice and opportunity for comment,[3] it is established to the Administrator's satisfaction that such an AMEL will achieve emissions reductions at least equivalent to the reductions required under the applicable CAA section 111(h)(1) or 112(h)(1) standards. As noted in Table 1, many of the identified NSPS and NESHAP also include specific regulatory provisions allowing sources to request an AMEL.

ExxonMobil, Marathon, Blanchard, Chalmette, and LACC submitted AMEL requests to operate above the applicable maximum permitted velocity requirements for flares in the General Provisions in 40 CFR parts 60 and 63 and/or in 40 CFR 63.670. ExxonMobil, Marathon, Blanchard, Chalmette, and LACC provided information that the flare designs achieve a reduction in emissions at least equivalent to the reduction in emissions for flares complying with the applicable General Provisions and/or MACT subpart CC requirements. For further information on ExxonMobil's, Marathon's, Blanchard's, Chalmette's, and LACC's AMEL requests, see supporting materials from ExxonMobil, Marathon, Blanchard, Chalmette, and LACC at Docket ID No. EPA–HQ–OAR–2010–0682 and EPA–HQ–OAR–2014–0738.

[3] CAA section 111(h)(3) requires that the EPA provide an opportunity for a hearing.

II. Requests for AMEL

A. ExxonMobil Corporation Baytown Refinery Flexicoker Flare

ExxonMobil submitted an AMEL for Flare 26 at the ExxonMobil Baytown Refinery. Flare 26 is an elevated flare, with an approximate height of 284 feet. Flare 26 will be modified to install a 52-inch gas-assisted flare tip. Gas-assisted means that natural gas is discharged near or at the flare tip exit and is used to improve the combustion efficiency in the combustion zone, but it is not part of the vent gas, and, as such, does not contribute to the vent gas volume that determines the exit tip velocity. Still, this flare cannot meet the exit velocity limitation in 40 CFR 63.670(d). Flare 26 receives low BTU gas (LBG) from episodic and maintenance events from the Flexicoking LBG system during startup, shutdown, and other non-routine operations. Flare 26 will also accept flow from the Flexicoking LBG system during normal operations where there is a fuel gas imbalance.

B. Marathon Petroleum Company Garyville, Louisiana, and Blanchard Refining's Galveston Bay Refinery MPGFs

Marathon submitted an AMEL for their two MPGFs at their Garyville refinery and also for one MPGF at their subsidiary, Blanchard Refining's GBR. These three MPGFs were included in a single AMEL request because the principle is the same for each MPGF. All three MPGFs are designed to operate with tip exit velocities greater than those allowed in 40 CFR 60.18, 63.11, and 63.670, while achieving >96.5-percent combustion efficiency and 98-percent destruction efficiency. The scope of the AMELs include steam-assisted steam kinetic energy combustors (SKEC burners) at Garyville, pressure-assisted linear relief gas oxidizers (LRGO burners) at Garyville and GBR, and an air-assisted burner (LH burner) at GBR. All three of the MPGFs covered in this AMEL request were manufactured by John Zink Company, LLC (John Zink). Marathon is seeking AMELs to operate these flares during periods of startup, shutdown, upsets, and emergency events.

C. Chalmette Refinery Request

Chalmette Refining, LLC submitted an AMEL for their No. 1 Flare. The No. 1 Flare was designed by John Zink and constructed in 1982. The flare is an 8-stage candelabra style raised pressure-assisted flare with multiple flare tips comprised of two designs. The flare is elevated 171.92 feet above ground. Stage one is equipped with John Zink LRGO-Spider model burners. All other stages have John Zink model LRGO–FF burners. The gases being flared can range in composition and flow, but the flare only operates during upset and emergency conditions.

D. LACC, LLC Request

LACC, LLC submitted an AMEL for two MPGF operating in series. This system consists of an enclosed ground flare and a high-pressure ground flare that operates as a cascading system whereby the enclosed ground flare serves as the primary relief control device and the high-pressure ground flare serves as the secondary relief control device should the enclosed ground flare approach burner utilization capacity. The high-pressure header portion of these ground flares are MPGF and utilize two different types of pressure assisted burners; LRGO–HC (both flares) and INDAIR (enclosed ground flare only). Both are designed and produced by John Zink. The high-pressure header MPGFs will be used for destruction of vent streams during startups, shutdowns, upsets, and emergency events.

E. Information Supporting Flare AMEL Requests

As mentioned above, ExxonMobil, Marathon, Blanchard, and Chalmette provided the information specified in the flare AMEL framework at 40 CFR 63.670(r) to support their AMEL requests. LACC provided the information specified in the flare AMEL framework finalized on April 21, 2016 (81 FR 23486), to support its AMEL request. The information specified in both frameworks includes, but is not limited to: (1) Details on the project scope and background; (2) information on regulatory applicability; (3) flare test data on destruction efficiency/combustion efficiency; (4) flare stability testing data; (5) flare cross-light testing data; (6) information on flare reduction considerations; and (7) information on appropriate flare monitoring and operating conditions. (For further information on the supporting materials provided, see Docket ID No. EPA–HQ–OAR–2010–0682 and EPA–HQ–OAR–2014–0738.)

Information supplied by these companies indicates that the flares can achieve adequate combustion efficiency if operated under certain conditions. Generally, testing of burners for the vent gas mixture determined to be representative of the flare operation was used to set the appropriate combustion zone net heating value (NHV_{cz}) minimum limit. Exxon Mobil conducted a series of combustion efficiency tests over a range of operating conditions and vent gas velocities to establish limits on a representative gas-assisted burner. Marathon and Blanchard submitted combustion efficiency test data for all three different types of burners to establish their minimum NHV_{cz}. Burners in these flares include steam assisted (SKEC) and non-assisted (LRGO) burners at Garyville and an air-assisted (LH) and non-assisted (LRGO) at the Blanchard GBR. At the Garyville Refinery, the MPGFs are operated in series such that the flare gas is directed to the SKEC burners in stages 1 through 4, and then to the LRGO burners in stages 5 through 11. Therefore, we selected an operating limit of the higher of 600 BTU/standard cubic feet (scf) NHV_{cz} or the NHV_{cz} value resulting from the equation of the line presented in Table 2 appropriate for the SKEC burner. At the Blanchard GBR, we selected a value of 600 BTU/scf NHV_{cz} based on the successful combustion efficiency test at 600 BTU/scf for the representative waste gas. The LRGO operating limit is limiting because the LRGO burners follow the air-assisted LH burner at the GBR.

Chalmette Refining submitted required information and requested a minimum NHV_{cz} of 1000 BTU/scf or a maximum lower flammability limit (LFL) of less than or equal to 6.5 percent, based on the conditions that were demonstrated to cross light flare stage 8A from adjacent stages 5 and 7 and stage 8B from stages 6 and 7. Stages 8A and B are not equipped with pilots, and, therefore, lighting of these stages relies on lighting from adjacent stages. Chalmette also requested that video records be used to show that cross lighting is successful, even if the NHV_{cz} or LFL conditions are not met. However, we do not intend to allow an alternate compliance method based on visual indication and have not included this in the proposed alternatives.

Finally, LACC requested two separate limits to account for the two sets of burners on their MPGF, LRGO, and INDAIR burners operating on waste gas from ethylene and downstream chemical manufacturing (ethylene oxide and monoethylene glycol) processes. LACC cited previous combustion efficiency information for the LRGO burners and successful cross light and stability at 800 BTU/scf for the representative waste gas composition. The combustion efficiencies for the INDAIR burners testing showed that a minimum of 1,067 BTU/scf for NHV_{cz} was necessary to achieve the desired combustion efficiency. For process control, LACC requested a minimum limit of 1,075 BTU/scf for these burners. It is also important to note that LACC has the ability to lock out the stages containing the four INDAIR burners so that they can meet the 800 BTU/scf minimum for the LRGO burners only.

III. AMEL for the Flares

Based upon our review of the AMEL requests, we have concluded that, by complying with the proposed AMEL specified in Table 2 and accompanying paragraphs, the flares will achieve emission reductions at least equivalent to reduction in emissions being controlled by flares complying with the flare requirements under the applicable NESHAP and NSPS identified in Table 1. We are seeking the public's input on the requests that the EPA approve AMELs for these flares. Specifically, the EPA seeks the public's input on the conditions specified in this document in the following paragraphs. The EPA's proposed AMEL for Chalmette Refining does not include the requested provision to allow a source not to meet the limits in Table 2 as long as evidence of cross light and combustion exists.

TABLE 2—PROPOSED ALTERNATIVE OPERATING CONDITIONS

AMEL submitted	Company	Affected facilities	Flare type(s)	Proposed alternative operating conditions.
11/7/17	ExxonMobil	Baytown, TX Flexicoker Flare 26.	Elevated gas-assist flare.	≥270 BTU/scf NHV_{cz} and velocity <361 feet per second (ft/sec).
10/7/17	Marathon	Garyville, LA	2 MPGFs	When both SKEC and LRGO burners are being used, the higher of ≥600 BTU/scf NHVcz or ≥127.27 ln(v_{vg})–110.87 NHVcz. When only the SKEC burner is being used ≥127.27 ln(v_{vg})–110.87 NHVcz.
10/7/17	Marathon/ Blanchard Refining.	GBR (Texas City, TX).	MPGF	≥600 BTU/scf NHV_{cz}.
9/19/17	Chalmette Refining	Chalmette, LA	Elevated multi-point flare.	≥1000 BTU/scf NHV_{cz} or LFL_{cz}≤6.5 vol%.
5/1/17	LACC	Lake Charles, LA	2 MPGFs	≥1075 BTU/scf NHV_{cz} for INDAIR Burners; ≥800 BTU/scf NHV_{cz} for LRGO only.

(1) All flares must be operated such that the combustion zone gas net heating value (NHV_{cz}) or the lower flammability in the combustion zone (LFL_{cz}) as specified in Table 2 is met. Owners or operators must demonstrate compliance with the applicable NHV_{cz} or LFL_{cz} specified in Table 2 on a 15-minute block average. Owners or

operators must calculate and monitor for the NHV_{cz} or LFL_{cz} according to the following:

(a) Calculation of NHV_{cz}

(i) If an owner or operator elects to use a monitoring system capable of continuously measuring (*i.e.,* at least once every 15 minutes), calculating, and recording the individual component concentrations present in the flare vent gas, NHV_{vg} shall be calculated using the following equation:

$$NHV_{vg} = \sum_{i=1}^{n} x_i NHV_i \qquad \text{(Eqn. 1)}$$

Where:

NHV_{vg} = Net heating value of flare vent gas, BTU/scf. *Flare vent gas* means all gas found just prior to the tip. This gas includes all flare waste gas (*i.e.,* gas from facility operations that is directed to a flare for the purpose of disposing the gas), flare sweep gas, flare purge gas, and flare supplemental gas, but does not include pilot gas.

i = Individual component in flare vent gas.

n = Number of components in flare vent gas.

x_i = Concentration of component i in flare vent gas, volume fraction.

NHV_i = Net heating value of component i determined as the heat of combustion where the net enthalpy per mole of offgas is based on combustion at 25 degrees Celsius (°C) and 1 atmosphere (or constant pressure) with water in the gaseous state from values published in the literature, and then the values converted to a volumetric basis using 20 °C for ''standard temperature.'' Table 3 summarizes component properties including net heating values.

(ii) If the owner or operator uses a continuous net heating value monitor, the owner or operator may, at their discretion, install, operate, calibrate, and maintain a monitoring system capable of continuously measuring, calculating, and recording the hydrogen concentration in the flare vent gas. The owner or operator shall use the following equation to determine NHV_{vg} for each sample measured via the net heating value monitoring system.

$$NHV_{vg} = NHV_{measured} + 938x_{H2} \qquad \text{(Eqn. 2)}$$

Where:

NHV_{vg} = Net heating value of flare vent gas, BTU/scf.

$NHV_{measured}$ = Net heating value of flare vent gas stream as measured by the continuous net heating value monitoring system, BTU/scf.

x_{H2} = Concentration of hydrogen in flare vent gas at the time the sample was input into the net heating value monitoring system, volume fraction.

938 = Net correction for the measured heating value of hydrogen (1,212–274), BTU/scf.

(iii) For non-assisted flare burners, NHV_{vg} = NHV_{cz}. For assisted burners, such as the Marathon Garyville MPGF SKEC burners, the Blanchard Refining MPGF LH burner, and the ExxonMobil gas-assisted burner, NHV_{cz} should be calculated using Equation 3.

$$NHV_{cz} = \frac{Q_{vg} \times NHV_{vg} + Q_{ag} \times NHV_{ag}}{(Q_{vg} + Q_{ag})} \qquad \text{(Eqn. 3)}$$

Where:

NHV_{cz} = Net heating value of combustion zone gas, BTU/scf.

NHV_{vg} = Net heating value of flare vent gas for the 15-minute block period as determined according to (1)(a)(i), BTU/scf.

Q_{vg} = Cumulative volumetric flow of flare vent gas during the 15-minute block period, scf.

Q_{ag} = Cumulative volumetric flow of assist gas during the 15-minute block period, standard cubic feet flow rate, scf.

NHV_{ag} = Net heating value of assist gas, BTU/scf; this is zero for air or for steam.

(b) Calculation of LFL_{cz}

(i) The owner or operator shall determine LFL_{cz} from compositional analysis data by using the following equation:

$$LFL_{vg} = \frac{1}{\sum_{i=1}^{n} \left(\frac{\chi_i}{LFL_i}\right)} \times 100\% \qquad \text{(Eqn. 4)}$$

Where:

LFL_{vg} = Lower flammability limit of flare vent gas, volume percent (vol %).

n = Number of components in the vent gas.

i = Individual component in the vent gas.

χ_i = Concentration of component i in the vent gas, vol %.

LFL_i = Lower flammability limit of component i as determined using values published by the U.S. Bureau of Mines (Zabetakis, 1965), vol %. All inerts, including nitrogen, are assumed to have an infinite LFL (*e.g.,* $LFL_{N2} = \infty$, so that $\chi_{N2}/LFL_{N2} = 0$). LFL values for common flare vent gas components are provided in Table 3.

(ii) For non-assisted flare burners, LFL_{vg} = LFL_{cz}.

(c) Calculation of V_{tip}

For the ExxonMobil flexicoker flare (F–26), the owner or operator shall calculate the 15-minute block average V_{tip} by using the following equation:

$$V_{tip} = \frac{Qvg}{Area \times 900} \qquad \text{(Eqn. 5)}$$

Where:

V_{tip} = Flare tip velocity, ft/sec.

Q_{vg} = Cumulative volumetric flow of vent gas over 15-minute block average period, scf.

Area = Unobstructed area of the flare tip, square ft.

900 = Conversion factor, seconds per 15-minute block average.

(d) For all flare systems specified in this document, the operator shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring the volumetric flow rate of flare vent gas (Q_{vg}), the volumetric flow rate of total assist steam (Q_s), the volumetric flow rate of total assist air (Q_a), and the volumetric flow rate of total assist gas (Q_{ag}).

(i) The flow rate monitoring systems must be able to correct for the temperature and pressure of the system and output parameters in standard conditions (*i.e.,* a temperature of 20 °C (68 °Fahrenheit) and a pressure of 1 atmosphere).

(ii) Mass flow monitors may be used for determining volumetric flow rate of flare vent gas provided the molecular weight of the flare vent gas is determined using compositional analysis so that the mass flow rate can be converted to volumetric flow at standard conditions using the following equation:

$$Q_{vol} = \frac{Q_{mass} \times 385.3}{MW_t} \qquad \text{(Eqn. 6)}$$

Where:

Q_{vol} = Volumetric flow rate, scf/sec.

Q_{mass} = Mass flow rate, pounds per sec.

385.3 = Conversion factor, scf per pound-mole.

MW_t = Molecular weight of the gas at the flow monitoring location, pounds per pound-mole.

(e) For each measurement produced by the monitoring system used to comply with (1)(a)(ii), the operator shall determine the 15-minute block average as the arithmetic average of all measurements made by the monitoring system within the 15-minute period.

(f) The operator must follow the calibration and maintenance procedures according to Table 4. Maintenance periods, instrument adjustments, or checks to maintain precision and accuracy and zero and span adjustments may not exceed 5 percent of the time the flare is receiving regulated material.

TABLE 3—INDIVIDUAL COMPONENT PROPERTIES

Component	Molecular formula	MW_i (pounds per pound-mole)	NHV_i (BTU/scf)	LFL_i (volume %)
Acetylene	C_2H_2	26.04	1,404	2.5
Benzene	C_6H_6	78.11	3,591	1.3
1,2-Butadiene	C_4H_6	54.09	2,794	2.0
1,3-Butadiene	C_4H_6	54.09	2,690	2.0
iso-Butane	C_4H_{10}	58.12	2,957	1.8
n-Butane	C_4H_{10}	58.12	2,968	1.8
cis-Butene	C_4H_8	56.11	2,830	1.6
iso-Butene	C_4H_8	56.11	2,928	1.8
trans-Butene	C_4H_8	56.11	2,826	1.7
Carbon Dioxide	CO_2	44.01	0	∞
Carbon Monoxide	CO	28.01	316	12.5
Cyclopropane	C_3H_6	42.08	2,185	2.4
Ethane	C_2H_6	30.07	1,595	3.0
Ethylene	C_2H_4	28.05	1,477	2.7
Hydrogen	H_2	2.02	*1,212	4.0
Hydrogen Sulfide	H_2S	34.08	587	4.0
Methane	CH_4	16.04	896	5.0
Methyl-Acetylene	C_3H_4	40.06	2,088	1.7
Nitrogen	N_2	28.01	0	∞
Oxygen	O_2	32.00	0	∞
Pentane+ (C5+)	C_5H_{12}	72.15	3,655	1.4
Propadiene	C_3H_4	40.06	2,066	2.16
Propane	C_3H_8	44.10	2,281	2.1
Propylene	C_3H_6	42.08	2,150	2.4
Water	H_2O	18.02	0	∞

*The theoretical net heating value for hydrogen is 274 BTU/scf, but for the purposes of the flare requirement in this subpart, a net heating value of 1,212 BTU/scf shall be used.

TABLE 4—ACCURACY AND CALIBRATION REQUIREMENTS

Parameter	Accuracy requirements	Calibration requirements
Flare Vent Gas Flow Rate	±20 percent of flow rate at velocities ranging from 0.1 to 1 foot per second ±5 percent of flow rate at velocities greater than 1 foot per second.	Performance evaluation biennially (every 2 years) and following any period of more than 24 hours throughout which the flow rate exceeded the maximum rated flow rate of the sensor, or the data recorder was off scale. Checks of all mechanical connections for leakage monthly. Visual inspections and checks of system operation every 3 months, unless the system has a redundant flow sensor. Select a representative measurement location where swirling flow or abnormal velocity distributions due to upstream and downstream disturbances at the point of measurement are minimized.
Flow Rate for All Flows Other Than Flare Vent Gas	±5 percent over the normal range of flow measured or 1.9 liters per minute (0.5 gallons per minute), whichever is greater, for liquid flow. ±5 percent over the normal range of flow measured or 280 liters per minute (10 cubic feet per minute), whichever is greater, for gas flow. ±5 percent over the normal range measured for mass flow.	Conduct a flow sensor calibration check at least biennially (every 2 years); conduct a calibration check following any period of more than 24 hours throughout which the flow rate exceeded the manufacturer's specified maximum rated flow rate or install a new flow sensor. At least quarterly, inspect all components for leakage, unless the continuous parameter monitoring system (CPMS) has a redundant flow sensor. Record the results of each calibration check and inspection. Locate the flow sensor(s) and other necessary equipment (such as straightening vanes) in a position that provides representative flow; reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.
Pressure	±5 percent over the normal range measured or 0.12 kilopascals (0.5 inches of water column), whichever is greater.	Review pressure sensor readings at least once a week for straight-line (unchanging) pressure and perform corrective action to ensure proper pressure sensor operation if blockage is indicated. Performance evaluation annually and following any period of more than 24 hours throughout which the pressure exceeded the maximum rated pressure of the sensor, or the data recorder was off scale. Checks of all mechanical connections for leakage monthly. Visual inspection of all components for integrity, oxidation, and galvanic corrosion every 3 months, unless the system has a redundant pressure sensor. Select a representative measurement location that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.
Net Heating Value by Calorimeter	±2 percent of span	Calibration requirements should follow manufacturer's recommendations at a minimum. Temperature control (heated and/or cooled as necessary) the sampling system to ensure proper year-round operation. Where feasible, select a sampling location at least 2 equivalent diameters downstream from and 0.5 equivalent diameters upstream from the nearest disturbance. Select the sampling location at least 2 equivalent duct diameters from the nearest control device, point of pollutant generation, air in-leakages, or other point at which a change in the pollutant concentration or emission rate occurs.
Net Heating Value by Gas Chromatograph	As specified in Performance Standard (PS) 9 of 40 CFR part 60, appendix B.	Follow the procedure in PS 9 of 40 CFR part 60, appendix B, except that a single daily mid-level calibration check can be used (rather than triplicate analysis), the multi-point calibration can be conducted quarterly (rather than monthly), and the sampling line temperature must be maintained at a minimum temperature of 60 °C (rather than 120 °C).
Hydrogen Analyzer	±2 percent over the concentration measured, or 0.1 volume, percent, whichever is greater.	Specify calibration requirements in your site specific CPMS monitoring plan. Calibration requirements should follow manufacturer's recommendations at a minimum. Specify the sampling location at least 2 equivalent duct diameters from the nearest control device, point of pollutant generation, air in-leakages, or other point at which a change in the pollutant concentration occurs.

(2) The flare system shall be operated with a flame present at all times when in use. Additionally, each stage that cross-lights must have at least two pilots with a continuously lit pilot flame, except for Chalmette Refining, which has one pilot for each stage, excluding stages 8A and 8B. Each pilot flame must be continuously monitored by a thermocouple or any other equivalent device used to detect the presence of a flame. The time, date, and duration of any complete loss of pilot flame on any of the burners must be recorded. Each monitoring device must be maintained or replaced at a frequency in accordance with the manufacturer's specifications.

(3) Flares at refineries shall comply with the requirements of 40 CFR 63.670(h). For LACC, LLC, the flare system shall be operated with no visible emissions except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. A video camera that is capable of continuously recording (*i.e.,* at least one frame every 15 seconds with time and date stamps) images of the flare flame and a reasonable distance above the flare flame at an angle suitable for visible emissions observations must be used to demonstrate compliance with this requirement. The owner or operator must provide real-time video surveillance camera output to the control room or other continuously

manned location where the video camera images may be viewed at any time.

(4) For the MPGF and the Chalmette elevated multi-point flare, the operator of a flare system shall install and operate pressure monitor(s) on the main flare header, as well as a valve position indicator monitoring system capable of monitoring and recording the position for each staging valve to ensure that the flare operates within the range of tested conditions or within the range of the manufacturer's specifications. The pressure monitor shall meet the requirements in Table 4. Maintenance periods, instrument adjustments or checks to maintain precision and accuracy, and zero and span adjustments may not exceed 5 percent of the time the flare is receiving regulated material.

(5) Recordkeeping Requirements

(a) All data must be recorded and maintained for a minimum of 3 years or for as long as required under applicable rule subpart(s), whichever is longer.

(6) Reporting Requirements

(a) The information specified in section III (6)(b) and (c) below must be reported in the timeline specified by the applicable rule subpart(s) for which the flare will control emissions.

(b) Owners or operators shall include the final AMEL operating requirements for each flare in their initial Notification of Compliance status report.

(c) The owner or operator shall notify the Administrator of periods of excess emissions in their Periodic Reports. The notification shall include:

(i) Records of each 15-minute block for all flares during which there was at least 1 minute when regulated material was routed to the flare and a complete loss of pilot flame on a stage of burners occurred, and for all flares, records of each 15-minute block during which there was at least 1 minute when regulated material was routed to the flare and a complete loss of pilot flame on an individual burner occurred.

(ii) Records of visible emissions events (including the time and date stamp) that exceed more than 5 minutes in any 2-hour consecutive period.

(iii) Records of each 15-minute block period for which an applicable combustion zone operating limit (*i.e.,* NHV_{cz} or LFL_{cz}) is not met for the flare when regulated material is being combusted in the flare. Indicate the date and time for each period, the NHV_{cz} and/or LFL_{cz} operating parameter for the period, the type of monitoring system used to determine compliance with the operating parameters (*e.g.,* gas chromatograph or calorimeter), and also indicate which high-pressure stages were in use.

(iv) Records of when the pressure monitor(s) on the main flare header show the flare burners are operating outside the range of tested conditions or outside the range of the manufacturer's specifications. Indicate the date and time for each period, the pressure measurement, the stage(s) and number of flare burners affected, and the range of tested conditions or manufacturer's specifications.

(v) Records of when the staging valve position indicator monitoring system indicates a stage of the flare should not be in operation and is or when a stage of the flare should be in operation and is not. Indicate the date and time for each period, whether the stage was supposed to be open, but was closed, or vice versa, and the stage(s) and number of flare burners affected.

IV. Request for Comments

We solicit comments on all aspects of ExxonMobil's, Marathon's, Blanchard's, Chalmette's, and LACC's requests for approval of an AMEL for flares to be used to comply with the standards specified in Table 1. We specifically seek comment regarding whether or not the alternative operating requirements listed in section III above will achieve emission reductions at least equivalent to emissions being controlled by flares complying with the applicable flare requirements in 40 CFR 60.18(b), 63.11(b), and/or 63.670.

Dated: April 18, 2018.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2018–08575 Filed 4–24–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2017–0427; FRL–9975–48–OAR]

RIN 2060–AT73

National Emission Standards for Hazardous Air Pollutants for Asbestos: Request for Approval of an Alternative Work Practice for Asbestos Cement Pipe Replacement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of request for comments.

SUMMARY: This action provides public notice and solicits comment on an alternative work practice (AWP) request under the Clean Air Act, to use new technology and work practices developed for removal and replacement of asbestos cement (A/C) pipe. In this action, the Environmental Protection Agency (EPA) is soliciting comment on all aspects of this request for an AWP that, in order to be approved, should be at least environmentally equivalent to the existing work practices in the National Emission Standards for Hazardous Air Pollutants for Asbestos (Asbestos NESHAP), which applies to the removal and replacement of A/C pipe.

DATES:

Comments. The EPA must receive written comments on or before June 25, 2018.

Public Hearing. If a public hearing is requested by April 30, 2018, then we will hold a public hearing on May 10, 2018 at the EPA William Jefferson Clinton (WJC) East Building, 1201 Constitution Avenue NW, Washington, DC 20004. If a public hearing is requested, then we will provide additional details about the public hearing on our website at *https://www.epa.gov/stationary-sources-air-pollution/asbestos-national-emission-standards-hazardous-air-pollutants.* To request a hearing, to register to speak at a hearing, or to inquire if a hearing will be held, please contact Aimee St. Clair at (919) 541–1063 or by email at *stclair.aimee@epa.gov.* The EPA does not intend to publish any future notices in the **Federal Register** regarding a public hearing on this proposed action and directs all inquiries regarding a hearing to the website and contact person identified above. The last day to pre-register in advance to speak at the public hearing will be May 8, 2018.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0427, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov. Regulations.gov* is our preferred method of receiving comments. However, other submission formats are accepted. To ship or send mail via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2017–0427, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. Use the following Docket Center address if you are using express mail, commercial delivery, hand delivery, or courier. EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours.

Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Send or deliver information identified as CBI only to the following address. OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2017–0427.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Public Hearing. If a public hearing is requested, it will be held at EPA Headquarters, EPA WJC East Building, 1201 Constitution Avenue NW, Washington, DC 20004. If a public hearing is requested, then we will provide details about the public hearing on our website at: *https://www.epa.gov/stationary-sources-air-pollution/asbestos-national-emission-standards-hazardous-air-pollutants.* The EPA does not intend to publish another document in the **Federal Register** announcing any updates on the request for a public hearing. Please contact Aimee St. Clair at (919) 541–1063 or by email at *StClair.Aimee@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

The EPA will make every effort to accommodate all speakers who arrive and register. If a hearing is held at a U.S. government facility, individuals planning to attend should be prepared to show a current, valid state- or federal-approved picture identification to the security staff in order to gain access to the meeting room. An expired form of identification will not be permitted. Please note that the Real ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by a noncompliant state, you must present an additional form of identification to enter a federal facility. Acceptable alternative forms of identification include: Federal employee badge, passports, enhanced driver's licenses, and military identification cards. Additional information on the Real ID Act is available at *https://www.dhs.gov/real-id-frequently-asked-questions.* In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Ms. Susan Fairchild, Sector Policies and Programs Division (D–243–04), Office of Air Quality Planning and Standards (OAQPS), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5167; fax number: (919) 541–4991; and email address: *fairchild.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2017–0427. All documents in the docket are listed in the *Regulations.gov* index. 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. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0427. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. This type of information should be submitted by mail (see **ADDRESSES** section of this preamble for correct mailing address). The *http://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Acronyms and Abbreviations. We use multiple acronyms and terms in this notice. While this list may not be exhaustive, to ease the reading of this notice and for reference purposes, the EPA defines the following terms and acronyms here:

A/C asbestos cement
ACM asbestos-containing material
ACPRP asbestos cement pipe replacement project
ACWM asbestos-containing waste material
ASTM American Society for Testing and Materials
AWP alternative work practice
CBI confidential business information
CFR Code of Federal Regulations
CTPS close tolerance pipe slurrification
EPA Environmental Protection Agency
NESHAP national emission standards for hazardous air pollutants
OAQPS Office of Air Quality Planning and Standards
PVC polyvinyl chloride
RACM regulated asbestos-containing material, as defined in 40 CFR 61.141
VE visible emissions, as defined in 40 CFR 61.141

Organization of This Document. The information in this notice is organized as follows:

I. General Information

A. Does this action apply to me?

Categories and entities potentially affected by this reconsideration action include those listed in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

NESHAP and source category	NAICS [1] code
Water treatment plants	221310
Distribution line, sewer and water, construction, rehabilitation, and repair	237110
Sewer main, pipe and connection, construction, rehabilitation, and repair	237110
Storm sewer construction, rehabilitation, and repair	237110
Irrigation systems construction, rehabilitation, and repair	237110
Water main and line construction, rehabilitation, and repair	237110
Pipeline rehabilitation contractors	237120
Horizontal drilling (*e.g.,* underground cable, pipeline, sewer installation)	237990
Pipe fitting contractors	238220
Power, communication and pipeline right-of-way clearance (except maintenance)	238910
Pipeline transportation (except crude oil, natural gas, refined petroleum products)	486990
Pipeline terminal facilities, independently operated	488999
Pipeline inspection (*i.e.,* visual) services	541990
Asbestos removal contractors	562910
Asbestos abatement services	562910

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposed action. To determine whether your A/C pipe replacement project (ACPRP) would be affected by this proposed action, you should examine the applicability criteria in the Asbestos NESHAP (40 CFR part 61, subpart M). If you have any questions regarding the applicability of any aspect of this proposed action, please contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. How do I obtain a copy of this document and other related information?

The docket number for this proposed action regarding the Asbestos NESHAP is Docket ID No. EPA–HQ–OAR–2017–0427. In addition to being available in the docket, an electronic copy of this document will also be available on the internet. The EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/asbestos-national-emission-standards-hazardous-air-pollutants following official Agency signature.*

Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents on this same website.

II. Background Information

A. Why are asbestos cement pipes being replaced?

Drinking water, waste water, and storm water are handled by a system of pipes which deliver water to residences, commercial, institutional, and industrial users; transfer waste water from users to wastewater treatment plants; and carry untreated storm water to streams and lakes. As the infrastructure of municipalities age, utilities serving the population need to replace deteriorated water pipes. Existing water pipes can be made of various components, such as clay, iron, polyvinyl chloride (PVC), concrete, and A/C. These A/C pipes are potentially subject to regulation under the Asbestos NESHAP when replaced.

When A/C pipes age, the cementitious bonds in the pipe matrix weaken, primarily due to the pH of the water, particulate in suspension, acidic gases in sewage, and the scrubbing effect of sandy soil caused by movement, such as tidal changes against the outside of the pipe (*e.g.,* in coastal environments). These mechanisms degrade both the outside and the inside of the pipes, causing them to become compromised and to leak.

Once pipes begin to leak, the environment can be harmed in several ways. Leaking waste water pipes can pollute nearby waterways, such as oceans, rivers, and lakes. Compromised storm water pipes can allow excess ground water, produced during high volume storm events, to seep into the pipe through cracks. This influx of ground water (or ''infiltration'') can create a significant increase in the volume of waste water arriving at waste water treatment plants. If treatment plants become overburdened, waste water may be forced to be routed to the nearest waterway without being properly treated, leading to increased waterway contamination. Compromised drinking water pipes waste valuable finished water, which can leak out of the degraded pipes into surrounding soils. Water pipes carrying finished water have been known to rupture due to a combination of degradation and a high-pressure load, also known as a water main break.

Because existing water pipes of all types run beneath and beside major roadways, beneath buildings, and overlap other utilities (*e.g.,* gas, electricity, cable), their replacement can potentially be problematic, especially in high density residential, industrial, and urban areas. Even replacement in suburban and rural areas can require careful navigation beneath roadways and other major structures.

B. What is the Asbestos NESHAP?

The Asbestos NESHAP is a set of work practice standards designed to minimize the release of asbestos, prescribed for the handling, processing, and disposal of asbestos-containing materials (ACM). The purpose of these work practices is to minimize the release of asbestos into the environment.

Asbestos is a known human carcinogen and the primary route of exposure is through inhalation of asbestos fibers. The potential for exposure to asbestos fibers is directly linked to ACM's potential to become friable, and, thus, for fibers to become airborne. Certain ACM can readily release asbestos fibers when they are disturbed or damaged. Asbestos fibers can then become entrained into the ambient air where they become available for inhalation. More information on the health effects of asbestos may be found at *https://www.epa.gov/asbestos/learn-about-asbestos#effects.*

The Asbestos NESHAP defines friable asbestos material as any material containing more than 1-percent asbestos as determined using the method specified in 40 CFR part 763, subpart E, appendix E, section 1, Polarized Light Microscopy (PLM), that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent, as determined by a method other than point counting by PLM, the asbestos content must be verified by point counting using PLM.

In the preamble to the 1990 Asbestos NESHAP amendments (55 FR 48406, November 20, 1990), the EPA stated in response to comments on the definition of ''friable'' as it applied to the demolition and renovation of ACM, that the EPA's intention was to distinguish between materials that would readily release asbestos fibers when damaged or disturbed and those materials that were unlikely to result in the release of significant amounts of asbestos fibers. The Asbestos NESHAP test to determine if ACM is friable is to attempt to crush the dry material by hand. If the dry ACM can be crumbled, pulverized, or crushed to powder by hand pressure, it is friable, and is regulated under the Asbestos NESHAP.

Asbestos-contaminated material regulated under the Asbestos NESHAP is termed regulated asbestos-containing material (RACM). RACM is defined in 40 CFR 61.141 of the Asbestos NESHAP and includes: (1) Friable [1] ACM; (2) Category I nonfriable ACM [2] that has become friable; (3) Category I nonfriable ACM that has been or will be sanded, ground, cut, or abraded; or (4) Category II nonfriable ACM [3] that has already been or is likely to become crumbled, pulverized, or reduced to powder by the forces acting upon it. If the regulatory threshold for RACM [4] is met or exceeded in a renovation operation, then all friable ACM in the operation, and in certain situations, nonfriable ACM in the operation, are subject to the work practice standards of the Asbestos NESHAP.

Thus, the purpose of the work practices required for the removal of A/C pipe in the Asbestos NESHAP is to minimize the release of asbestos fibers into the atmosphere, either at the time the material is removed, or at a later date, as a result of friable materials left in the soil. Therefore, in evaluating under 40 CFR 61.12(d) whether an AWP will achieve a reduction in emissions of asbestos fibers at least equivalent to the reduction achieved under the Asbestos NESHAP work practices, the EPA will evaluate whether the AWP minimizes the release of asbestos fibers to the atmosphere.

C. How is an alternative work practice approved?

The 40 CFR part 61 General Provisions explain under what circumstances the EPA may approve an alternative means of emission limitation. At 40 CFR 61.12(d)(1) and (2), the General Provisions require that the alternative means of emission limitation must achieve a reduction in emissions at least equivalent to the reduction achieved by the work practices required under the existing standard, and that the **Federal Register** document permitting the use of the alternative be published only after notice and an opportunity for a hearing.

Additionally, the Asbestos NESHAP itself contains specific provisions under which the EPA may receive applications for prior written approval of an alternative emission control and waste treatment method. For example, 40 CFR 61.150(a)(4) authorizes ''[u]se [of] an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in 40 CFR 61.149(c)(2).'' As required by 40 CFR 61.150(a)(4) and 40 CFR 61.149(c)(2), before approval may be granted for an AWP, a written application must be submitted to the Administrator demonstrating that the following criteria are met: (i) The alternative method will control asbestos emissions equivalent to currently required methods; (ii) the suitability of the alternative method for the intended application; (iii) the alternative method will not violate other regulations; and (iv) the alternative method will not result in increased water pollution, land pollution, or occupational hazards.

In order to be approved, the proposed AWP must meet all requirements for no visible emissions (VE), adequate wetting, waste handling, and disposal under the Asbestos NESHAP. The EPA is proposing that this AWP is equivalent to the work practice in the Asbestos NESHAP: It removes A/C pipe while replacing it with non-asbestos materials; converts friable ACM, and ACM that may become friable when disturbed into nonfriable ACM during the replacement

[1] Friable ACM means any material containing more than 1-percent asbestos as determined using the method specified in 40 CFR part 763, subpart E, appendix E, section 1, Polarized Light Microscopy (PLM), that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

[2] Category I nonfriable ACM means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1-percent asbestos as determined using PLM.

[3] Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1-percent asbestos as determined using PLM, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

[4] The regulatory threshold for RACM is 260 linear feet, 160 square feet, or 35 cubic feet (if the amount of RACM cannot otherwise be measured in linear or square feet).

process; and uses amended water[5] to achieve adequate wetting of all ACM.

D. How do the Asbestos NESHAP requirements apply to replacement of A/C pipe?

To the extent A/C pipe is either friable ACM or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on it during the pipe replacement process, the A/C pipes meet the RACM definition. If Category II nonfriable A/C pipes do not have a high probability of becoming and have not become crumbled, pulverized, or reduced to powder by the forces expected to act on them during the pipe replacement process, those pipes would not be regulated as RACM under the Asbestos NESHAP.

For renovations such as a regulated underground ACPRP, if the total amount of RACM for the project over the course of a single calendar year to be stripped, removed, dislodged, cut, drilled, or similarly disturbed during the activity is less than 260 linear feet, the renovation work practices found in 40 CFR 61.145 of the NESHAP do not apply, regardless of the pipe replacement method to be used, the type of material (Category I or II), or its condition (friable versus nonfriable). See 40 CFR 61.145(a)(4). The waste disposal requirements found in 40 CFR 61.150 and 61.154 apply to any source regulated under 40 CFR 61.145.

It is important to note that projects may not be broken up to avoid regulation under the Asbestos NESHAP, and the EPA has clarified the requirements of the Asbestos NESHAP as they relate to a project on several occasions. In our 1995 *Clarification of Intent,* we stated the ''EPA considers demolitions planned at the same time or as part of the same planning or scheduling period to be part of the same project. In the case of municipalities, a scheduling period is often a calendar year or fiscal year or the term of the contract.'' See 60 FR 38725 (July 28, 1995, Footnote 1). As stated in the 40 CFR part 61 General Provisions, ''No owner or operator shall build, erect, install, or use any article, machine, equipment, process, or method, the use of which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous dilutants to achieve compliance with a VE standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.'' As we said in addressing this issue in a previous applicability determination,[6] the relevant part of that requirement is the part that discusses the prohibition on the piecemeal carrying out of an operation to avoid coverage by a standard. Therefore, as required by 40 CFR 61.145(a)(iii) and (iv), owners or operators (owner/operator) must predict the combined additive amount of RACM to be removed in the course of the renovation activities (or, in the case of emergency renovations, estimate that amount) over the calendar year to determine the applicability of the standard to a project.

The work practices for asbestos control under the Asbestos NESHAP exist to minimize the release of asbestos into the ambient air. When a facility component that contains, is covered with, or is coated with RACM is being removed from a facility[7] as a unit or in sections (*e.g.,* a pipeline), the rule requires adequate wetting of all RACM exposed during cutting or disjoining operations; and each unit or section to be carefully lowered to the floor and/or ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM. After a facility component (*e.g.,* pipeline section) containing, covered with, or coated with RACM has been taken out of the facility as a unit or in sections pursuant to paragraph (c)(2), it shall be stripped or contained in leak-tight wrapping.[8] If stripped, the owner/operator may either adequately wet the RACM during stripping; or use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping, and this system must exhibit no VE to the outside air, or be designed and operated in accordance with 40 CFR 61.152 (air cleaning). For removal of A/C pipe, the owner/operator must ensure that no VE are exhibited during the removal of the A/C pipe and that all A/C pipe is kept adequately wet to minimize the release of asbestos emissions, unless one of the other specific provisions of the Asbestos NESHAP is followed. Additional requirements apply to the waste handling and disposal.

The work practices in the Asbestos NESHAP that apply to the removal and replacement of A/C pipe include procedures for emission control, handling of asbestos waste, and asbestos waste disposal. These work practices are discussed in the sections below.

1. Procedures for Emission Control

The principal controls in the Asbestos NESHAP for renovations such as pipe replacement operations include requirements that the RACM be adequately wetted to minimize VE during pipe replacement operations involving RACM, and that asbestos waste be handled, collected, and disposed of properly. The emission control requirements must meet the standard for no VE. ''Adequately wet'' means to sufficiently mix or penetrate with liquid to prevent the release of particulates. If VE are observed coming from RACM, then that material has not been adequately wetted. However, the absence of VE is not sufficient evidence of being adequately wet. Typically, the emission controls used to achieve adequate wetting include a fine water spray (or a mist).[9] The Asbestos NESHAP (40 CFR 61.145(c)(6)) requires that, after removal, the RACM must remain adequately wet until collected and contained, or treated in preparation for disposal in accordance with 40 CFR 61.150.

The Asbestos NESHAP specifies at 40 CFR 61.150(a)(5) that the asbestos-containing waste material (ACWM) handling requirements do not apply to Category I nonfriable ACM waste (asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1-percent asbestos) and Category II nonfriable ACM waste (any other nonfriable ACM containing more than 1-percent asbestos) that did *not* become crumbled, pulverized, or reduced to powder.

2. Handling of Asbestos Waste

Asbestos containing waste materials from activities regulated by 40 CFR 61.145 must be handled, collected, and disposed of in accordance with 40 CFR 61.150. No VE may be discharged to the outside air during the collection, processing, packaging, or transportation of any ACWM. All ACWM must be kept adequately wet and sealed in leak-tight

[5] Amended water is water to which surfactant chemicals (wetting agents) have been added to reduce the surface tension of the water.

[6] Applicability Determination Number A020001. August 30, 2002. From George Czerniak, Chief, Air Enforcement and Compliance Assurance Branch, U.S. EPA Region 5, to Robert Swift. *https://cfpub.epa.gov/adi/index.cfm?fuseaction=home.dsp_show_file_contents&CFID=27301905&CFTOKEN=85118624&id=A020001.*

[7] See 40 CFR 61.145(c)(2).

[8] For large facility components such as reactor vessels, large tanks, and steam generators, the RACM is not required to be stripped. However, other requirements for such components apply.

[9] While not required under the Asbestos NESHAP, the EPA recommends the use of surfactants to amend the water used to keep ACM adequately wet because these water amendments greatly enhance the ability of water to penetrate and mix with ACM.

containers (40 CFR 61.150(a)(1)) or processed into a nonfriable form, such as a nonfriable pellet or other shape (40 CFR 61.150(a)(2)).

3. Waste Disposal

The Asbestos NESHAP requires all ACWM to be deposited as soon as is practical in a waste disposal site operated in accordance with the provisions of 40 CFR 61.154 or an EPA-approved site that converts RACM and ACWM into nonasbestos (asbestos-free) material according to the provisions of 40 CFR 61.155.

E. What techniques are approved for removal and replacement of A/C pipes?

Even A/C pipes in good condition (which would be Category II nonfriable ACM) become regulated ACM, if the pipe has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the pipe during the renovation activities. Moreover, most of the A/C pipe being replaced by municipalities is likely to be in poor condition (*i.e.,* friable) due to the degradation over time as discussed in the section II of this document.

The EPA has previously determined [10] that pipe removal is generally a renovation unless it is associated with the demolition of a structure (in which case, it is a demolition). One applicability determination from 1994 states that removal of A/C pipe ''. . . is a renovation because the pipe is not a load bearing structural member.''

The accepted technique to remove and replace A/C pipes is known as ''open trench replacement.'' In open trench replacement, the pipe is located, cleaned, and inspected. Because pipes run beneath and cross transportation corridors, traffic is rerouted to available detours. Temporary water and sewer service is installed to handle the water supply and/or wastewater handling affected by the disruption of service. Other utilities (electricity, cable, optical fiber) that may obstruct or interfere with pipe replacement are also identified. Once the location of the pipe and all utilities are identified, the road surfacing, and other structures, such as sidewalks, medians, etc., are removed and an open trench is dug to expose the length of pipe to be replaced. A pipe cutter is clamped around the A/C pipe being replaced, and it is scored along the outside of its circumference while water is applied to prevent emissions of asbestos to the atmosphere, which may occur along the line of cutting. The pipe is snapped along the cut and the process is repeated to produce transportable 6- to 8-foot sections of pipe. Asbestos cement pipe in poor condition may resemble wet cardboard in the way it responds to these removal activities. It can simply collapse and tear into smaller pieces, rather than snap, as A/C pipe in good condition is known to do. Each pipe section is removed, wrapped in plastic, and placed on a truck labelled according to regulations for asbestos waste disposal. This process of snap cutting and removal is repeated for the entire length of A/C pipe to be replaced.

No AWPs for the replacement of A/C pipes have yet been approved.

III. Alternative Work Practice Request

A. What is the close tolerance pipe slurrification technique for A/C pipe replacement?

The EPA received a request from Trenchless Consulting, LLC, in July 2017, for approval of an AWP, known as the ''Close Tolerance Pipe Slurrification'' (CTPS) method, for the removal and replacement of A/C pipes. This is one of two AWPs requested. The second one, which involves a technique commonly known as ''pipe bursting'' is still under consideration. We are not discussing ''pipe bursting'' in this **Federal Register** document and no decision has been made on whether or not to propose approval of ''pipe bursting'' as an AWP.

Documentation for CTPS is found in the Docket, and includes photographs and video of the CTPS process demonstration on clay pipe,[11] schematics of the process, and descriptions of the process. The CTPS method uses an equipment train to deliver drilling fluids and clays in suspension through a pipe in the center of the train. The equipment train uses a cutting head which grinds the underground A/C pipe to a fine grain while the fluids maintain the adequately wet requirements of 40 CFR 61.145 and entrain the finely ground pipe fragments in a slurry. During this process, the slurry mixes with the drilling fluids to create a homogenous [12] wet cementitious material, which is removed from the underground pipe path at vertical access points (*i.e.,* manholes, trenches, other vertical access cuts). These vertical access points are sheathed with a nonpermeable lining, such as plastic, at the beginning and end of the run of pipe being replaced. The cementitious slurry hardens into a nonfriable A/C after 48–56 hours. The proposed CTPS AWP employs dust suppression using amended water at all vertical access points to maintain the no VE and adequately wet requirements of the Asbestos NESHAP, as required by 40 CFR 61.145 and 40 CFR 61.150.

The EPA is proposing to consider the slurry that is formed by the CTPS AWP for A/C pipe to be nonfriable once hardened. This is important because the typical A/C pipe that is replaced is usually friable in many places and in poor condition. The proposed CTPS AWP converts all the ACM of the A/C pipe into a nonfriable material which is disposed of in a landfill permitted to receive ACWM. A skim coat of the nonfriable cementitious ACM remains on the outer rim of the new pipe.

Because disposal takes place before the slurry hardens, and the test to determine friability takes place after the slurry hardens, the slurry must be sealed in containment at disposal (rather than disposed openly pending the outcome of the test). Although the Asbestos NESHAP does not require containment of nonfriable ACM, this AWP must ensure the ACWM is contained because the test indicating the ACWM is nonfriable would not yet have been conducted at the time of disposal (the friability test is done on a sample of the material that has cured and hardened over a period of 48 to 56 hours).

In contrast to the Asbestos NESHAP work practices for ACPRPs conducted in temperatures below freezing, the CTPS method may only be used when temperatures are above 32 °F (0 °C) to prevent freezing the slurry, drilling fluids, and/or the amended water needed to maintain adequate wetting.

B. What is the EPA's proposed action on the AWP request?

The EPA believes that the CTPS work practices are ''consistent with the EPA's intent to distinguish between material that could release significant amounts of asbestos fibers during demolition and renovation operations and those that would not, and to prevent significant emissions of asbestos fibers to the atmosphere.'' (see 55 FR 48408, November 20, 1990 Asbestos NESHAP final notice, in our statements in response to comments on friable vs. nonfriable materials). The EPA is proposing that, for the following five reasons, CTPS is at least equivalent to

[10] See the applicability determination number a960010, October 12, 1994, from John Rasnic regarding removal of pipe, which may be found in the EPA's Applicability Determination Index.

[11] According to the demonstration of the CTPS process by Portland Utilities, clay pipe is pulverized and slurrifies similarly to A/C pipe when subjected to the CTPS process.

[12] A homogenous mixture is one in which the components are uniformly distributed throughout the mixture.

the Asbestos NESHAP process for A/C pipe removal.

First, this technique of replacement only exposes a small portion of the A/C pipe, thereby preventing significant emissions of asbestos to the atmosphere, a part of the overall reduction in emissions potential. As described in more detail below, the CTPS approach only excavates the A/C pipe at predetermined points along the pipe's path. Vertical access cuts are made to remove A/C pipe only at the beginning and end of the length of pipe to be removed and in designated vertical access points to reduce pressure buildup of the slurry. This limited excavation reduces the level of exposure to asbestos emissions from the A/C pipe remediation project.

Second, during periods where ACM is exposed, it is in the liquid slurry form and is considered adequately wet and, thus, does not become airborne, where it could be available for inhalation. The slurry is pumped out of these points into an enclosed tank to be taken to a waste disposal site approved to receive asbestos.

Third, the CTPS AWP uses amended water to improve dust suppression at all cuts, trenches, and vertical access points where A/C pipe may be exposed to the ambient air. The pipe is otherwise not exposed to the air.

Fourth, a skim coat of slurry, which contains ACM and remains on the new pipe, is not loose in the soil, but adheres to the surface of the new pipe. The skim coat fills the annular space created by the close tolerance drill through the ground as it pulls the new pipe through. Therefore, it has a structural support preventing the thin coating from being crushed, and also is not free to migrate to the surface as a result of soil movement, such as frost heaves.[13] Furthermore, the existence of asbestos in the skim coat is noted on the utility records so that owners/operators are advised of its presence.

Fifth, once hardened, the skim coat is nonfriable and has properties of cement: Similar to light-weight flowable fill (concrete) purchased from concrete plants, the skim coat has a strength of 50–150 pounds per square inch. Once hardened, the skim coat has static properties such that it does not settle or compress further. Once the skim coat is in place, it can only be removed by force, *i.e.,* using a pipe saw or a pipe cutter. Additionally, the skim coat is not subject to corrosional forces from inside the pipe. For more information on the properties of the skim coat that remains on the pipe, see docket item ''Skim Coat Properties, email correspondence from Mike Woodcock, Portland Utilities Construction, January 2018.''

The Asbestos NESHAP focuses on asbestos containing materials and their decline into friable material. Since the advent of new methods which were not available at the time of the last amendment to the rule, this may be a procedure whereby friable A/C pipe in poor condition is partially remediated back to a nonfriable state, and its properties are similar to the properties of other cement products such as flowable fill concrete.

Close tolerance pipe slurrification differs from the conventional work practices in which the entire pipe, much of which is in poor condition and may be friable, is excavated and exposed, cut into numerous 6- to 8-foot transportable sections, sealed in leak-tight wrapping, labeled, and transported to an approved asbestos waste disposal site. Five A/C pipe replacement guidance documents from state and local agencies (from Massachusetts, Maine, Oregon, Utah, and the city of Richmond, Virginia) are available in the docket for reference on the conventional work practices.

Consequently, the EPA believes that by following the CTPS AWP, adequately wet and no VE protocols, and exposing only small sections of A/C pipe to the air, asbestos emissions to the atmosphere are minimized, and the AWP would achieve an emission reduction at least equivalent to the current Asbestos NESHAP.

While the Asbestos NESHAP (and associated applicability determinations) contemplate and provide direction on a number of situations for handling and managing asbestos, the situation whereby friable ACM is turned into nonfriable ACM is not one that is contemplated under the rule. The EPA is proposing that when the CTPS work practices are adhered to as described in this document, and when the test for friability confirms that the resulting hardened slurry (skim coating) is nonfriable ACM, the resulting material can be regulated as nonfriable ACM. Under 40 CFR 61.145(c)(1)(iv) of the Asbestos NESHAP, under certain conditions nonfriable ACM need not be removed, if they are Category II nonfriable ACM and the probability is low that materials will become crumbled, pulverized, or reduced to powder during demolition. We are proposing that the nonfriable skim coating of ACM left on the outer rim of the new pipe be allowed to also remain in place.

The EPA is proposing that when CTPS is used to remove the underground A/C pipe, while maintaining no VE and the adequately wet requirements of 40 CFR 61.145 and 40 CFR 61.150(a), removing the old A/C pipe, converting all A/C pipe to Category II nonfriable ACM, and replacing the underground A/C pipe with new pipe, then CTPS is at least equivalent, in terms of emission reductions, to the work practices in the Asbestos NESHAP as they apply to renovations.

The Asbestos NESHAP waste disposal requirements include deed notations for inactive asbestos waste disposal sites, where ACWM (*e.g.,* friable ACM) has been left behind in the ground. The EPA included this provision in the Asbestos NESHAP for situations in which manufacturing waste had been left behind, sometimes buried on property, and that property later was sold for development. Without a deed notation to warn potential buyers of its presence, new owners could accidentally expose themselves to asbestos (for example, by installing a swimming pool, driveway, or digging a basement). The EPA, therefore, added requirements for property deed notation when ACWM has been left behind in the ground, creating an inactive asbestos waste disposal site.

The EPA is proposing that the nonfriable ACM resulting from CTPS would not be subject to deed notations. However, as is current practice, the EPA proposes that owner/operators (*e.g.,* municipality or utility) using the CTPS AWP would be required to maintain utility maps with the actual location of each ACPRP identified by the 6-digit latitude and longitude coordinates of the newly laid line, and that the utility maps would note the line as covered by a skim coat of ACM for future work.

The EPA is also proposing that the other requirements in the Asbestos NESHAP that apply to renovations, including notification requirements found in 40 CFR 61.145(b), would apply to the CTPS AWPs. Additionally, the EPA is proposing that the waste handling and disposal requirements found in 40 CFR 61.150 and 61.154 would apply to the slurry that is removed at the ACPRP.

IV. What are the proposed work practices for A/C pipe replacement?

The EPA is seeking the public's input on Trenchless Consulting's request that the EPA approve the CTPS approach as an AWP under the Asbestos NESHAP. We are seeking comments on whether

[13] Frost heaves occur in the top 3 feet of soil, and occur at low temperatures when available moisture in the soil freezes, expanding, and displaces materials with higher surface area (regardless of density) upward due to decreasing pressure. In this way, chunks of material of various densities may be moved to the surface.

the CTPS work practices are equivalent to those in the Asbestos NESHAP, including adequate wetting requirements, no VE, notification, containment, labeling, waste handling, waste transportation, and disposal of ACWM. The materials supporting the request for this approval are available in the Docket and include industry descriptions of the CTPS work practice and processes, the process patent, records of the EPA's communication with the industry requestors, and the EPA's observations of the methods conducted on PVC and clay sewer pipe.

Based upon our initial review of the proposed AWP request, the demonstrations of the work practice, and written materials including equipment, materials, slurry characteristics, testing, and waste specifications, we propose that, by complying with the following list of requirements, this proposed AWP will achieve emission reductions at least equivalent to emission reductions achieved under 40 CFR 61.145, 40 CFR 61.150, and 40 CFR 61.154, as required by the applicable Asbestos NESHAP, provided that adequate wetting accompanies all vertical access points, access trenches, and manholes to prevent VE, and that the A/C cementitious material resulting from this process is properly handled and contained during and after removal and properly disposed of as required by the Asbestos NESHAP.

The patent related to this process, ''Method of Replacing an Underground Pipe Section,'' is available from the U.S. Patent Office, patent number US8,641,326B2; February 4, 2014, and a copy is available in the docket. That patent deals with the replacement of low-pressure sewer pipes and indicates some parameters that may be different from the work practices in this notice, depending on the soil composition, depth of pipe, and serviceable use of the pipe (*e.g.,* a low-pressure sewer, waste water, or fresh water pipe). While this patented process is one used by the company requesting approval of this AWP, an owner/operator would not have to license the patent and could choose different equipment in order to follow the work practices of this notice.

A. What is the proposed CTPS AWP?

The proposed CTPS AWP is as follows:

1. Vertical Access Points

Vertical access points (*e.g.,* manholes, trenches) are made at designated intervals along the length of pipe replacement. The distance between vertical access points is a function of the soil type, pipe size, pneumatic pressure on the CTPS head, and frictional drag on the line; and is determined for each project on a case-by-case basis by the owner/operator. Incorrect estimation of the vertical access point locations may result in a malfunction. The owner/operator must not disturb A/C pipe during the digging out of these access points. Water and suction should be used to uncover as much of the A/C pipe as is needed to begin the CTPS process.

2. Removal of Pipe at Terminals and Vertical Access Points

At the starting and terminal points, and at designated intervals along the length of pipe replacement, sections of pipe are cut and removed at the vertical access points (*i.e.,* manholes, trenches). The owner/operator must handle all sections of A/C pipe in accordance with 40 CFR 61.145 and 40 CFR 61.150 of the Asbestos NESHAP.

3. CTPS Equipment Train

The CTPS technique should use a drilling head train with a slightly larger diameter than the pipe being replaced. This technology must use a heavy duty four-stage cutting and wetting train, made of hardened carbon steel, which is able to be fed directly around the pipe to be replaced. The cutting head must be drawn around the existing pipe and must be capable of grinding the old A/C pipe to a fine powder using a liquid delivery system as described in section IV.A.4 of this preamble. The process must return the A/C pipe to a cementitious slurry that is a homogenous mixture and stays adequately wet through disposal according to the requirements of 40 CFR 61.145. The owner/operator must ensure that the CTPS train pulls the replacement pipe behind it, and that no ACM contacts the inside of the new pipe.

4. Liquid Delivery

The horizontal drilling train must be equipped with ports to deliver liquid materials to the drilling head. Drilling fluids and bentonite clay should also be delivered through these ports to reduce frictional drag on the line, and to lubricate the interface along the soil to pipe line.

5. Trackable Pipeline

The owner/operator would be required to ensure that the new pipeline is trackable by steel cable (or other durable trackable material) laid with the new pipe.

6. Slurry Characteristics

The owner/operator would be required to ensure that no visible emissions are discharged to the air from the slurry, and that the slurry is a homogenous mixture comprised of finely ground A/C pipe, drilling fluids, bentonite clay, and other materials suspended in solution that, when cured (a period of 48–56 hours), re-hardens so that it meets the sample friability test in section IV.D.2 of this preamble. The slurry must meet the no visible emissions requirements of 40 CFR 61.145 and 61.150.

7. Slurry Removal, Containment, Transportation, and Disposal

The A/C pipe slurry is removed at vertical access points using a vacuum attached to a tank (*e.g.,* vacuum truck). The owner/operator would be required to ensure that the slurry remains in an adequately wet state during the slurrification process and remains in containment throughout the removal, transportation, and disposal processes, meeting the requirements of 40 CFR 61.145 and 40 CFR 61.150. The slurry must be contained and in slurry form at the time of disposal in a landfill permitted to accept ACWM and meeting the requirements of 40 CFR 61.154. The slurry must be managed at the disposal site using procedures meeting the requirements of 40 CFR 61.154.

8. Adequate Wetting With No VE

Any opening to the atmosphere along the pipe is a potential source of asbestos emissions to the outside (ambient) air. The owner/operator would be required to ensure that dust suppression equipment (*i.e.,* dust suppression apparatus or manual misting) using amended water is placed at each vertical access point. If a new trench is dug to resolve a malfunction, the owner/operator would be required to ensure that the new trench is equipped with dust suppression and follow the procedure in paragraphs (1) and (2) above. Amended water is water to which surfactant chemicals (wetting agents) have been added to reduce the surface tension of the water.

B. What notification requirements would apply?

If an underground ACPRP meets the applicability and threshold requirements under the NESHAP, then the EPA (or the delegated agency) must be notified in advance of the replacement in accordance with the requirements of the Asbestos NESHAP at 40 CFR 61.145(b). See 40 CFR 61.145 for more information on the notification requirements.

C. What inspection, operation, and maintenance requirements would apply?

1. Inspection

Prior to using the CTPS for an ACPRP, the owner/operator would conduct underground pipe inspections (*e.g.,* by using remote technologies like robotic cameras) and shall identify, locate, and mark onto an underground utility map of the area all identified potential areas of malfunctions, such as changes in pipe type, drops in the line, broken and off-center points, and changes in soil type.

2. Operation and Maintenance

The owner/operator of a CTPS method system is required to install, operate, and maintain the drilling head train, CTPS liquid delivery system, and all equipment used to deliver adequate wetting at all vertical access points and cut lengths of pipe in accordance with their written standard operating procedures. The records must be kept in accordance with section IV.F.1 of this preamble.

D. What sampling, testing, and utility map notation requirements would apply?

1. Sample Collection

After the slurry has been pumped from the vertical access points, but before disposal, the owner/operator of a CTPS method system is required to collect a 2-inch roughly spherical wet sample of the slurry. A single sample must be collected for each project discharging to a single enclosed tank. The owner/operator would be required to seal the sample in leak-tight wrapping and allow the sample to harden and dry (usually 48–56 hours).

2. Sample Friability Test and Certification

When the sample is hardened and dry, the owner/operator would be required to attempt to crush the sample by hand. The sample that cannot be crumbled, pulverized, or reduced to powder by hand pressure is nonfriable, and the remaining slurry from that pipe replacement job is likewise nonfriable. After testing, the owner/operator would be required to ensure that the sample is packaged in leak-tight wrapping for storage, labeled ''Asbestos Containing Material. Do not break or damage this sealed package,'' dated according to the ACPRP date of generation, stored in a secure location that is inaccessible to the general public (such as a locked storage unit), and is maintained by the owner/operator for a period of 2 years. After this 2-year retention period, the sample may be disposed of in a landfill permitted to accept ACWM.

a. If the sample cannot be crushed, crumbled, or reduced to powder by hand pressure, the owner/operator would be required to certify this as follows: ''The hardened slurry sample from the ACPRP conducted on (date) at (location) could not be crushed, crumbled, or reduced to powder by hand pressure. I am aware it is unlawful to knowingly submit incomplete, false, and/or misleading information and there are significant criminal penalties for such unlawful conduct, including the possibility of fine and imprisonment.'' The owner/operator would be required to maintain a signed certificate of this statement so that it is available to the EPA Administrator, local, and state agency officials upon demand.

b. If the sample can be crushed, crumbled, or reduced to powder by hand pressure, the owner/operator would be required to follow the malfunction reporting requirements in IV.F. 2 below.

3. Utility Map Notations

Owner/operators would be required to note utility maps according to the actual location identified by the 6-digit latitude and longitude coordinates of the newly laid line. Notations would have to be maintained for the life of the new pipe by the owner/operator (*e.g.,* municipality or utility), and would have to be labeled as covered by a skim coat of ACM for future work.

E. What labeling and transportation requirements would apply?

Because all A/C pipe being replaced using the CTPS technique is converted to a nonfriable state during the replacement, it would be categorized as Category II ACM and would need to be labeled and transported in accordance with the corresponding requirements of 40 CFR 61.145 and 40 CFR 61.150 in the Asbestos NESHAP.

F. What recordkeeping and reporting requirements would apply?

1. The owner/operator would be required to record and maintain for a period of 2 years the following data:

a. Date(s) from beginning to end of each ACPRP;

b. Location(s) of the A/C pipe(s) replaced using CTPS, identified by 6-digit latitudinal and longitudinal coordinates for each ACPRP;

c. Diameter and length of A/C pipe replaced at the ACPRP;

d. Total amount of slurry generated at the ACPRP;

e. Total amount of slurry disposed by the owner/operator from the ACPRP;

f. Slurry disposal site;

g. Manifest of ACM slurry disposal; and

h. Malfunction records (if applicable).

i. Records of VE events and their duration (including the time and date stamp) of any VE event;

ii. Records of when and how each VE event was resolved. Indicate the date and time for each VE period, whether the VE event occurred at an exposed manhole, trench, or other vertical access point, and the number of openings to the ambient air affected;

iii. Procedure used to resolve each VE event; and

iv. Results of each sample friability test that indicates the slurry is friable, as required by IV.D.1 and 2 above.

i. Records of the standard operation procedures for the installation, operation, and maintenance of the drilling head train, CTPS liquid delivery system, and all equipment used to deliver adequate wetting at all vertical access points and cut lengths of pipe.

2. Each owner/operator is required to submit the following reports to the Administrator after each occurrence, as follows:

a. Malfunction Report. The malfunction report must include the records in section IV.F.1.h.i.-iv of this preamble. The malfunction report must be submitted as soon as practical after the occurrence, but in no case later than 30 days.

b. ACPRP Report. The ACPRP report must be submitted to the Asbestos NESHAP program office within the EPA Regional office in which the ACPRP is located. The report may be submitted electronically when the means to do so are available. The EPA Regional office may, at their discretion, waive this requirement and delegate this reporting to the state and municipality. If the EPA Regional office has waived the reporting, and if the state or municipality is unable to receive electronic reports, then only a hard copy is required to be submitted. These reports must be postmarked or electronically submitted within 30 calendar days of completion of the ACPRP.

V. Request for Comments

We solicit comments on all aspects of this request for approval of CTPS as an AWP for the work practice standards specified in 40 CFR part 61, subpart M, the Asbestos NESHAP. We specifically seek comments regarding whether the AWPs, as described in section IV above, will achieve emission reductions at least equivalent to the work practices in the

Asbestos NESHAP at 40 CFR 61.145 and 40 CFR 61.150.

Dated: April 18, 2018.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2018–08574 Filed 4–24–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0785; FRL–9976–28]

2018 Safer Choice Partner of the Year Awards Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking applications for the 2018 Safer Choice Partner of the Year Awards. In 2015, EPA developed the Partner of the Year Awards to recognize Safer Choice stakeholders who have advanced the goals of the Pollution Prevention Act by reducing pollution at its source through safer chemistry. At the 2018 Partner of the Year Awards, Safer Choice will recognize stakeholder organizations from five broad categories: Formulators/ Product Manufacturers of both Consumer and Institutional/Industrial products, Purchasers and Distributors, Retailers, Supporters (*e.g.,* non-governmental organizations), and Innovators (*e.g.,* chemical manufacturers). All applications and accompanying materials must be received by Wednesday, June 27, 2018. Award winners will be recognized at a ceremony in the fall of 2018.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Linda Rutsch, Chemistry, Economics and Sustainable Strategies Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 343–9924; email address: *rutsch.linda@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

NAICS Code	Affected Industry
325510	Paint and Coating Manufacturing.
325611	Soap and Other Detergent Manufacturing.
325612	Polish and Other Sanitation Good Manufacturing.
325910	Printing Ink Manufacturing.
325992	Photographic Film, Paper, Plate, and Chemical Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
561210	Facilities Support Services.
561720	Janitorial Services.
561740	Carpet and Upholstery Cleaning Services.
611310	Colleges, Universities, and Professional Schools.
8123	Dry Cleaning and Laundry Services.
921190	Other General Government Support.

B. How can I get related information?

The full Safer Choice Partner of the Year Awards announcement and award application materials can be found at: *https://www.epa.gov/saferchoice/safer-choice-partner-year-awards.*

C. How can I get copies of this document and other related information?

The docket for this action, identified by docket information (ID) number EPA–HQ–OPPT–2015–0785, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

EPA is seeking applications for the 2018 Safer Choice Partner of the Year Awards. In 2015, EPA developed the Partner of the Year Awards to recognize Safer Choice stakeholders who have advanced the goals of the Pollution Prevention Act by reducing pollution at its source through safer chemistry. The Safer Choice Partner of the Year Awards recognize program participants for advancing the goal of chemical safety through exemplary participation in or promotion of the Safer Choice program. Safer Choice program participants are continually driving innovation to make chemical products safer. The program currently certifies approximately 2,000 products, used by consumers, institutions and industry that meet the Safer Choice Standard. The 2018 Partner of the Year Awards will be the fourth annual event, with recognition for Safer Choice stakeholder organizations from five broad categories: (1) Formulators/ Product Manufacturers of both Consumer and Institutional/Industrial products, (2) Purchasers and Distributors, (3) Retailers, (4) Supporters (*e.g.,* non-governmental organizations, including environmental and health advocates, trade associations, academia, sports teams, and others), and (5) Innovators (*e.g.,* chemical manufacturers, technology developers, and others).

The award application and instructions are available at *https://www.epa.gov/saferchoice/safer-choice-partner-year-awards.* Interested applicants may also view a webinar on the award application process by visiting the website. All applications and accompanying materials must be received by Wednesday, June 27, 2018. Award winners will be recognized at a ceremony in the fall of 2018.

Authority: 15 U.S.C. 2601.

Dated: April 17, 2018,

Charlotte Bertrand,

Acting Principal Deputy Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2018–08693 Filed 4–24–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2018–0124; FRL–9977–11–OARM]

Proposed Information Collection Request; Comment Request; Contractor Cumulative Claim and Reconciliation (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR),

''Contractor Cumulative Claim and Reconciliation (Renewal)'' (EPA ICR No. 0246.13, OMB Control No. 2030–0016) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through November 30, 2018. 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: Comments must be submitted on or before June 25, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2018–0124 online using *www.regulations.gov* (our preferred method), by email to *oei.docket@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.

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, Policy Training and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4522; email address: *valentino.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: All contractors who have completed an EPA cost-reimbursement type contract will be required to submit EPA Form 1900–10. EPA Form 1900–10 summarizes all costs incurred in performance of the contract and sets forth the final indirect rates. This form is reviewed by the contracting officer to determine the final costs reimbursable to the contractor. The Federal Acquisition Regulation (FAR) 52.216–7 states that the Government will pay only the costs determined to be allowable by the contracting officer in accordance with FAR Subpart 31.2. Furthermore, FAR 52.216–7 states that indirect cost rates shall be established for each fiscal year at the close of a contractor's fiscal year. EPA Form 1900–10 summarizes this information for the entire contract period and provides a basis for cost review by contracting, finance, and audit personnel. In addition, FAR 4.804–5 mandates that the office administering the contract shall ensure that the costs and indirect cost rates are settled.

Form Numbers: EPA Form 1900–10.

Respondents/affected entities: All contractors who have completed an EPA cost-reimbursement type contract.

Respondent's obligation to respond: Mandatory (FAR 52.216–7).

Estimated number of respondents: 5 (total).

Frequency of response: Once, at the end of the contract.

Total estimated burden: 31.5 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,408.65 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is no change in the hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: April 9, 2018.

Kimberly Y. Patrick,

Director, Office of Acquisition Management.

[FR Doc. 2018–08694 Filed 4–24–18; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Extension Without Change: State and Local Government Information Report (EEO–4).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC) announces that it is submitting to the Office of Management and Budget (OMB) a request for a three-year extension without change of the State and Local Government Information Report (EEO–4 Report, Form 164).

DATES: Written comments on this notice must be submitted on or before May 25, 2018.

ADDRESSES: Comments on this notice must be submitted to Joseph B. Nye, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, email *oira_submission@omb.eop.gov.* Commenters are also encouraged to send comments to the EEOC online at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on the website for submitting comments. In addition, the EEOC's Executive Secretariat will accept comments in hard copy. Hard copy comments should be sent to Bernadette Wilson, Executive Officer, EEOC, 131 M Street NE, Washington, DC 20507. Finally, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''fax'') machine before the same deadline at (202) 663–4114. (This is not a toll-free number.) Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll-free telephone numbers.) The EEOC will post online at *http://www.regulations.gov* all comments submitted via this website, in hard copy, or by fax to the Executive Secretariat. These comments will be posted without change, including any personal information you provide. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products. All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters Library, 131 M Street NE, Washington, DC 20507. Upon request, individuals who require assistance viewing comments will be provided appropriate aids such as readers or print magnifiers. To schedule an appointment, contact EEOC Library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Benita Marsh, Director of Surveys, Office of Research, Information and Planning, Equal Employment Opportunity Commission, 131 M Street NE, Room 4SW32H, Washington, DC 20507; (202) 663–7197 (voice) or by email at *Benita.Marsh@eeoc.gov.* Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION: State and local governments with 100 or more employees have been required to submit EEO–4 reports since 1974 (biennially in odd-numbered years since 1993). A notice that EEOC would be submitting this request was published in the **Federal Register** on February 2, 2018, allowing for a 60-day public comment period. Seven comments were received from the public; however, none of these comments addressed the EEO–4 report. Accordingly, no changes have been made to the report based upon the unresponsive comments.

Overview of Current Information Collection

Collection Title: State and Local Government Information Report (EEO–4).

OMB Number: 3046–0008.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more employees.

Description of Affected Public: State and local governments excluding public elementary and secondary public school districts.

Number of Respondents: 5,128.[1]

Number of Responses: 12,197.[2]

Biennial Reporting Hours: 85,379.

Biennial Cost to Respondents: $1,646,107.12.

Federal Cost: $251,920.

Number of Forms: 1.

Form Number: EEOC FORM 164.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations at 29 CFR 1602.32–1602.37 prescribing the reporting requirements for State and local governments. The individual reports are confidential.

EEO–4 data are used by the EEOC to investigate charges of discrimination against state and local governments and to provide information on the employment status of minorities and women. The data are shared with several other Federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, U.S.C. 2000e–8(d), as amended, EEO–4 data are shared with State and Local Fair Employment Practices Agencies (FEPAs). Aggregated data are also used by researchers and the general public.

Burden Statement: The EEOC has updated its methodology for calculating biennial burden to reflect the time spent by staff that are responsible for preparing and filing the EEO–4 report. Based upon its years of experience and interactions with EEO–4 filers, the EEOC now accounts for time to be spent biennially on EEO–4 reporting by human resources assistants. The estimated number of respondents included in the biennial estimate is 5,128 state and local government respondents, as this is the number of EEO–4 filers from the 2015 reporting cycle. These 5,128 filers submit an estimated 12,197 reports biennially. The estimated hour burden per report will be 7 hours; this estimate is supported by information on hour burden collected from a sample of both small and large EEO–4 filers. The estimated total biennial respondent burden hours will be 85,379 hours. Burden hour cost was calculated using median hourly wage rates for human resources assistants.[3] The burden hour cost per report will be $134.96, and the estimated total biennial burden hour cost will be $1,646,107.12. (See Table 1 below.)

TABLE 1—ESTIMATE OF BIENNIAL BURDEN FOR EEO–4 REPORT

State and local governments	Hourly wage rate	Hours per local government report	Burden hour cost per report[4]	Total burden hours[5]	Total burden hour cost[6]
Number of State and Local Government Respondents = 5,128				Number of Reports Submitted = 12,197	
HUMAN RESOURCES ASSISTANTS	$19.28	7	$134.96	85379	$1,646,107.12
TOTAL	19.28	7	134.96	85379	1,646,107.12

[1] This number represents the total number of state and local government respondents from the most recent reporting cycle in 2015.

[2] This number represents the total number of reports filed during the 2015 reporting cycle; it is larger than the number of respondents due to the requirement for some state and local governments to file separate reports by function.

[3] The rate of $19.28 per hour is based on the mean hourly pay rate of human resources assistants (Occupational Employment Statistics, Occupational Employment and Wages, May 2016, 43–4161 Human Resources Assistants, Except Payroll and Timekeeping, *https://www.bls.gov/oes/2016/may/oes434161.htm,* U.S. Bureau of Labor Statistics, Division of Occupational Employment Statistics).

[4] The figures in this column were calculated by multiplying the hourly wage rate by the hours per report (7).

[5] The figures in this column were calculated by multiplying the hours per report by 12,197, the total number of responses.

[6] The figures in this column were calculated by multiplying the burden hour cost per report by 12,197, the total number of responses.

The cost estimates are based on the assumption that filers use online reporting. For the 2015 EEO–4 report, 85% of EEO–4 filers submitted their report via online reporting and 5% of EEO–4 reports were submitted using the data upload method. The remaining 10% of filers submitted reports via the paper method. The EEOC has made electronic filing much easier for employers required to file the EEO–4 Report. As a result, more jurisdictions are using this filing method. This development, along with the greater availability of human resource information software, is expected to have significantly reduced the actual burden of reporting.

Dated: April 18, 2018.

For the Commission.

Victoria A. Lipnic,

Acting Chair.

[FR Doc. 2018–08685 Filed 4–24–18; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Public Meeting To Discuss the Proposed Draft Staff Implementation Guidance 6.1: Guidance for Implementation of SFFAS 6, Accounting for Property, Plant, and Equipment, as amended

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the staff of the Federal Accounting Standards Advisory Board (FASAB) will convene a public meeting on May 9, 2018, from 9:00 a.m. until 11:00 a.m. to discuss proposed draft Staff Implementation Guidance 6.1: *Guidance for Implementation of SFFAS 6, Accounting for Property, Plant, and Equipment, as amended.* The meeting will be held in room 5N30 at the Government Accountability Office, located at 441 G Street, NW, Washington, DC 20548.

Those interested in attending should contact Ms. Melissa Batchelor, Assistant Director, by contacting (202) 512–5976 or *batchelorm@fasab.gov* no later than May 2, 2018. Any interested person may attend the public meeting as an observer.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: April 19, 2018.

Wendy M. Payne,

Executive Director.

[FR Doc. 2018–08668 Filed 4–24–18; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) 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. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 25, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: New Procedure for Non-Federal Public Safety Entities to License Federal Government Interoperability Channels.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Not-for-profit institutions; State, Local, or Tribal government.

Number of Respondents and Responses: 45,947 respondents; 45,947 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: New Section 90.25 adopted in Order DA 18–282, requires any non-federal public safety entity seeking to license mobile and portable units on the Federal Interoperability Channels to obtain written concurrence from its Statewide Interoperability Coordinator (SWIC) or a state appointed official and include such written concurrence with its application for license. A non-federal public safety entity may communicate on designated Federal Interoperability Channels for joint federal/non-federal operations, provided it first obtains a license from the Commission authorizing use of the channels. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, and 332 of the Communications Act of 1934.

Total Annual Burden: 11,487 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Applicants who include written concurrence from their SWIC or state appointed official with their application to license mobile and portable units on the Federal Interoperability Channels need not include any confidential information with their application. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Needs and Uses: This collection will be submitted as a new collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The purpose of requiring a non-federal public safety entity to obtain written consent from its SWIC or state appointed official before communicating with federal government agencies on the Federal Interoperability Channels is to ensure that the non-federal public safety entity operates in accordance with the rules and procedures governing use of the federal interoperability channels and does not cause inadvertent interference during emergencies. Commission staff will use the written concurrence from the SWIC or state appointed official to determine if an applicant's proposed operation on the Federal Interoperability Channels conforms to the terms of an agreement signed by the SWIC or state appointed official with a federal user with a valid assignment from the National Telecommunications and Information Administration (NTIA) which has jurisdiction over the channels.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–08572 Filed 4–24–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0519]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 25, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, CG Docket No. 02–278.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions.

Number of Respondents and Responses: 22,503 respondents; 140,186,983 responses.

Estimated Time per Response: .004 hours (15 seconds) to 1 hour.

Frequency of Response: Annual, monthly, on occasion and one-time reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements are found in the Telephone Consumer Protection Act of 1991 (TCPA), Pub. L. 102–243, December 20, 1991, 105 Stat. 2394, which added Section 227 of the Communications Act of 1934, [47 U.S.C. 227] Restrictions on the Use of Telephone Equipment.

Total Annual Burden: 606,838 hours.

Total Annual Cost: $1,650,600.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance'', in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014. A system of records for the do-not-call registry was created by the Federal Trade Commission (FTC) under the Privacy Act. The FTC originally published a notice in the **Federal Register** describing the system. *See* 68 FR 37494, June 24, 2003. The

FTC updated its system of records for the do-not-call registry in 2009. *See* 74 FR 17863, April 17, 2009.

Privacy Impact Assessment: Yes.

Needs and Uses: The reporting requirements included under this OMB Control Number 3060–0519 enable the Commission to gather information regarding violations of section 227 of the Communications Act, the Do-Not-Call Implementation Act (Do-Not-Call Act), and the Commission's implementing rules. If the information collection was not conducted, the Commission would be unable to track and enforce violations of section 227 of the Communications Act, the Do-Not-Call Act, or the Commission's implementing rules. The Commission's implementing rules provide consumers with several options for avoiding most unwanted telephone solicitations.

The national do-not-call registry supplements the company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. Any company that is asked by a consumer, including an existing customer, not to call again must honor that request for five (5) years.

A provision of the Commission's rules, however, allows consumers to give specific companies permission to call them through an express written agreement. Nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship are exempt from the ''do-not-call'' registry requirements.

On September 21, 2004, the Commission released the *Safe Harbor Order,* published at 69 FR 60311, October 8, 2004, establishing a limited safe harbor in which persons will not be liable for placing autodialed and prerecorded message calls to numbers ported from a wireline service within the previous 15 days. The Commission also amended its existing National Do-Not-Call Registry safe harbor to require telemarketers to scrub their lists against the Registry every 31 days.

On December 4, 2007, the Commission released the *DNC NPRM,* published at 72 FR 71099, December 14, 2007, seeking comment on its tentative conclusion that registrations with the Registry should be honored indefinitely, unless a number is disconnected or reassigned or the consumer cancels his registration.

On June 17, 2008, in accordance with the Do-Not-Call Improvement Act of 2007, the Commission revised its rules to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Do-Not-Call Registry to protect consumer privacy rights. The Commission released a *Report and Order* in CG Docket No. 02–278, FCC 08–147, published at 73 FR 40183, July 14, 2008, amending the Commission's rules under the Telephone Consumer Protection Act (TCPA) to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five-year registration period. Specifically, the Commission modified § 64.1200(c)(2) of its rules to require sellers and/or telemarketers to honor numbers registered on the Registry indefinitely or until the number is removed by the database administrator or the registration is cancelled by the consumer.

On February 15, 2012, the Commission released a *Report and Order* in CG Docket No. 02–278, FCC 12–21, originally published at 77 FR 34233, June 11, 2012, and later corrected at 77 FR 66935, November 8, 2012, revising its rules to: (1) Require prior express written consent for all autodialed or prerecorded telemarketing calls to wireless numbers and for all prerecorded telemarketing calls to residential lines; (2) eliminate the established business relationship exception to the consent requirement for prerecorded telemarketing calls to residential lines; (3) require telemarketers to include an automated, interactive opt-out mechanism in all prerecorded telemarketing calls, to allow consumers more easily to opt out of future robocalls during a robocall itself; and (4) require telemarketers to comply with the 3% limit on abandoned calls during each calling campaign, in order to discourage intrusive calling campaigns.

Finally, the Commission also exempted from the Telephone Consumer Protection Act requirements prerecorded calls to residential lines made by health care-related entities governed by the Health Insurance Portability and Accountability Act of 1996.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–08571 Filed 4–24–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2018–08]

Filing Dates for the Mississippi Senate Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Mississippi has scheduled a special general election on November 6, 2018, to fill the U.S. Senate seat vacated by Senator Thad Cochran. Under Mississippi law, a majority winner in a nonpartisan special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on November 27, 2018, between the top two vote-getters.

Committees participating in the Mississippi special elections are required to file pre- and post-election reports. Filing dates for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Mississippi Special General and Special Runoff Elections shall file a 12-day Pre-General Report on October 25, 2018; a 12-day Pre-Runoff Report on November 15; and a 30-day Post-Runoff Report on December 27, 2018. (See charts below for the closing date for each report.)

If only one election is held, all principal campaign committees of candidates in the Special General Election shall file a 12-day Pre-General Report on October 25, 2018; and a 30-day Post-General Report on December 6, 2018. (See charts below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2018 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Mississippi Special General or Special Runoff Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Mississippi Special General or Special Runoff Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Mississippi Special General Elections may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $18,200 during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b).

CALENDAR OF REPORTING DATES FOR MISSISSIPPI SPECIAL GENERAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
If *Only* the Special General Is Held (11/06/18), Political Committees Involved Must File:			
Pre-General	10/17/18	10/22/18	10/25/18
Post-General	11/26/18	12/06/18	12/06/18
Year-End	12/31/18	01/31/19	01/31/19
If Two Elections Are Held, Political Committees Involved *Only* in the Special General (11/06/18) Must File:			
Pre-General	10/17/18	10/22/18	10/25/18
Year-End	12/31/18	01/31/19	01/31/19
Political Committees Involved in *Both* the Special General (11/06/18) and Special Runoff (11/27/18) Must File:			
Pre-General	10/17/18	10/22/18	10/25/18
Pre-Runoff	11/07/18	[2] 11/12/18	11/15/18
Post-Runoff	12/17/18	12/27/18	12/27/18
Year-End	12/31/18	01/31/19	01/31/19
If Two Elections Are Held, Political Committees Involved *Only* in the Special Runoff (11/27/18) Must File:			
Pre-Runoff	[2] 11/07/18	11/12/18	11/15/18
Post-Runoff	12/17/18	12/27/18	12/27/18
Year-End	12/31/18	01/31/19	01/31/19

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked before that date.

On behalf of the Commission,

Dated: April 11, 2018.

Caroline C. Hunter,

Chair, Federal Election Commission.

[FR Doc. 2018–08605 Filed 4–24–18; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 2018.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *MSB Capital Corporation, Columbus, Ohio;* to become a bank holding company by acquiring 100 percent of the voting shares of United Midwest Savings Bank, De Graff, Ohio, upon its conversion to a national bank.

Board of Governors of the Federal Reserve System, April 20, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–08690 Filed 4–24–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 15, 2018.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. J. *Chester Porter Trust Fund A, and J. Chester Porter Trust Fund B, both of Shepherdsville, Kentucky, Jack Chester Porter, Taylorsville, Kentucky, and Jennifer Elizabeth Porter, Mount Washington, Kentucky, as trustees:* To retain shares of Porter Bancorp, Inc., Louisville, Kentucky, and thereby retain shares of Limestone Bank, Inc., Louisville, Kentucky

Board of Governors of the Federal Reserve System, April 20, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–08691 Filed 4–24–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of a modified system of records.

SUMMARY: The FTC is publishing in final form a routine use that would permit disclosure of the agency's Freedom of Information Act (''FOIA'') request and appeal records to the Office of Government Information Services (''OGIS''), in order for OGIS to assist FOIA requesters, as needed, in processing and resolving their FOIA requests and appeals. In addition, the FTC is updating the records disposition section of the Privacy Act system of records notice for these records.

DATES: April 25, 2018, except that the new routine use shall be applicable May 25, 2018.

FOR FURTHER INFORMATION CONTACT: If you have general questions about the system, contact Dione Stearns, FOIA/PA Supervisor, Office of General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2735. For specific questions about these amendments to the system notice, contact G. Richard Gold and Alex Tang, Attorneys, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2424.

SUPPLEMENTARY INFORMATION:

In a document previously published in the **Federal Register**, 82 FR 10012 (Feb. 9, 2017), the Federal Trade Commission, as required by the Privacy Act, sought comments on a proposal to adopt a new routine use. *See* 5 U.S.C. 552a(e)(4) and (11). As the FTC explained, the new routine use, the text of which is set forth at the end of this document, authorizes the FTC to disclose FOIA request and appeal records comprising the FTC system of records designated as FTC–V–1 to the Office of Government Information Services (''OGIS''), in order for OGIS to assist requesters in the processing and resolution of their requests and appeals.

The OPEN Government Act of 2007 amended the Freedom of Information Act and created OGIS within the National Archives and Records Administration (''NARA''). The 2007 FOIA amendments require OGIS to review agency FOIA policies, procedures, and compliance, and to offer mediation services to resolve disputes between FOIA requesters and agencies. *See* 5 U.S.C. 552(h).

In order for OGIS to fulfill its statutory responsibilities, it requires access to FOIA request files originated and maintained by federal agencies including the FTC. However, because the FOIA request and appeal records (FTC–V–1) are governed by the Privacy Act, their disclosure normally requires the prior written consent of the individual to whom the records pertain (including, for example, an individual filing a FOIA request), unless the agency has published a routine use authorizing disclosure.

The Privacy Act authorizes the agency to adopt routine uses that are consistent with the purpose for which information is collected. 5 U.S.C. 552a(b)(3); *see also* 5 U.S.C. 552a(a)(7). The FTC believes that it is consistent with the purposes for which the FOIA request and appeal records covered by FTC–V–1 are collected to disclose such records routinely to OGIS to help OGIS mediate between individual FOIA requesters and agencies and ensure compliance with the FOIA statute. If agencies do not establish a ''routine use'' to provide for this proposed disclosure, OGIS would have to obtain the written consent of the individual FOIA requesters in order to obtain the access it requires to assist that requester. Simplifying the procedure for exchanging information would increase the efficiency of the FOIA administrative process. FTC staff understands that obtaining such consent has proven more complicated in some circumstances, *e.g.,* when an agency, rather than the individual FOIA requester, seeks OGIS's assistance to mediate between the agency and the individual FOIA requester. Accordingly, since the purpose of collecting and maintaining these records is to facilitate the processing and disposition of FOIA requests, the Commission concludes that it is authorized under the Privacy Act to adopt a routine use permitting disclosure of these records to OGIS for that purpose.

In addition, to correct some technical deficiencies identified by Office of Management and Budget (OMB) staff in the previously published notice, the FTC is publishing this updated notice: (1) To clarify that the text of Appendices I–III, cited in this system of records notice (SORN), is publicly available on the FTC's website and previously published in the **Federal Register**; (2) to modify the text of the security classification section, substituting the term ''unclassified'' for ''not applicable''; and (3) to provide additional legal citations in the history section.

The FTC is also making a technical revision that updates the records disposition section of FTC–V–1. During January 2017, NARA issued General Records Schedule 4.2, Records of Information Access and Protection, in part superseding and rescinding General Records Schedule 14, which previously covered FOIA-related records across the federal government. FTC–V–1's records disposition section has been updated accordingly.

Other than the new routine use for disclosure to OGIS, for which the FTC has already provided a public comment period and notice to OMB and Congress, the technical changes described above are not considered significant under the Privacy Act and implementing OMB guidelines [1] and thus do not require prior public comment or notice to the OMB and Congress.

In light of the updated SORN template set forth in the newly revised OMB Circular A–108, the FTC is reprinting the text of the entire SORN, including the new routine use, for the public's benefit, to read as follows:

* * * * *

SYSTEM NAME AND NUMBER:

Freedom of Information Act Requests and Appeals–FTC (FTC–V–1).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems and at 80 FR 9460, 9465 (Feb. 23, 2015).*

SYSTEM MANAGER(S):

FOIA/PA Supervisor, Office of General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.;* Freedom of Information Act, 5 U.S.C. 552.

PURPOSE(S) OF THE SYSTEM:

To consider requests and appeals for access to records under the Freedom of Information Act; to determine the status of requested records; to respond to the requests and appeals; to make copies of FOIA requests and frequently requested records available publicly, under the FTC's Rules of Practice and FOIA; to maintain records, documenting the consideration and disposition of the requests for reporting, analysis, and recordkeeping purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing requests for access to information under the Freedom of Information Act (FOIA); individuals named in the FOIA request; FTC staff assigned to help process, consider, and respond to such requests, including any appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Communications (*e.g.,* letters, emails) to and from the requesting party; agency documents generated or collected during processing and consideration of the request, including scanned copies of materials responsive to the FOIA request.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained and agency staff assigned to help process, review, or respond to the access request, including any appeal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Request and appeal letters, and agency letters responding thereto, are placed on the FTC's public record and available to the public for routine inspection and copying. See FTC–I–6 (Public Records–FTC).

(2) As required by the FOIA, records that have been ''frequently requested'' and disclosed under the FOIA within the meaning of that Act, as determined by the FTC, are made available to the public for routine inspection and copying. See FTC–I–6 (Public Records–FTC).

(3) Disclosure to the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS's offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 36333–36334 (June 12, 2008).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained electronically using a commercial software application run on the agency's internal servers. Temporary paper files are destroyed once the request is complete.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by name of requesting party and subject matter of request. Records can also be searched by name, address, phone number, fax number, and email of the requesting party, subject matter of the request, requestor organization, FOIA number, and staff member assigned to the request.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with General Records Schedule 4.2, issued by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Requests, appeals, and responses available to the public, as described above. Access to nonpublic system records is restricted to FTC personnel or contractors whose responsibilities require access. Nonpublic paper records are temporary, maintained in lockable file cabinets or offices, and destroyed once the request is complete. Access to electronic records is controlled by ''user ID'' and password combination and other electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Records contained in this system that have been placed on the FTC public record are available upon request, as discussed above. However, pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are

[1] See U.S.C. 552a(e)(11) and 552a(r); OMB Circular A–108 (2016).

exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

HISTORY:

82 FR 27483–27485 (June 15, 2017).
82 FR 10012–10014 (February 9, 2017).
73 FR 33592–33634 (June 12, 2008).

* * * * *

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2018–08628 Filed 4–24–18; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend for three years the current PRA clearance for information collection requirements pertaining to the Commission's administrative activities. That clearance expires on April 30, 2018, and consists of: (a) Requests to the Commission primarily under Parts I and IV of the Commission's Rules of Practice; (b) the FTC's consumer complaint systems; and (c) the FTC's program evaluation activities.

DATES: Comments must be filed by May 25, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/adminactivitiespra2,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For purposes specific to this **Federal Register** Notice: (a) Requests to the Commission: Gary Greenfield (Office of the General Counsel), 202–326–2753; (b) Complaint Systems: Nicholas Mastrocinque (Nick M.) and Ami Dziekan (Ami D.) (Bureau of Consumer Protection); Nick M., 202–326–3188 and Ami D., 202–326–2648; and (c) Program Evaluations: Jennifer Lee (Divestiture Orders), 202–326–2246; Derek Moore (Review of Competition Advocacy Program), 202–326–3367.

SUPPLEMENTARY INFORMATION: On January 22, 2018, the FTC sought public comment on the information collection requirements associated with the Commission's administrative activities (''January 22, 2018 Notice'' [1]). As required by OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501–3521, the FTC is providing this second opportunity for public comment.

Most comments on the January 22, 2018 **Federal Register** Notice were non-germane, but five comments questioned the reliability of FTC randomly sampling consumer complainants for feedback regarding ftc.gov complaint sites.[2] The public comments appear focused on the veracity and quality of the complaints and request that the FTC admit only complaints from consumers who are not ''misguided'' and who demonstrate ''critical thinking skills.'' The FTC simply cannot verify the millions of complaints it receives and so it makes clear to law enforcement users of the system that the information is unverified. It is the role of the Sentinel user to judge the veracity of the complaints. For example, the FTC often seeks signed declarations to verify consumer experiences. Additionally, Bureau of Consumer Protection staff meets periodically with its law enforcement partners to help determine how Sentinel can provide the information needed to open and successfully prosecute civil or criminal consumer fraud cases.

The agency conducts surveys to determine consumer satisfaction with the complaint intake systems. The agency uses the American Consumer Satisfaction Index (ACSI) to conduct its survey of the Consumer Response Center. ACSI uses random samples of customer interviews as input to a multi-equation econometric model. Such sampling is a practical measure given the vast volume of consumer complaints entering Sentinel and the limited number of consumers who provide substantive feedback.

For the ftc.gov complaint sites, the FTC uses a full-measure survey called ForeSee on the Complaint Assistant. When consumers complete the complaint form and hit ''Submit,'' they are given the invitation to take the survey. The consumer can choose to take the survey or not. The survey is not presented to anyone who does not complete and submit the complaint form. The survey's key goal is to enable a smooth consumer complaint reporting experience that will result in a consumer complaint entering Sentinel.

Burden Statement: As detailed in the January 22, 2018 Notice, the FTC estimates cumulative annual burden on affected entities to be 1,167,181 hours and $25,240 in labor costs. There are no capital, start up, operation, maintenance, or other similar costs to the affected entities.

Request for Comment: You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before May 25, 2018. Write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *http://www.ftc.gov/os/publiccomments.shtm.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/adminactivitiespra2,* by following the instructions on the web-based form. When this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you file your comment on paper, write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary,

[1] 83 FR 2988.

[2] Comments of Samuel Meyer; Anthony Clavien; Corey Bates (CEO, Auto Connection); Gary Jodat of Jodat Law Group; Aaron Leidler of Keller Williams Realty (Brentwood, CA).

Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *https://www.ftc.gov/,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 25, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.* For supporting documentation and other information underlying the PRA discussion in this Notice, see *http://www.reginfo.gov/public/jsp/PRA/praDashboard.jsp.*

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead can also be sent by email to *wliberante@omb.eop.gov.*

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2018–08627 Filed 4–24–18; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3054]

Uber Technologies, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis To Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 14, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''Uber Technologies, Inc.'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/reviseduberconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Uber Technologies, Inc.'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ben Rossen (202–326–3679) and James Trilling (202–326–3497), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 12, 2018), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 14, 2018. Write ''Uber Technologies, Inc.'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/reviseduberconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you prefer to file your comment on paper, write ''Uber Technologies, Inc.'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *https://www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 14, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has withdrawn its acceptance of the agreement containing consent order from Uber Technologies, Inc. (''Uber'') that the Commission released for public comment in this proceeding on August 15, 2017 (''August 2017 proposed consent agreement''), and has accepted, subject to final approval, a new agreement containing consent order from Uber (''April 2018 proposed consent agreement'').

The April 2018 proposed consent agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. All comments received during this period will become part of the public record. Interested persons who submitted comments during the public comment period for the August 2017 proposed consent agreement should resubmit their original comments, or submit new comments, during the new comment period if they would like the Commission to consider their comments when the Commission decides whether to make final the April 2018 proposed consent agreement. After thirty (30) days, the Commission again will review the April 2018 proposed consent agreement, and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Since 2010, Uber has operated a mobile application (the ''App'') that connects consumers who are transportation providers (''Drivers'') with consumers seeking those services (''Riders''). Riders book transportation or delivery services through a publicly-available version of the App that can be downloaded to a smartphone. When a Rider requests transportation through the App, the request is conveyed to a nearby Uber Driver signed into the App.

Drivers use the App to determine which ride requests they will accept. Uber collects a variety of personal information from Drivers, including names, email addresses, phone numbers, postal addresses, Social Security numbers, driver's license numbers, bank account information, vehicle registration information, and insurance information. With respect to Riders, Uber collects names, email addresses, postal addresses, and detailed trip records with precise geolocation information, among other things.

In November 2014, Uber was the subject of various news reports describing improper access and use of consumer personal information, including geolocation information, by Uber employees. One article reported that an Uber executive had suggested that Uber should hire ''opposition researchers'' to look into the ''personal lives'' of journalists who criticized Uber's practices. Another article described an aerial tracking tool known as ''God View'' that displayed the personal information of Riders using Uber's services. These reports led to considerable consumer uproar. In an effort to respond to consumer concerns, Uber issued a statement describing its policies concerning access to Rider and Driver data. As part of that statement, Uber promised that all ''access to rider and driver accounts is being closely monitored and audited by data security specialists on an ongoing basis, and any violations of the policy will result in disciplinary action, including the possibility of termination and legal action.''

As alleged in the proposed complaint, Uber has not monitored or audited its employees' access to Rider and Driver personal information on an ongoing basis since November 2014. In fact, between approximately August 2015 and May 2016, Uber did not timely follow up on automated alerts concerning the potential misuse of consumer personal information, and for approximately the first six months of this period only monitored access to account information belonging to a set of internal high-profile users, such as Uber executives. During this time, Uber did not otherwise monitor internal access to personal information unless an employee specifically reported that a co-worker had engaged in improper access. Count one of the proposed complaint alleges that Uber's representation that it closely monitored and audited internal access to consumers' personal information was false or misleading in violation of Section 5 of the FTC Act in light of Uber's subsequent failure to monitor and audit such access between August 2015 and May 2016.[1]

The proposed complaint also alleges that Uber failed to provide reasonable security for consumer information stored in a third-party cloud storage service provided by Amazon Web Services (''AWS'') called the Amazon Simple Storage Service (the ''Amazon S3 Datastore''). Uber stores in the Amazon S3 Datastore a variety of files that contain sensitive personal information, including full and partial back-ups of Uber databases. These back-ups contain a broad range of Rider and Driver personal information, including, among other things, names, email addresses, phone numbers, driver's license numbers, and trip records with precise geolocation information.

From July 13, 2013 to July 15, 2015, Uber's privacy policy described the security measures Uber used to protect the personal information it collected from consumers, stating that such information ''is securely stored within our databases, and we use standard, industry-wide commercially reasonable security practices such as encryption, firewalls and SSL (Secure Socket Layers) for protecting your information—such as any portions of your credit card number which we retain . . . and geo-location information.'' Additionally, Uber's customer service representatives offered assurances about the strength of Uber's security practices to consumers who were reluctant to submit personal information to Uber.

As described below, count two of the proposed complaint alleges that the above statements violated Section 5 of the FTC Act because Uber engaged in a number of practices that, taken together, failed to provide reasonable security to prevent unauthorized access to Rider and Driver personal information in the Amazon S3 Datastore.[2] Specifically, Uber allegedly:

- Failed to implement reasonable access controls to safeguard data stored in the Amazon S3 Datastore. For example, Uber (1) until approximately September 2014, permitted engineers to access the Amazon S3 Datastore with a single, shared AWS access key that provided full administrative privileges over all data stored there; (2) until approximately September 2014, failed to restrict access to systems based on employees' job functions; and (3) until approximately September 2015, failed to require multi-factor authentication for individual account access, and until at least November 2016, failed to require multi-factor authentication for programmatic service account access, to the Amazon S3 Datastore;
- Until at least September 2014, failed to implement reasonable security training and guidance;
- Until approximately September 2014, failed to have a written information security program; and
- Until at least November 2016, stored sensitive personal information in the Amazon S3 Datastore in clear, readable text, rather than encrypting the information.

As a result of these failures, intruders accessed Uber's Amazon S3 Datastore multiple times using access keys that Uber engineers had posted to GitHub, a code-sharing site used by software developers.

First, on or about May 12, 2014, an intruder accessed Uber's Amazon S3 Datastore using an access key that was publicly posted and granted full administrative privileges to all data and documents stored within Uber's Amazon S3 Datastore (the ''2014 data breach''). The intruder accessed one file that contained sensitive personal information belonging to Uber Drivers, including over 100,000 unencrypted names and driver's license numbers, 215 unencrypted names and bank account and domestic routing numbers, and 84 unencrypted names and Social Security numbers. Uber did not discover the breach until September 2014. Uber sent breach notification letters to affected Uber Drivers in February 2015. Uber later learned of more affected Uber Drivers in May and July 2016 and sent breach notification letters to those Drivers in June and August 2016.

Second, between October 13, 2016 and November 15, 2016, intruders accessed Uber's Amazon S3 Datastore using an AWS access key that was posted to a private GitHub repository (''the 2016 data breach''). Uber granted its engineers access to Uber's GitHub repositories through engineers' individual GitHub accounts, which engineers generally accessed through personal email addresses. Uber did not have a policy prohibiting engineers from reusing credentials, and did not require engineers to enable multi-factor authentication when accessing Uber's GitHub repositories. The intruders who committed the 2016 breach said that they accessed Uber's GitHub page using passwords that were previously exposed in other large data breaches, whereupon they discovered the AWS access key they used to access and download files from Uber's Amazon S3 Datastore. The intruders downloaded sixteen files that contained unencrypted consumer personal information relating to U.S. Riders and Drivers, including approximately 25.6 million names and email addresses, 22.1 million names and mobile phone numbers, and 607,000 names and driver's license numbers. Nearly all of the exposed personal information was collected before July 2015 and stored in unencrypted database backup files.

Uber discovered the 2016 data breach on or about November 14, 2016, when one of the attackers contacted Uber claiming to have compromised Uber's ''databases'' and demanding a six-figure payout. Uber paid the attackers $100,000 through the third party that administers Uber's ''bug bounty'' program. Respondent created the bug bounty program to pay financial rewards in exchange for the responsible disclosure of serious security vulnerabilities. However, the attackers who committed the 2016 data breach were fundamentally different from legitimate bug bounty recipients. Instead of responsibly disclosing a vulnerability, the attackers maliciously exploited the vulnerability and acquired millions of consumers' personal information.

Uber failed to disclose the 2016 data breach to affected consumers until November 21, 2017, more than a year after discovering it. Uber also failed to disclose the 2016 data breach to the Commission until November 2017 despite the fact that the breach occurred in the midst of a nonpublic Commission investigation relating to Uber's data security practices, including, specifically, the security of Uber's Amazon S3 Datastore.

The proposed consent order contains provisions designed to prevent Uber from engaging in acts and practices in the future similar to those alleged in the proposed complaint.

Part I of the proposed order prohibits Uber from making any misrepresentations about the extent to which Uber monitors or audits internal access to consumers' personal information or the extent to which Uber protects the privacy, confidentiality, security, or integrity of consumers' personal information. This Part is identical to Part I of the August 2017 proposed consent agreement.

[1] Count one of the proposed complaint and the underlying factual allegations are unchanged from the proposed complaint against Uber that the Commission issued previously as part of the August 2017 proposed consent agreement.

[2] Count two of the proposed complaint addresses the same allegedly false or misleading statements as did count two of the proposed complaint against Uber that the Commission issued as part of the August 2017 proposed consent agreement. The proposed complaint includes allegations that the now withdrawn complaint included to support count two and also includes additional allegations to support count two based on new information the Commission obtained after August 2017.

Part II of the proposed order requires Uber to implement a mandated comprehensive privacy program that is reasonably designed to (1) address privacy risks related to the development and management of new and existing products and services for consumers, and (2) protect the privacy and confidentiality of consumers' personal information. Part II.B includes new language that requires Uber's mandated privacy risk assessments to include consideration of risks and safeguards related to (a) secure software design, development, and testing, including access key and secret key management and secure cloud storage; (b) review, assessment, and response to third-party security vulnerability reports, including through a ''bug bounty'' or similar program; and (c) prevention, detection, and response to attacks, intrusions, or systems failures.

Part III of the proposed order requires Uber to undergo biennial assessments of its mandated privacy program by a third party. Part III has been revised from the August 2017 proposed consent agreement to require Uber to submit to the Commission each of its assessments rather than only its initial assessment.

Part IV of the proposed order requires Uber to submit a report to the Commission if Uber discovers any ''covered incident'' involving unauthorized access or acquisition of consumer information. This Part is new.

Parts V through IX of the proposed order are reporting and compliance provisions. Part V requires dissemination of the order now and in the future to all current and future principals, officers, directors, and managers, and to persons who participate in conduct related to the subject matter of the order, including all employees, agents, and representatives who regularly access personal information. Part VI mandates that Uber submit a compliance report to the FTC one year after issuance of the order and submit additional notices as specified. Parts VII and VIII require Uber to retain documents relating to its compliance with the order, and to provide such additional information or documents as are necessary for the Commission to monitor compliance. Part IX states that the order will remain in effect for 20 years.

These provisions include modifications from the August 2017 proposed consent agreement. Part V expands the acknowledgement of order provision to require Uber to obtain signed acknowledgements from all employees, agents, and representatives who regularly access personal information that Uber collects or receives from or about consumers, rather than limiting the requirement to employees with managerial responsibility related to the order. And Part VII contains modified recordkeeping provisions and new recordkeeping provisions relating to Uber's bug bounty program and its subpoenas and communications with law enforcement.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2018–08600 Filed 4–24–18; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK–KURe–K12 Telephone Review.

Date: May 7, 2018.

Time: 12:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK KUH Fellowship Review.

Date: June 6, 2018.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel and Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; The NIDDK DDK–D Member Conflict SEP.

Date: June 6, 2018.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel and Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

Date: June 7–8, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK–C Conflicts.

Date: June 8, 2018.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; O'Brien Urology Centers.

Date: July 10–11, 2018.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20817, 301–496–9010, *hoffertj@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 19, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–08565 Filed 4–24–18; 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; AIDS and Related Research Special Topic.

Date: April 30, 2018.

Time: 8:00 a.m. to 11:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dimitrios Nikolaos Vatakis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, Bethesda, MD 20892, 301–827–7480, *dimitrios.vatakis@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Cancer Immunology.

Date: May 1, 2018.

Time: 5:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5187 MSC 7840, Bethesda, MD 20892, 301–451–3388, *seldens@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: April 19, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–08562 Filed 4–24–18; 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 Peer Review Meeting.

Date: May 17, 2018.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Zhuqing (Charlie) Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room # 3G41B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC9823, Bethesda, MD 20892–9823, (240) 669–5068, *zhuqing.li@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: April 19, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–08567 Filed 4–24–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council for Biomedical Imaging and Bioengineering, May 23, 2018, 08:30 a.m. to May 23, 2018, 03:00 p.m., The William F. Bolger Center, Bolger Center Hotel Lobby, 9600 Newbridge Drive, Overland Room, Potomac, MD 20854 which was published in the **Federal Register** on April 10, 2018, 83 FR 15392.

The meeting notice is amended to change the location of the meeting from the Overland Room to the Stained Glass Hall in the Osgood Building at the Bolger Center. The meeting is partially closed to the public.

Dated: April 19, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–08566 Filed 4–24–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 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 General Medical Sciences Special Emphasis Panel; NIGMS SCORE Review.

Date: June 12, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikebr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 19, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–08564 Filed 4–24–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of August 2, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 3, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Lauderdale County, Alabama and Incorporated Areas	
Docket No.: FEMA–B–1655	
Unincorporated Areas of Lauderdale County	Lauderdale County Road Department, 1630 State Street, Florence, AL 35630.
Lawrence County, Alabama and Incorporated Areas	
Docket No.: FEMA–B–1655	
Town of Hillsboro	Town Hall, 11355 Main Street, Hillsboro, AL 35643.
Unincorporated Areas of Lawrence County	Lawrence County Engineering Department, 160 Parker Road, Moulton, AL 35650.

Community	Community map repository address
Marshall County, Alabama and Incorporated Areas	
Docket No.: FEMA–B–1655	
Unincorporated Areas of Marshall County	Marshall County Courthouse, 424 Blount Avenue, Guntersville, AL 35976.
Bryan County, Georgia and Incorporated Areas	
Docket No.: FEMA–B–1701	
City of Richmond Hill	Planning and Zoning Department, 85 Richard R. Davis Drive, Richmond Hill, GA 31324.
Unincorporated Areas of Bryan County	Bryan County Engineering and Inspections Department, 66 Captain Matthew Freeman Drive, Suite 201, Richmond Hill, GA 31324.
McIntosh County, Georgia and Incorporated Areas	
Docket No.: FEMA–B–1701	
City of Darien	City Hall, 106 Washington Street, Darien, GA 31305.
Unincorporated Areas of McIntosh County	McIntosh County Building and Zoning Department, 100 Madison Street, Darien, GA 31305.
Butler County, Pennsylvania (All Jurisdictions)	
Docket No.: FEMA–B–1412, FEMA–B–1546, FEMA–B–1709	
Borough of Bruin	Borough Secretary's Office, 126 Water Street, Bruin, PA 16022.
Borough of Callery	Borough Hall, 199 Railroad Street, Callery, PA 16024.
Borough of Chicora	Borough Office, 110 Firehouse Cartway, Chicora, PA 16025.
Borough of Connoquenessing	Borough Office, 228 Constitution Avenue, Connoquenessing, PA 16027.
Borough of East Butler	Borough Municipal Building, 1105 Randolph Avenue, East Butler, PA 16029.
Borough of Evans City	Borough Building, 204 B South Jackson Street, Evans City, PA 16033.
Borough of Harmony	Borough Building, 217 Mercer Street, Harmony, PA 16037.
Borough of Harrisville	Borough Office, 117 South Main Street, Harrisville, PA 16038.
Borough of Karns City	Borough Office, 116 Main Street, Karns City, PA 16041.
Borough of Mars	Borough Office, 598 Spring Street, Mars, PA 16046.
Borough of Petrolia	Petrolia Borough Secretary's Office, 110 Coon Dog Lane, Chicora, PA 16025.
Borough of Prospect	Borough Office, 159 Monroe Street, Prospect, PA 16052.
Borough of Saxonburg	Borough Office, 420 West Main Street, Saxonburg, PA 16056.
Borough of Seven Fields	Borough Municipal Building, 2200 Garden Drive, Suite 100, Seven Fields, PA 16046.
Borough of Valencia	Borough Building, 61 Almira Street, Valencia, PA 16059.
Borough of West Liberty	West Liberty Borough Building, 134 Rhoer Road, Slippery Rock, PA 16057.
Borough of Zelienople	Municipal Building, 111 West New Castle Street, Zelienople, PA 16063.
City of Butler	City Building, 140 West North Street, Butler, PA 16001.
Township of Adams	Adams Township Municipal Building, 690 Valencia Road, Mars, PA 16046.
Township of Allegheny	Allegheny Township Municipal Building, 373 Foxburg Road, Parker, PA 16049.
Township of Brady	Brady Township Building, 141 West Liberty Road, Slippery Rock, PA 16057.
Township of Buffalo	Buffalo Township Municipal Office, 109 Bear Creek Road, Sarver, PA 16055.
Township of Butler	Township Municipal Building, 290 South Duffy Road, Butler, PA 16001.
Township of Center	Center Township Municipal Building, 150 Henricks Road, Butler, PA 16001.
Township of Cherry	Cherry Township Secretary's Office, 1573 West Sunbury Road, #8, West Sunbury, PA 16061.
Township of Clay	Clay Township Municipal Building, 1115 Euclid School Road, Butler, PA 16001.
Township of Clearfield	Clearfield Township Municipal Office, 103 McGrady Road, Fenelton, PA 16034.
Township of Clinton	Clinton Township Municipal Building, 711 Saxonburg Boulevard, Saxonburg, PA 16056.
Township of Concord	Concord Township Building, 690 Hooker Road, West Sunbury, PA 16061.
Township of Connoquenessing	Connoquenessing Township Office, 102 Township Drive, Renfrew, PA 16053.

Community	Community map repository address
Township of Cranberry	Municipal Center, 2525 Rochester Road, Suite 400, Cranberry Township, PA 16066.
Township of Donegal	Donegal Township Office, 400 East Slippery Rock Road, Chicora, PA 16025.
Township of Fairview	Fairview Township Secretary's Office, 1571 Hooker Road, Karns City, PA 16041.
Township of Forward	Forward Township Municipal Building, 207 Ash Stop Road, Evans City, PA 16033.
Township of Franklin	Franklin Township Municipal Building, 191 Election House Road, Prospect, PA 16052.
Township of Jackson	Jackson Township Office, 140 Magill Road, Zelienople, PA 16063.
Township of Jefferson	Jefferson Township Municipal Building, 157 Great Belt Road, Butler, PA 16002.
Township of Lancaster	Lancaster Township Office, 113 Kings Alley, Harmony, PA 16037.
Township of Marion	Marion Township Office, 2275 West Sunbury Road, Suite B, Boyers, PA 16020.
Township of Mercer	Mercer Township Secretary's Office, 1047 Harmony Road, Harrisville, PA 16038.
Township of Middlesex	Middlesex Township Municipal Building, 133 Browns Hill Road, Valencia, PA 16059.
Township of Muddy Creek	Muddy Creek Township Building, 420 Stanford Road, Prospect, PA 16052.
Township of Oakland	Oakland Township Municipal Building, 565 Chicora Road, Butler, PA 16001.
Township of Parker	Parker Township Municipal Building, 107 Snake Road, Petrolia, PA 16050.
Township of Penn	Penn Township Municipal Building, 157 East Airport Road, Butler, PA 16002.
Township of Slippery Rock	Township Office, 155 Branchton Road, Slippery Rock Township, PA 16057.
Township of Summit	Summit Township Office, 502 Bonniebrook Road, Butler, PA 16002.
Township of Venango	Venango Township Building, 332 Eau Claire Road, Boyers, PA 16020.
Township of Washington	Washington Township Building, 241 Old Brick Road, Hilliards, PA 16040.
Township of Winfield	Winfield Township Office, 194 Brose Road, Cabot, PA 16023.
Township of Worth	Worth Township Building, 815 West Park Road, Slippery Rock, PA 16057.
Calhoun County, Texas and Incorporated Areas	
Docket No.: FEMA–B–1709	
Unincorporated Areas of Calhoun County	Calhoun County Courthouse, 211 South Ann Street, Port Lavaca, TX 77979.

[FR Doc. 2018–08591 Filed 4–24–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1819]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 24, 2018.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1819, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472,

(202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 3, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Craig County, Oklahoma and Incorporated Areas	
Project: 11–06–2182S Preliminary Date: October 25, 2017	
City of Vinita	City Hall, 104 East Illinois Avenue, Vinita, OK 74301.
Town of Big Cabin	Craig County Emergency Management, 915 East Apperson Road, Vinita, OK 74301.
Town of Bluejacket	Craig County Emergency Management, 915 East Apperson Road, Vinita, OK 74301.
Town of Ketchum	Craig County Emergency Management, 915 East Apperson Road, Vinita, OK 74301.
Town of Welch	Craig County Emergency Management, 915 East Apperson Road, Vinita, OK 74301.
Unincorporated Areas of Craig County	Craig County Emergency Management, 915 East Apperson Road, Vinita, OK 74301.
Delaware County, Oklahoma and Incorporated Areas	
Project: 11–06–2182S Preliminary Date: October 25, 2017	
City of Grove	City Hall, 104 West 3rd Street, Grove, OK 74344.
City of Jay	Delaware County Emergency Management, 1411 South Broadway Street, Grove, OK 74344.
Town of Bernice	Town Hall, 104 East Harry Street, Bernice, OK 74331.
Unincorporated Areas of Delaware County	Delaware County Emergency Management, 1411 South Broadway Street, Grove, OK 74344.
Mayes County, Oklahoma and Incorporated Areas	
Project: 11–06–2182S Preliminary Date: October 25, 2017	
Town of Disney	Town Hall, 322 West Main Street, Disney, OK 74340.
Town of Grand Lake Towne	Mayes County Courthouse, 1 Court Place, Suite 140, Pryor, OK 74361.
Town of Langley	Town Hall, 324 West Osage Street, Langley, OK 74350.
Unincorporated Areas of Mayes County	Mayes County Courthouse, 1 Court Place, Suite 140, Pryor, OK 74361.

Community	Community map repository address
Ottawa County, Oklahoma and Incorporated Areas	
Project: 11–06–2182S Preliminary Date: October 25, 2017	
City of Commerce	City Hall, 618 Commerce Street, Commerce, OK 74339.
City of Miami	Civic Center, 129 5th Avenue Northwest, Miami, OK 74354.
Town of Afton	Town Hall, 201 Southwest 1st Street, Afton, OK 74331.
Town of Fairland	City Hall, 28 North Main Street, Fairland, OK 74343.
Town of North Miami	City Hall, 309 Pine Street, North Miami, OK 74358.
Town of Quapaw	City Hall, 410 Main Street, Quapaw, OK 74363.
Town of Wyandotte	City Hall, 212 South Main Street, Wyandotte, OK 74370.
Unincorporated Areas of Ottawa County	Ottawa County Courthouse Annex, 123 East Central Boulevard, Suite 103, Miami, OK 74354.
Wyandotte Nation	Tribal Administration, 64700 East Highway 60, Wyandotte, OK 74370.

[FR Doc. 2018–08580 Filed 4–24–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1820]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 24, 2018.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1820, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: April 3, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Burlington County, New Jersey (All Jurisdictions)	
Project: 17–02–0795S Preliminary Date: December 22, 2017	
Township of Mount Laurel	Municipal Building, 100 Mount Laurel Road, Mount Laurel, NJ 08054.

[FR Doc. 2018–08589 Filed 4–24–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–17]

30-Day Notice of Proposed Information Collection: Evaluation of the Office of Public and Indian Housing's (PIH) Energy Performance Contracting (EPC) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* May 25, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 22, 2016 at 81 FR 47813.

A. Overview of Information Collection

Title of Information Collection: Evaluation of the Office of Public and Indian Housing's (PIH) Energy Performance Contracting (EPC) Program.

OMB Approval Number: 2528—New.

Type of Request: New.

Form Number: N/A.

Description of the Need for the Information and Proposed Use: The information is being collected to explore and document the effectiveness and value of HUD's Energy Performance Contracting (EPC) program. EPCs are an innovative financing technique designed to provide Public Housing Authorities (PHAs) with cost-effective energy improvements that are installed with little or no up-front expenditures, wherein the costs of the improvements are typically borne by the performance contractor and repaid using a portion of the cost savings resulting from the improvements. Since this type of financing began in the 1980s, HUD has approved approximately 315 EPCs totaling nearly $1.5 billion in investments. EPCs have been executed in all ten HUD regions in very small (less than 250 units) to very large (more than 6,599 units) PHAs; however, to date; no substantive review of the program's performance has been conducted. The proposed data collection instrument is a web-based survey that will be supported by follow-up telephone interviews to a subset of the study's participants.

Respondents (i.e., Affected Public): Employees of housing organizations receiving funding from HUD, specifically public housing authorities.

Estimated Number of Respondents/Estimated Number of Responses:

Information collection	Number of respondents	Frequency of Response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response [1]	Annual cost
Base Period:							
Web	299.00	1.00	299.00	0.33	98.67	$34.79	$3,432.73
Telephone	28.00	1.00	28.00	1.00	28.00	34.79	974.12
Total	327.00		327.00		126.67	34.79	4,406.85
Option Period:							
Web	136.00	1.00	136.00	0.33	44.88	34.79	1,561.38
Telephone	18.00	1.00	18.00	1.00	18.00	34.79	626.22
Total	154.00				62.88	34.79	2,187.60
Total	481.00				189.55	34.79	6,594.45

[1] The Bureau of Labor Statistics National Compensation Survey reported estimates that in 2017, the average property manager made about $34.79/hour (see *https://www.bls.gov/oes/current/oes_nat.htm*).

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: April 18, 2018.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–08579 Filed 4–24–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6097–N–01]

Mortgagee Review Board: Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (''HUD'').

ACTION: Notice.

SUMMARY: In compliance with Section 202(c)(5) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW, Room B–133/3150, Washington, DC 20410–8000; telephone (202) 708–2224 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (12 U.S.C. § 1708(c)(5)) requires that HUD ''publish a description of and the cause for administrative action against a HUD-approved mortgagee'' by HUD's Mortgagee Review Board (''Board''). In compliance with the requirements of Section 202(c)(5), this notice advises of actions that have been taken by the Board in its meetings from October 1, 2016 to September 30, 2017.

I. Civil Money Penalties, Withdrawals of FHA Approval, Suspensions, Probations, and Reprimands

1. Alliance Financial Resources, LLC., Phoenix, AZ [Docket No. 16–1861–MR]

Action: On June 27, 2017, the Board voted to accept the terms of a settlement agreement with Alliance Financial Resources, LLC. (''Alliance'') that required Alliance to pay a civil money penalty in the amount of $13,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Alliance (a) failed to timely notify HUD/FHA that Alliance entered into a Consent Order with the State of Oklahoma Department of Consumer Credit which required Alliance to pay a penalty; and (b) falsely certified on its annual certification that it had not been sanctioned by a state agency, notwithstanding the Consent Order with the Oklahoma Department of Consumer Credit.

2. Citizens Bank, N.A., Warwick, RI [Docket No. 16–1771–MR]

Action: On December 15, 2016, the Board voted to accept the terms of a settlement agreement with Citizens Bank, N.A. (''Citizens'') that required Citizens to pay a civil money penalty in the amount of $25,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Citizens (a) failed to timely notify HUD/FHA that Citizens entered into a Consent Order with the Consumer Financial Protection Bureau which required Citizens to pay a penalty; (b) failed to timely notify HUD/FHA that Citizens had been assessed a civil money penalty by the Office of the Comptroller of Currency; and (c) failed to notify HUD/FHA that Citizens was assessed another civil money penalty by the Office of the Comptroller of Currency.

3. CMG Mortgage, Inc., San Ramon, CA [Docket No. 16–1770–MR]

Action: On December 15, 2016, the Board voted to accept a settlement agreement with CMG Mortgage, Inc. (''CMG'') that required CMG to pay a civil money penalty in the amount of $8,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: CMG failed to timely notify HUD/FHA that it entered into a Settlement Agreement with the State of New York Department of Financial Services under which it paid a fine.

4. Financial Freedom, a Division of CIT Bank N.A., Irvine, CA [Docket No.17–0036–FC]

Action: On January 9, 2017, the Board voted to accept a settlement agreement with Financial Freedom; pursuant to the settlement agreement, Financial Freedom was required to pay the United States $89,274,944 without admitting liability.

Cause: The Board took this action because Financial Freedom allegedly failed to self-curtail debenture interest on mortgage insurance claims it had submitted to HUD relating to HECM loans.

5. Great Western Financial Services, Inc., Plano, TX [Docket No. 16–1781–MR]

Action: On June 27, 2017, the Board voted to accept a settlement agreement with Great Western Financial Services (''Great Western'') that required Great Western to pay a civil money penalty in the amount of $52,468. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Great Western (a) failed to timely notify HUD/FHA that it was assessed a fine by the State of Illinois Department of Financial and Professional Regulation Division of Banking; (b) failed to timely notify HUD/FHA that it was issued a Consent Order by the State of Oklahoma Department of Consumer Credit requiring Great Western to pay a civil money penalty; (c) failed to timely notify HUD/FHA that it was issued a Consent Order by the State of Connecticut Department of Banking requiring Great Western to pay a civil money penalty; (d) failed to timely notify HUD/FHA that it was issued a Consent Order by the State of Texas Department of Savings and Mortgage

Lending requiring Great Western to pay a civil money penalty; (e) falsely certified to HUD/FHA that it had not been sanctioned by any state agency in 2014; (f) falsely certified to HUD/FHA that it had not been sanctioned by any state agency in 2015; and (g) falsely certified to HUD/FHA that it had not been sanctioned by any state agency in 2016.

6. James B. Nutter and Company, Kansas City, MO [Docket No. 16–1773–MR]

Action: On October 20, 2016, the Board voted to accept a settlement agreement with James B. Nutter and Company (''Nutter and Company'') that required Nutter and Company to pay a civil money penalty in the amount of $3,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Nutter and Company failed to timely notify HUD/FHA that it had entered into a settlement agreement with the State of New York Department of Financial Services under which it paid a fine.

7. Magna Bank, Memphis, TN [Docket No. 14–1712–MR]

Action: On December 15, 2016, the Board voted to accept a settlement agreement with Magna Bank that required Magna Bank (a) to pay a civil money penalty in the amount of $84,000; and (b) indemnify HUD/FHA for losses incurred in the amount of $45,499.60 on one loan. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Magna Bank (a) failed to provide Servicemember Civil Relief Act notices to defaulted borrowers; (b) failed to maintain copies of inspection reports; (c) failed to offer loss mitigation in accordance with HUD requirements; (d) failed to send loss mitigation information to the mortgagor's counsel in bankruptcy cases; (e) failed to perform and/or document a pre-foreclosure management review; (f) improperly charged property inspection fees; (g) created a permanent loan modification with monthly payments that exceeded the trial modification amounts; (h) failed to perform property inspections after being unable to contact the borrower; (i) sent cover letters that did not meet HUD's requirements; (j) failed to provide accurate reports to HUD's Single Family Default Monitoring System (''SFDMS''); (k) failed to reconcile its portfolio with respect to SFDMS reporting; (l) failed to meet SFDMS reporting deadlines; and (m) failed to establish and implement a quality control plan with all required elements.

8. MLD Mortgage, Inc. d/b/a The Money Store, Florham Park, NJ [Docket No. 16–1660–MR]

Action: On June 27, 2017, the Board voted to accept a settlement agreement with MLD Mortgage, Inc. d/b/a The Money Store (''MLD Mortgage''); pursuant to the settlement agreement, MLD Mortgage was required to (a) pay a civil money penalty in the amount of $34,968, and (b) refrain from making any claim for insurance benefits to HUD/FHA and/or indemnify HUD/FHA for HUD's losses on three loans. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: MLD Mortgage (a) failed to notify HUD/FHA that it entered into a consent order with the State of Washington Department of Financial Institutions under which it paid a fine; and (b) failed to properly underwrite HUD/FHA insured loans.

9. NFM, Inc., Linthicum, MD [Docket No. 16–1683–MRT]

Action: On June 27, 2017, the Board voted to accept a settlement agreement with NFM, Inc. (''NFM''); pursuant to the settlement agreement, NFM paid a civil money penalty in the amount of $6,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: NFM failed to timely notify HUD/FHA that NFM entered into a settlement agreement with the State of New York Department of Financial Services under which it paid a fine.

10. OceanFirst Bank, Toms River, NJ [Docket No. 16–1756–MR]

Action: On June 27, 2017, the Board voted to accept a settlement agreement with OceanFirst Bank (''OceanFirst'') that required OceanFirst to pay a civil money penalty in the amount of $4,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: OceanFirst failed to notify HUD/FHA that OceanFirst had merged with another entity.

11. PHH Home Loans, LLC., Mount Laurel, NJ [Docket No. 16–1865–MR]

Action: On June 27, 2017, the Board voted to release PHH Home Loans, LLC. (''PHH'') from any civil money penalties or administrative actions as part of a settlement between PHH and the United States that required PHH to pay the United States $65,000,000.

Cause: The Board took this action based on PHH's alleged failure to properly originate, underwrite, and conduct quality control reviews for HUD/FHA insured loans in violation of HUD/FHA requirements.

12. Polonia Bank, Huntingdon Valley, PA [Docket No. 16–1622–MR]

Action: On December 15, 2016, the Board voted to accept a settlement agreement with Polonia Bank (''Polonia'') that required Polonia to (a) pay a civil money penalty in the amount of $346,000; and (b) indemnify HUD/FHA for HUD's losses on thirty-one loans. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Polonia (a) failed to properly process and document closeouts for three 203(k) mortgages; (b) failed to ensure that it properly calculated the maximum mortgage amount on one loan; (c) failed to adequately document the stability of borrowers' income on five loans; (d) failed to properly document compliance with Federal debt requirements on one loan; (e) failed to adequately verify or document borrowers' earnest money deposit, source of funds to close, or the source of funds to pay consumer debt on thirteen loans; (f) failed to ensure the integrity of AUS data by using a credit report older than 120 days; (g) failed to timely notify HUD/FHA that it entered into a formal written agreement with the Comptroller of Currency; (h) failed to properly document the source and adequacy of funds used for down payments and for closing costs on sixteen loans; (i) falsely certified to HUD/FHA that it had not been the subject of unresolved findings by any state agency in 2014; and (j) failed to timely submit acceptable audited financial statements for fiscal year 2015.

13. Prudential Huntoon Paige Associates, LTD. Dallas, TX [Docket No. 16–1665–MR]

Action: On October 20, 2016, the Board voted to accept a settlement agreement with Prudential Huntoon Paige Associates, LLC. (''Prudential'') that required Prudential to make a payment in the amount of $4,000,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on Prudential's alleged failure to properly process and underwrite four multi-family HUD/FHA insured projects in violation of HUD/FHA requirements.

14. Reverse Mortgage Solutions, Inc., Houston, TX [Docket No. 16–1685–MRT]

Action: On June 27, 2017, the Board voted to accept a settlement agreement with Reverse Mortgage Solutions, Inc. (''Reverse Mortgage'') that required Reverse Mortgage to pay a civil money penalty in the amount of $4,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Reverse Mortgage failed to timely notify HUD/FHA that Reverse Mortgage entered into a settlement agreement with the State of New York Department of Financial Services under which it paid a fine.

15. RMK Financial Corporation, Ontario, CA [Docket No. 16–1866–MR]

Action: On June 27, 2017, the Board voted to accept a settlement agreement with RMK Financial Corporation (''RMK'') that required RMK to pay a civil money penalty in the amount of $26,968. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: RMK (a) failed to timely notify HUD/FHA that RMK was issued a consent order by the Consumer Financial Protection Bureau under which it paid a civil money penalty; (b) failed to timely notify HUD/FHA that RMK entered into settlement agreement with the State of Ohio Department of Commerce Division of Financial Institutions under which it paid a fine; (c) falsely certified that RMK had not been sanctioned by any federal or state agency in 2015; and (d) failed to timely notify HUD/FHA that RMK was issued a consent order by the State of Kentucky Department of Financial Institutions under which it paid a civil money penalty.

16. Seckel Capital, LLC., Newtown, PA [Docket No. 17–1857–MR]

Action: On June 27, 2017, the Board voted to immediately suspend Seckel Capital, LLC.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Seckel Capital, LLC submitted fraudulent financial statements for fiscal year 2012 through fiscal year 2015 and falsely certified for fiscal year 2012 through fiscal year 2015 that it was in compliance with HUD requirements.

17. SiWell, Inc., Lubbock, TX [Docket No. 16–1658–MR]

Action: On June 27, 2017, the Board voted to accept a settlement agreement with SiWell, Inc. that required SiWell, Inc. pay a civil money penalty in the amount of $193,025. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: SiWell, Inc. (a) failed to timely remit periodic Monthly Mortgage Insurance Premiums to HUD/FHA for 732 loans; and (b) failed to timely remit Upfront Mortgage Insurance Premiums on fifteen loans.

18. Stearns Lending, LLC., Santa Ana, CA [Docket No. 16–1687–MRT]

Action: On October 20, 2016, the Board voted to accept a settlement agreement with Stearns Lending, LLC. (''Stearns'') that required Stearns pay a civil money penalty in the amount of $4,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Stearns failed to timely notify HUD/FHA that Stearns entered into a settlement agreement with the State of Arizona Department of Financial Institutions under which it paid a civil money penalty.

19. SunTrust Mortgage, Inc., Richmond, VA [Docket No. 16–1688–MRT]

Action: On December 15, 2016, the Board voted to accept a settlement agreement with SunTrust Mortgage, Inc. (''SunTrust'') that required SunTrust pay a civil money penalty in the amount of $8,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: SunTrust failed to timely notify HUD/FHA that it entered into a settlement agreement with the State of New York Department of Financial Services under which it paid a fine.

20. United Shore Financial Services, LLC., Troy, MI [Docket No. 17–0009–FC]

Action: On December 21, 2016, the Board voted to release United Shore Financial Services, LLC. (''United Shore'') from any civil money penalties or administrative actions as part of a settlement between United Shore and the United States that required United Shore to pay the United States $48,000,000 plus interest.

Cause: The Board took this action based on United Shore's alleged failure to properly originate, underwrite, and conduct quality control reviews for HUD/FHA insured loans in violation of HUD/FHA requirements.

II. Lenders That Failed To Timely Meet Requirements for Annual Recertification of HUD/FHA Approval but Came Into Compliance

Action: The Board entered into settlement agreements with the lenders listed below, which required the lender to pay a civil money penalty without admitting fault or liability.

Cause: The Board took this action based upon allegations that the lenders listed below failed to comply with HUD's annual recertification requirements in a timely manner.

1. Aberdeen Federal Credit Union, Aberdeen, SD ($4,500) *[Docket No. 16–1757–MRT]*
2. Academy Mortgage Corporation, Draper, UT ($3,500) *[Docket No. 16–1768–MRT]*
3. All in One Mortgage Lenders, Miami, FL ($8,500) *[Docket No. 16–1809–MRT]*
4. Austin Bank of Chicago dba ABC Bank, Chicago, IL ($4,500) *[Docket No. 16–1712–MRT]*
5. Bank 7, Nichols Hills, OK ($4,500) *[Docket No. 16–1785–MRT]*
6. Bridgewater Savings Bank, Bridgewater, MA ($4,500) *[Docket No. 17–1836–MRT]*
7. Celtic Bank, Salt Lake City, UT ($4,500) *[Docket No. 16–1711–MRT]*
8. CFBank, Fairlawn, OH ($8,500) *[Docket No. 16–1780–MRT]*
9. Champion Bank, Parker, CO ($9,468) *[Docket No. 17–1865–MRT]*
10. City of Oakland, Oakland, CA ($8,500) *[Docket No. 17–1724–MRT]*
11. Clark County Credit Union, Las Vegas, NV ($4,500) *[Docket No. 17–1853–MRT]*
12. CoastHills Credit Union, Lompoc, CA ($4,500) *[Docket No. 16–1696–MRT]*
13. Commerce State Bank, West Bend, WI ($4,500) *[Docket No. 16–1713–MRT]*
14. Cooperativa de Ahorro Y Credit de Aguas, Aguas Buenas, PR ($4,500) *[Docket No. 16–1717–MRT]*
15. Coral Mortgage Bankers Corp., Hackensack, NJ ($8,500) *[Docket No. 16–1723–MRT]*
16. Craft3, Ilwaco, WA ($4,500) *[Docket No. 16–1691–MRT]*

17. Diversified Members Credit Union, Detroit, MI ($4,500) *[Docket No. 17–1895–MRT]*
18. Eagle Bank and Trust Company, Hillsboro, MO ($4,500) *[Docket No. 16–1791–MRT]*
19. Eagle Mortgage & Funding, Inc., Memphis, TN ($8,500) *[Docket No. 16–1790–MRT]*
20. East West Bank. Pasadena, CA ($4,500) *[Docket No. 16–1746–MRT]*
21. Fidelity Direct Mortgage, LLC., Gaithersburg, MD ($4,500) *[Docket No. 17–1725–MRT]*
22. First National Bank of Granbury, Granbury, TX ($4,500) *[Docket No. 17–1871–MRT]*
23. First National Bank of Pasco, Dade City, FL ($4,500) *[Docket No. 17–1881–MRT]*
24. First State Bank, Barboursville, WV ($4,500) *[Docket No.16–1833–MRT]*
25. Fulton Savings Bank, Fulton, NY ($4,500) *[Docket No. 16–1735–MRT]*
26. Gladewater National Bank, Gladewater, TX ($4,500) *[Docket No. 16–1789–MRT]*
27. Great Western Financial Services, Plano, TX ($4,500) *[Docket No.16–1781–MRT]*
28. Herring Bank, Amarillo, TX ($4,500) *[Docket No 17–1876–MRT]*
29. Home Bank and Trust, Wichita, KS ($4,500) *[Docket No. 17–1885–MRT]*
30. Hometown Bank of the Hudson Valley, Walden, NY ($4,500) *[Docket No. 78716]*
31. Idaho First Bank, Boise, ID ($4,500) *[Docket No. 16–1792–MRT]*
32. Industrial Bank N.A., Washington, DC ($4,500) *[Docket No. 16–1784–MRT]*
33. Intercap Lending Inc., Albuquerque, NM ($4,500) *[Docket No. 16–1749–MRT]*
34. Ixonia Bank, Ixonia, WI ($4,500) *[Docket No. 16–1806–MRT]*
35. Krkabob, Inc., d/b/a Argus Lending, Pleasant Hill, CA ($4,500) *[Docket No. 16–1728–MRT]*
36. Landings Credit Union, Tempe, AZ ($4,500) *[Docket No. 17–1841–MRT]*
37. Mazuma Credit Union, Overland Park, KS ($4,500) *[Docket No. 16–1801–MRT]*
38. New Windsor State Bank, New Windsor, MD ($4,500) *[Docket No. 16–1800–MRT]*
39. One Bank and Trust, N.A., Little Rock, AR ($4,500) *[Docket No. 16–1793–MRT]*
40. Premier Members Credit Union, Boulder, CO ($8,500) *[Docket No. 17–1731–MRT]*
41. Prime Source Mortgage, Inc., Murrieta, CA ($4,500) *[Docket No. 16–1858–MRT]*
42. Private Bank of Buckhead, Atlanta, GA ($4,500) *[Docket No. 16–1740–MRT]*
43. Republic Mortgage Commercial, Salt Lake City, UT ($4,500) *[Docket No. 16–1754–MRT]*
44. Signal Financial Federal Credit Union, Kensington, MD ($4,500) *[Docket No. 16–1748–MRT]*
45. Sindeo, Inc., San Francisco, CA ($8,500) *[Docket No. 16–1695–MRT]*
46. SN Servicing Corporation, Baton Rouge, LA ($4,500) *[Docket No. 16–1803–MRT]*
47. Somerville National Bank, Somerville, OH ($4,500) *[Docket No. 16–1776–MRT]*
48. TRM, LLC., San Juan, PR ($8,500) *[Docket No. 16–1743–MRT]*
49. U.S. Bank Trust National Association, New York, NY ($4,500) *[Docket No. 16–1761–MRT]*
50. United Heritage Credit Union, Austin, TX ($4,500) *[Docket No. 16–1725–MRT]*
51. Wendover Financial Service Corporation, Greensboro, NC ($8,500) *[Docket No. 16–1731–MRT]*
52. Wolverine Bank, FSB, Midland, MI ($4,500) *[Docket No. 16–1752–MRT]*

III. Lenders That Failed To Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board voted to withdraw the FHA approval of each of the lenders listed below for a period of one (1) year.

Cause: The Board took this action based upon allegations that the lenders listed below were not in compliance with HUD's annual recertification requirements.

1. AAA Concordia Mortgage Corp., San Juan, PR *[Docket No.18–1839–MRT]*
2. Banco Popular North America, New York, NY *[Docket No. 18–1840–MRT]*
3. Bristol County Savings Bank, Taunton, MA *[Docket No. 16–1874–MRT]*
4. Canon National Bank of Canon City, Canon City, CO *[Docket No. 18–1841–MRT]*
5. Citywide Bank, Denver, CO *[Docket No. 16–1741–MRT]*
6. Community 1st Federal Credit Union, Miles City, MT *[Docket No. 16–1760–MRT]*
7. Cooperativa De Ahorro Y Credito Hermanos, Hato Rey, PR *[Docket No. 17–1722–MRT]*
8. Covenant Bank, Clarksdale, MS *[Docket No. 16–1797–MRT]*
9. Eastland Financial Corp, Irvine, CA *[Docket No. 18–1842–MRT]*
10. Ecom Mortgage Inc., Covina, CA *[Docket No. 18–1843–MRT]*
11. First Community Bank, Austin, TX *[Docket No. 18–1844–MRT]*
12. First National Bank, Massillon, OH *[Docket No. 18–1845–MRT]*
13. Hendricks County Bank and Trust Company, Brownsburg, IN *[Docket No. 16–1715–MRT]*
14. Kentucky Federal Savings & Loan Association, Covington, KY *[Docket No. 16–1707–MRT]*
15. Michigan Community Credit Union, Jackson, MI *[Docket No. 18–1846–MRT]*
16. Municipal Housing Authority, Yonkers, NY *[Docket No. 17–1732–MRT]*
17. Oak Mortgage Group Inc., Dallas, TX *[Docket No. 18–1847–MRT]*
18. Oneida Savings Bank, Oneida, NY *[Docket No. 16–1804–MRT]*
19. Proficio Mortgage Ventures, LLC., Henderson, NV *[Docket No. 16–1794–MRT]*
20. Royal Bank of Missouri, St. Louis, MO *[Docket No.18–1805–MRT]*
21. Southeast Funding Alliance, Orlando, FL *[Docket No. 15–1934–MRT]*
22. Vanguard Funding, LLC., Garden City, NY *[Docket No. 18–1848–MRT]*
23. Vision Bank, N.A., Ada, OK *[Docket No. 16–1750–MRT]*

Dated: April 10, 2018.

Dana T. Wade,

General Deputy Assistant Secretary for Housing/FHA Commissioner, Chairman, Mortgagee Review Board.

[FR Doc. 2018–08669 Filed 4–24–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2018–N003; FXES11130300000–189–FF03E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of Five Listed Animal 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 under the Endangered Species Act of 1973, as amended, for five animal 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.

DATES: To ensure consideration, please send your written information by June 25, 2018. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information for each species, see the table in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: To request information, contact the appropriate person in the table in the **SUPPLEMENTARY INFORMATION** section. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA), for the Dakota skipper (*Hesperia dacotae*), Higgin's eye pearlymussel (*Lampsilis higginsii*), Hine's emerald dragonfly (*Somatochlora hineana*), Niangua darter (*Etheostoma nianguae*), and Poweshiek skipperling (*Oarisma poweshiek*).

Why do we conduct 5-year reviews?

Under the ESA (16 U.S.C. 1531 *et seq*.), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). 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 those species under active review. For additional information about 5-year reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html*, scroll down to ''Learn More about 5-Year Reviews,'' and click on our factsheet.

What information do we consider in our review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the ESA); and

(E) 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.

New information will be considered in the 5-year review and ongoing recovery programs for the species.

What species are under review?

This notice announces our active 5-year status reviews of the species in the following table.

ANIMALS

Common name	Scientific name	Taxonomic group	Listing status	Where listed	Final listing rule (**Federal Register** citation and publication date)	Contact person, email, phone	Contact person's U.S. mail address
Dakota skipper	*Hesperia dacotae*.	Butterfly	T	IA, IL, MN, ND, SD.	80 FR 59248; October 1, 2015.	Andrew Horton; *Andrew_Horton@fws.gov*; 952–252–0092.	USFWS, 4101 American Boulevard East, Bloomington, MN 55425.
Higgins' eye pearlymussel.	*Lampsilis higginsii*.	Mussel	E	IL, MN, MO, WI.	41 FR 21062; June 14, 1976.	Tamara Smith; *Tamara_Smith@fws.gov*; 952–252–0092.	USFWS, 4101 American Boulevard East, Bloomington, MN 55425.
Hine's emerald dragonfly.	*Somatochlora hineana*.	Insect	E	IL, IN, OH, WI	60 FR 5267, January 26, 1995.	Kristopher Lah; *Kristopher_Lah@fws.gov*; 312–216–4720.	USFWS, 230 South Dearborn, Suite 2398, Chicago, IL 60604.
Niangua darter	*Etheostoma nianguae*.	Fish	T	MO	50 FR 24649; June 12, 1985.	Bryan Simmons; *Bryan_Simmons@fws.gov*; 417–836–5302.	USFWS, 101 Park DeVille Drive, Suite A, Columbia, MO 65203.
Poweshiek skipperling.	*Oarisma poweshiek*.	Butterfly	E	IA, IL, IN, MI, MN, ND, SD, WI.	80 FR 59248; October 1, 2015.	Nick Utrup; *Nick_Utrup@fws.gov*; 952–252–0092.	USFWS, 4101 American Boulevard East, Bloomington, MN 55425.

Request for Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See ''What Information Do We Consider in Our Review?'' for specific criteria. 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. You may also direct questions to those contacts. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

Public Availability of Submissions

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

Authority

We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 12, 2018.

Lori H. Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2018–08630 Filed 4–24–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2018–N012; FXES111608MSSO0]

Marine Mammals; Incidental Take During Specified Activities; Proposed Incidental Harassment Authorization

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the United States Coast Guard (USCG) for authorization to take small numbers of marine mammals by harassment incidental to the replacement of pier piles and the potable water line at USCG Station Monterey in Monterey County, California. In accordance with provisions of the Marine Mammal Protection Act of 1972, as amended, we request comments on our proposed authorization for the applicant to incidentally take, by harassment, small numbers of southern sea otters during a 1-year authorization period beginning on or before June 15, 2018. We anticipate no take by injury or death and include none in this proposed authorization, which would be for take by harassment only.

DATES: Comments and information must be received by May 25, 2018.

ADDRESSES: *Comment submission:* You may submit comments by any one of the following methods:

1. *U.S. mail or hand-delivery:* Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

2. *Fax:* 805–644–3958, attention to Stephen P. Henry, Field Supervisor.

3. *Electronic mail (email): R8_SSO-IHA_Comment@fws.gov.* Please include your name and U.S. mail address in your message.

Document availability: Electronic copies of the incidental harassment authorization request, the Marine Mammal Monitoring Plan, the draft supplemental environmental assessment, and other supporting materials, such as the list of references used in this notice, may be obtained by writing to the address specified above, telephoning the contact listed in **FOR FURTHER INFORMATION CONTACT**, or visiting the internet at *http://www.fws.gov/ventura/endangered/species/info/sso.html.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned U.S. mail address.

FOR FURTHER INFORMATION CONTACT: Lilian Carswell, Southern Sea Otter Recovery & Marine Conservation Coordinator, (805) 677–3325, or by email at *Lilian_Carswell@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1371 (a)(5)(A) and (D)), authorize the Secretary of the Interior 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, provided that we make certain findings and either issue regulations or, if the taking is limited to harassment, provide a notice of a proposed authorization to the public for review and comment.

We may grant authorization to incidentally take small numbers of marine mammals if we find 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 subsistence uses. As part of the authorization process, we prescribe permissible methods of taking and other means of effecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

The term ''take,'' as defined by the MMPA, means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill, any marine mammal. Harassment, as defined by the MMPA, means ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [the MMPA calls this Level A harassment], or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [the MMPA calls this Level B harassment].''

The statutory terms ''negligible impact,'' ''small numbers,'' and ''unmitigable adverse impact'' are defined in the Code of Federal Regulations at 50 CFR 18.27, the Service's regulations governing take of small numbers of marine mammals incidental to specified activities. ''Negligible impact'' is defined as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' The term ''small numbers'' is also defined in the regulations as ''a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.'' However, we do not rely on the definition of ''small numbers'' here, as it conflates the terms ''small numbers'' and ''negligible impact,'' which we recognize as two separate and distinct requirements. *See NRDC* v. *Evans,* 232 F. Supp. 2d 1003, 1025 (N.D. Cal.). Instead, in our small numbers determination, we evaluate whether the number of marine mammals likely to be taken is small relative to the size of the overall population.

''Unmitigable adverse impact'' is determined in reference to impacts on the availability of the species or stock(s) for subsistence uses. It is defined as ''an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.'' Because this subsistence provision applies only to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific

Ocean or the Arctic Ocean (16 U.S.C. 1371(b)), it is relevant to northern sea otters (*Enhydra lutris kenyoni*) in Alaska but not to southern sea otters.

Summary of Request

In February 2017, we received a request from the USCG (Applicant) for MMPA authorization to take by harassment southern sea otters (*Enhydra lutris nereis*) incidental to the replacement of pier piles and the potable water line at USCG Station Monterey in Monterey Harbor, California. We received a revised request on July 11, 2017. The Applicant requested and received incidental harassment authorization (IHA) for the same project in 2014 but was not able to initiate work at that time. Other than revised dates, the project is essentially unchanged. The Applicant proposes to remove and replace 17 timber piles that structurally support the patrol boat pier (Pier), replace the existing potable water line, and improve associated structures to maintain the structural integrity of the Pier and potable water line. Pile-driving activities would be limited to the period from June 15 to October 15. Other construction activities associated with the project are not expected to affect sea otters and may occur at any time. A detailed description of the proposed action is contained in the revised incidental harassment authorization request submitted to us by the USCG (Amec Foster Wheeler 2017). The proposed action is expected to result in take, by Level B Harassment only, of sea otters.

Description of the Activity

The proposed action would involve removing the existing timber deck, timber stringers, steel pile caps, steel support beams, and hardware to access the 17 timber piles that need to be replaced. The timber piles, which are approximately 16 to 18 inches (in) (41 to 46 centimeters (cm)) in diameter and covered with polyvinyl chloride (PVC) wraps, would be removed by means of a vibratory extractor. Each timber pile would be replaced with a steel pipe pile 14 in (36 cm) in diameter installed using a vibratory hammer. Each steel pipe pile would be positioned and installed in the footprint of the extracted timber pile. Pile proofing would be conducted via impact hammer. If, due to substrate or breakwater armor, a pipe pile is unable to be driven to 30 feet (ft) (9 meters (m)) below the mud line using a vibratory hammer, then an impact hammer would be used. If the pile cannot be driven with an impact hammer, the pipe pile would be posted onto the armor stone. The steel pipe piles would not be filled with concrete. Materials and hardware removed to allow access to conduct pile work would be replaced with in-kind materials.

Sound attenuation measures, including implementation of a bubble curtain and cushion pads during impact pile driving, would be used. Pile extraction and driving equipment would be located on a barge. No staging would be located on the existing wharf. To facilitate supplementary monitoring of effects on sea otters in or near the project area, the Service has requested, and the USCG has agreed to provide, 24-hour advance notice of pile-driving activity and a record of the start and stop times of all pile-driving activities once they are completed.

a. Timing of Activity

Project construction would require a maximum of 60 work days. Pile extraction and driving activities would occur between June 15 and October 15. Pile-driving activities are expected to require 3 to 8 days of the total construction time, with an average of 2 to 3 piles removed and installed per day. Driving time would be approximately 20 minutes per pile for vibratory or impact pile driving. Vibratory extraction of the existing piles would take approximately 10 minutes per pile. In total, approximately 510 minutes (8.5 hours) of underwater and airborne noise are anticipated to be generated by pile driving/extraction activities over the course of the project.

b. Geographic Location of Activity

The USCG Station Monterey is located at 100 Lighthouse Avenue, in the city and county of Monterey, California. The Pier is on the eastern portion of the USCG Station's waterfront facility, along a jetty that extends approximately 1,300 ft (396 m) east into Monterey Harbor. The Pier and floating docks are on the southern side of the jetty.

Description of Marine Mammals in the Area of the Activity

Several species of marine mammals occur in the proposed construction area, including the Pacific harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), harbor porpoise (*Phocoena phocoena*), Risso's dolphin (*Grampus griseus*), bottlenose dolphin (*Tursiops truncatus*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*) and gray whale (*Eschrichtius robustus*). These species are under the jurisdiction of the National Marine Fisheries Service (NMFS) and are considered under a separate proposed IHA notice (82 FR 42986; September 13, 2017). The only marine mammal species under the jurisdiction of the Service that occurs in the proposed construction area is the southern sea otter.

Southern sea otters are listed as threatened under the Endangered Species Act of 1973, as amended (ESA) (42 FR 2965; January 14, 1977), and, because of their threatened status, are automatically considered ''depleted'' under the MMPA (16 U.S.C. 1362(1)(C)). The State of California also recognizes the sea otter as a fully protected mammal (Fish and Game Code section 4700) and as a protected marine mammal (Fish and Game Code section 4500). All members of the sea otter population in California are descendants of a small group that survived the fur trade and persisted near Big Sur, California. Historically ranging from at least as far north as Oregon (Valentine et al. 2008) to Punta Abreojos, Baja California, Mexico, in the south, sea otters currently occur in only two areas of California. The mainland population ranges from San Mateo County to Santa Barbara County, and a translocated population exists at San Nicolas Island, Ventura County. The 2017 California-wide index of abundance is 3,186 individuals (*www.werc.usgs.gov/seaottercount*). Additional general information on status and trends of the southern sea otter may be found in the 5-year review and stock assessment report, available at *http://www.fws.gov/ventura/endangered/species/info/sso.html.*

Sea otters occur in the Monterey Bay Harbor area year round. Census data indicate that there are, on average, 5.4 sea otters per 1,640 ft (500 m) of coastline within Monterey Harbor and in adjacent shoreline areas from Mussel Point to Del Monte Beach (ATOS 371–382; U.S. Geological Survey (USGS) 2017). The number of sea otters present at any one time in a particular location depends on a number of factors, including the availability of kelp canopy, the location of rafting sites, and individual sea otters' behavior. Sea otters typically use the harbor area to rest and to forage, with some sea otters feeding on mussels under the pier at or near the project location. Sea otters also occasionally use a passage through the rocks near the project location to access the kelp beds north of the jetty from the harbor (M. Staedler, Monterey Bay Aquarium Sea Otter Research and Conservation Program, pers. comm. 2014, 2017).

Potential Impacts of the Proposed Action on Sea Otters

In this section we provide a qualitative discussion of the potential impacts of the proposed project. The ''Estimated Take by Incidental Harassment'' section later in this document includes a quantitative analysis of the number of individuals that may be taken by Level B harassment as a result of this activity.

Marine mammals exposed to high-intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak et al. 1999; Schlundt et al. 2000; Finneran et al. 2002, 2005). A permanent threshold shift (PTS) is said to occur when the loss of hearing sensitivity is unrecoverable, whereas a temporary threshold shift (TTS) is said to occur when the animal's hearing threshold recovers over time (Southall et al. 2007). Noise exposures resulting in TTS can cause PTS if repeated over time. Chronic exposure to excessive, but not high-intensity, noise can cause masking at the frequency band that some animals utilize for vital biological functions (Clark et al. 2009). Noise can also cause other forms of disturbance when marine mammals alter their normal patterns of behavior to move away from the source.

Many marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, locating prey, and avoiding predators. Sea otter vocalizations include in-air screams used by mothers and pups to maintain contact when separated and a suite of other low-intensity, short-range, in-air signals that are likely used in close-range social interactions (Kenyon 1969, McShane et al. 1995). However, sea otters are not known to communicate underwater, nor are they known to use acoustic information to orient or to locate prey. Ghoul and Reichmuth (2014) conducted controlled laboratory hearing tests to obtain aerial and underwater audiograms for a captive adult male sea otter and to evaluate his hearing in the presence of ambient noise. In air, the sea otter's hearing was similar to that of a sea lion but less sensitive to high-frequency (greater than 22 kHz) and low-frequency (less than 2 kHz) sounds than terrestrial mustelids. Under water, the sea otter was able to detect signals as low as 0.125 kHz (at 116 dB re 1 μPa) and as high as 38.1 kHz (at 141 dB re 1 μPa), with best hearing sensitivity in the range of 8 and 16 kHz.

Although the sea otter's hearing was most similar to that of a sea lion, the sea otter had a narrower bandwidth of best hearing sensitivity (3.7 octaves) than either the sea lion (6.7 octaves) or harbor seal (8.6 octaves) and a pronounced reduction in sensitivity at frequencies below 1 kHz, where sounds could not be detected at levels below 100 dB re 1 μPa. At frequencies of 2 kHz or lower, the auditory threshold (level at which a sound becomes audible) was 12 to 34 dB higher for the sea otter than for the sea lion. In studies of auditory masking, signal-to-noise ratios required for signal detection (critical ratios) were 25 to 34 dB, more than 10 dB above those measured in pinnipeds, suggesting that sea otters have a poor capacity to detect acoustic signals in background noise relative to other marine carnivores. In particular, critical ratios for the sea otter at frequencies below 2 kHz indicate that low-frequency sounds are likely to be more difficult for sea otters to detect above low-frequency noise relative to other marine mammals.

Controlled behavioral studies of responses of sea otters to noise have not been conducted, but observational studies have not indicated any particular behavioral sensitivity to noise, (Riedman 1983, 1984). Observed responses of wild sea otters to disturbance are highly variable, probably reflecting the level of noise and activity to which they have been exposed and become acclimated over time and the particular location and social or behavioral state of that individual. Sea otters appeared to be relatively undisturbed by pile-driving activities in Elkhorn Slough during the construction of the Parsons Slough Sill, with many showing no response to pile driving and generally reacting more strongly to passing vessels associated with construction than to the sounds of machinery (Elkhorn Slough National Estuarine Research Reserve (ESNERR) 2011). However, these animals were likely acclimated to loud noises, as they occupied an area near an active railroad track, which produced in-air sound levels comparable to those produced by the vibratory driving of H piles (ESNERR 2011).

The most likely effect of the proposed project on sea otters is behavioral disturbance due to pile-driving noise and activity. Potentially affected areas include the harbor and the area immediately north of the jetty. Underwater and airborne noise generated by pile replacement work may cause sea otters that rest or forage within or near the harbor to relocate temporarily to nearby areas. Behavioral changes resulting from disturbance could include startle responses, the interruption of resting behaviors (while in water or hauled out on nearby docks), and changes in foraging patterns. Most likely, sea otters would move away from the noise source and would be temporarily displaced from the pile replacement work area.

NMFS has developed acoustic exposure criteria to define Level A harassment (injury) and Level B harassment (disturbance) resulting from project-related noise for the marine mammals under its jurisdiction (*i.e.,* cetaceans and pinnipeds other than walruses). Since the Coast Guard first received an IHA for this project, NMFS has adopted new criteria for assessing Level A impacts, which the Service adopts for use here. For otariid pinnipeds (sea lions and fur seals) exposed to non-impulsive underwater noise (such as vibratory pile driving and removal), NMFS currently uses a cumulative 24-hour sound exposure level of 219 dB re 1 μPa^{2}s as the threshold for Level A harassment, which is based on the estimated onset of physical injury as defined by the onset of PTS (NMFS 2016), and 120 dB re 1 μPa as the threshold for Level B harassment, although this threshold is not based on direct data.

For otariid pinnipeds exposed to impulsive underwater noise (such as impact hammering of piles), NMFS uses an unweighted peak sound pressure level of 232 dB re 1 μPa or cumulative 24-hour sound exposure level of 203 dB re 1 μPa^{2}s as the threshold for Level A harassment (NMFS 2016) and 160 dB re 1 μPa as the threshold for Level B harassment. For pinnipeds other than harbor seals exposed to airborne noise, NMFS uses 100 dB re 20 μPa as a guideline, but not formal threshold, for the onset of Level B harassment (79 FR 13991; March 12, 2014). NMFS does not have a guideline for the onset of Level A harassment of pinnipeds by airborne noise (A. Scholik-Schlomer, Office of Protected Resources, Marine Mammal and Sea Turtle Conservation Division, pers. comm. 2014). However, Southall et al. (2007) propose an injury criterion (estimated PTS onset) for sea lions exposed to airborne noise of 172.5 dB re 20 μPa.

In the absence of formal noise exposure thresholds specific to sea otters, but in light of evidence suggesting that the hearing of sea otters is generally comparable to that of other marine carnivores (*e.g.,* sea lions), although with relatively poorer sensitivity (higher hearing thresholds) at low frequencies, we generally use the thresholds, guidelines, and criteria developed by NMFS for sea lions (otariid pinnipeds) as proxies. However, since the Coast Guard first received an

IHA for this project, we have determined that the Level B threshold of 120 dB re 1 μPa for non-impulsive noise such as vibratory pile driving is not applicable to sea otters. The 120 dB re 1 μPa threshold is based on studies conducted by Malme et al. in the 1980s, during which gray whales were exposed to experimental playbacks of industrial noise. Based on the behavioral responses of gray whales to the playback of drillship noise during a study at St. Lawrence Island, Alaska, Malme et al. (1988) concluded that ''exposure to levels of 120 dB or more would probably cause avoidance of the area by more than one-half of the gray whales.'' Sea otters do not occur at St. Lawrence Island, Alaska, but similar playback studies that were conducted off the coast of California (Malme 1983, 1984) included a sea otter monitoring component (Riedman 1983, 1884). The 1983 and 1984 studies detected probabilities of avoidance in gray whales comparable to those reported in Malme et al. (1988), but there was no evidence of disturbance reactions or avoidance in sea otters.

Gray whales are in the group of marine mammals (baleen whales) believed to be most sensitive to low-frequency sounds, with an estimated audible frequency range of approximately 10 Hz to 30 kHz (Finneran 2016). In contrast, sea otters have relatively poor hearing sensitivity at frequencies below 2 kHz (Ghoul and Reichmuth 2014). Most of the acoustic energy generated by vibratory pile driving is limited to frequencies lower than 2 kHz, with greatest pressure spectral densities at frequencies below 1 kHz (Dahl et al. 2015). As a result, much of the noise generated by vibratory pile driving is expected to be inaudible or marginally audible to sea otters. During a previous project that occurred in Elkhorn Slough, Monterey County, project-related monitoring of sea otter behavior in areas exposed to underwater sound levels ranging from approximately 135–165 dB re 1 μPa during vibratory pile driving (ESNERR 2011) showed no clear pattern of disturbance or avoidance in relation to these levels of underwater sound exposure.

Based on the lack of disturbance or any other reaction by sea otters to the 1980s playback studies and the absence of a clear pattern of disturbance or avoidance behaviors attributable to underwater sound levels up to about 160 dB re 1 μPa resulting from vibratory pile driving, we use 160 dB re 1 μPa as the threshold for Level B harassment underwater for both impulsive and non-impulsive sources. For Level A harassment resulting from non-impulsive underwater noise, we use a threshold of 219 dB re 1 $\mu Pa^2 s$ (cumulative 24-hour sound exposure level). For Level A harassment resulting from impulsive underwater noise, we use a threshold of 232 dB re 1 μPa (unweighted peak sound pressure level) or 203 dB re 1 $\mu Pa^2 s$ (cumulative 24-hour sound exposure level). For Level B harassment resulting from airborne noise, we use the 100 dB re 20 μPa guideline that NMFS uses for in-air Level B harassment of pinnipeds other than harbor seals. For Level A harassment resulting from airborne noise, we use the Southall et al. (2007) criterion of 172.5 dB re 20 μPa for sea lions to approximate the airborne noise levels that may cause injury to sea otters.

Underwater and airborne sound levels expected to be produced during the proposed project are analyzed in Appendix A to Amec Foster Wheeler (2017). Figures 5–1 and 5–2 of Amec Foster Wheeler (2017) approximate the modeled extent of underwater noise resulting from vibratory pile driving and extraction and impact pile driving. This analysis has been revised slightly to reflect the following changes: The source sound pressure level has been revised downward to 182 dB for impact hammering (originally 195 dB, but 187 dB was determined to be more representative for 14-in (36-cm) piles based on WSDOT (2010), which is further reduced by 5 dB by use of a sound curtain) and to 162 dB for vibratory extraction/driving (originally 168 dB, but 162 dB was determined to be more representative for 14-in (36-cm) piles based on Caltrans (2015)). The distance to the 160-dB threshold (*i.e.,* the radius of the area exposed to sound levels equal to or exceeding 160 dB) for vibratory pile driving is 46 ft (14 m). The distance to the 160-dB threshold for impact pile driving, based on modeled attenuated noise transmission, is 249 ft (76 m) to the north and northeast (through the breakwater) and 961 ft (293 m) in all other directions. The distance to the 219-dB threshold for vibratory pile driving is 3 ft (0.9 m), whereas the distance to the 203-dB cumulative 24-hour sound exposure level threshold for impact pile driving is 6.6 ft (2.0 m).

Expected levels of airborne noise are based on measurements made during the Navy Test Pile Project in Bangor, Washington, for 18-in (46-cm) piles. Because airborne noise data for 14-in (36-cm) piles were not available, the modeled distances to the Level B 100–dB guideline (66 ft (20 m) for vibratory pile driving and 197 ft (60 m) for impact driving) (Amec Foster Wheeler 2017) are overestimates. Nevertheless, anticipated maximum noise levels based on 18-in (46-cm) piles (102 dB for vibratory driving and extraction and 112 dB for impact driving at a distance of 33 ft (10 m)) are well below the noise levels that may cause injury to sea otters. Noise thresholds and the modeled extent of sound pressure levels for underwater and airborne noise are summarized in Table 1.

TABLE 1—NOISE THRESHOLDS AND MODELED EXTENT OF SOUND PRESSURE LEVELS (SPLs) FOR UNDERWATER AND AIRBORNE NOISE

	Threshold, underwater (dB re 1 μPa)	Modeled extent of underwater SPLs (distance to threshold) (m)	Guideline, airborne (dB re 20 μPa)	Modeled extent of airborne SPLs (distance to threshold) (m)
Level A non-impulsive	219	0.9	172.5	n/a
Level A impulsive	203	2.0	172.5	n/a
Level B non-impulsive	160	14	100	*** 20
Level B impulsive	160	* 76 ** 293	100	*** 60

* North and northeast through breakwater.
** All other directions.
*** Distances are overestimates because they are based on data for 18-in (46-cm) piles; airborne sound data for 14-in (36-cm) piles were not available.

Potential Effects of the Proposed Action on Sea Otter Habitat

No permanent impacts on habitat are proposed or would occur as a result of this project. The Proposed Action would not increase the Pier's existing footprint, and no new structures would be installed that would result in the loss of additional habitat. Therefore, no restoration of habitat would be necessary. A temporary, small-scale loss of foraging habitat may occur if sea otters leave the area during pile extraction and driving activities.

Potential Impacts on Subsistence Needs

The subsistence provision of the MMPA does not apply.

Mitigation Measures

The USCG has proposed the following measures to prevent Level A harassment (injury) and to reduce the extent of potential effects from Level B harassment (disturbance) to marine mammals.

1. *Timing restrictions.* All work would be conducted during daylight hours to facilitate visual observation of the Level A and Level B zones.

2. *Noise attenuation.* A bubble curtain and cushion pads would be used during all impact pile driving to reduce underwater sound levels. Prior to impact driving, pre-drilling would be used to create a hole for the new pile to a depth of approximately 5 ft (1.5 m) above the required pile tip elevation to reduce friction, noise, and turbidity during installation.

3. *Exclusion zones and shutdown measures.* Exclusion zones based on the area exposed to sound levels equal to or exceeding those expected to cause PTS would be implemented to protect marine mammals from Level A harassment. If a sea otter is observed in the exclusion zone, pile extraction or driving would not commence until the individual has been observed outside of the zone or has not been observed for at least 15 minutes. If the sea otter entered the exclusion zone, a stop-work order would be issued. Work would not re-commence until the sea otter was sighted well outside of the exclusion zone or was not observed for at least 15 minutes. The modeled PTS isopleths relevant to sea otters are only 3 ft (0.9 m) for vibratory driving and extraction and 6.6 ft (2 m) for impact driving (Table 1); these would be verified based on in-situ source level and sound propagation measurements. However, the radius of the Level A exclusion zone for sea otters would be extended to at least 33 ft (10 m) to prevent injury from machinery. USCG would implement shutdown measures if the number of authorized takes reached the limit under the IHA and if sea otters were sighted within the vicinity of the project area and were approaching the Level B harassment zone during in-water construction activities.

4. *Level B harassment zone.* USCG would monitor the Level B harassment zone. Because impact hammering and vibratory driving would both be used in the project, the Level B harassment zone for all pile-driving activities would be set based on the greatest extent of sound pressure levels equal to or exceeding the thresholds summarized in Table 1. Because the distance to the threshold is greatest for underwater noise produced by impact hammering, the Level B harassment zone would have a minimum radius of 249 ft (76 m) to the north and northeast (through the breakwater) and 961 ft (293 m) in all other directions based on the modeled extent of underwater SPLs. This zone would be adjusted, as necessary, based in-situ source level and sound propagation measurements.

5. *Soft-start for impact pile driving.* For impact pile installation, contractors will provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Each day, USCG will use the soft-start technique at the beginning of impact pile driving and before resuming work if impact pile driving has ceased for more than 30 minutes.

Monitoring and Reporting

The USCG would implement two detailed monitoring plans prior to and during pile replacement activities: An acoustic monitoring plan and a marine mammal monitoring plan. The acoustic monitoring plan would ensure that measurements are recorded to provide data on actual noise levels during construction and to ensure that the marine mammal exclusion zone and Level B harassment zone are sized appropriately relative to acoustic thresholds. Specifically, USCG would conduct in-situ monitoring during the installation of five piles and removal of five piles (see the acoustic monitoring plan for more details). The marine mammal monitoring plan would provide details on data collection for each marine mammal species observed in the project area during the construction period.

Monitoring would be conducted by Service-approved observers who are familiar with sea otters and their behavior. The observers would conduct baseline monitoring for 2 days during the week prior to pile removal and driving. During pile removal and driving activities, three observers would monitor the exclusion zone and Level B harassment zone from the best vantage point possible (the Pier itself, the jetty, or adjacent boat docks in the harbor) to determine if sea otters were approaching the exclusion zone and to record behavioral responses to noise within the Level B harassment zone. The exclusion zone would be monitored for 30 minutes prior to, during, and after pile removal and driving. If a sea otter is within the exclusion zone, the start of extraction or driving would be delayed until no sea otters were sighted within the zone for a minimum of 15 minutes. If a sea otter approached the exclusion zone, the observation would be reported to the construction manager, and the individual would be watched closely. If the sea otter entered the exclusion zone, a stop-work order would be issued. The lead monitor would not allow work to re-commence until the sea otter was sighted well outside of the exclusion zone or was not observed for at least 15 minutes.

The following information would be documented for each sea otter observed at any range while pile driving or extraction activities are occurring:

(A) Date and time that monitored activity begins and ends;

(B) Construction activities occurring during each observation period;

(C) Weather parameters (*e.g.,* percent cover, visibility);

(D) Water conditions (*e.g.,* sea state, tide state);

(E) Numbers of individuals, sex and age class (if possible), and flipper tag color and location;

(F) Description of behavioral patterns, including bearing and direction of travel, distance from pile-driving activity, and specific activity (swimming at surface, swimming below surface, spyhopping, foraging, grooming, interacting with another sea otter, resting on water, resting while hauled out, etc.);

(G) Distance from pile-driving activities to sea otters and distance from the sea otters to the observation point;

(H) Locations of all marine mammal observations; and

(I) Other human activity in the area.

Daily observation sheets would be compiled on a weekly basis and submitted with a weekly monitoring report that summarized the monitoring results, construction activities, and environmental conditions. USCG would be required to submit a draft marine mammal monitoring report within 90 days after completion of the in-water construction work or the expiration of the IHA (if issued), whichever comes earlier. The report would include data from marine mammal sightings as described above. The marine mammal monitoring report would also include total takes, takes by day, and stop-work orders for each species. The Service would have an opportunity to provide comments on the report, and if the Service had comments, USCG would address the comments and submit a final report to the Service within 30 days.

In the unanticipated event that the specified activity clearly causes the take of a sea otter in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury, or mortality, USCG would immediately cease the specified activities and immediately report the incident to the Service's Southern Sea Otter Recovery Coordinator and Monterey Bay Aquarium's sea otter 24-hour emergency line. The report would be required to include the following information:

• Time, date, and location (latitude/longitude) of the incident;
• Description of the incident;
• Status of all sound source use in the 24 hours preceding the incident;
• Water depth;
• Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, and visibility);
• Description of all marine mammal observations in the 24 hours preceding the incident;
• Description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s).

Activities would not resume until the Service reviewed the circumstances of the prohibited take. The Service would work with USCG to determine what is necessary to minimize the likelihood of additional prohibited take and ensure MMPA compliance. USCG would not be permitted to resume activities until it implemented any necessary measures to minimize the likelihood of additional prohibited take and received notification by the Service via letter, email, or telephone.

In the event that the USCG discovered an injured or dead sea otter, and the lead monitor determined that the cause of the injury or death was unknown or unrelated to the specified activities, USCG would immediately report the incident to the Service's Southern Sea Otter Recovery Coordinator and Monterey Bay Aquarium's sea otter 24-hour emergency line. The report would be required to include the same information identified in the paragraph above. Activities would be permitted to continue while the Service reviewed the circumstances of the incident. The Service would work with USCG to provide for the implementation of measures, if appropriate, to minimize the likelihood of prohibited take.

Estimated Take by Incidental Harassment

Based on the proposed construction methodology and mitigation, including use of an exclusion zone, no Level A harassment is anticipated as a result of the proposed project. Behavioral harassment (Level B) will be considered to have occurred when sea otters enter the Level B harassment zone. We use the greatest modeled extent of sound pressure levels from Table 1 (the Level B zone for impulsive underwater noise) as the area within which to estimate the maximum number of sea otters that could be exposed to noise exceeding Level B thresholds during the estimated maximum 8 days of pile extraction and removal. An average of two or three piles would be installed and removed per day, totaling an estimated 60 to 70 minutes of pile driving per day. Assuming that an individual sea otter can be taken only once during a 24-hour period, we calculate the number of takes using the following formula: Take Estimate = *n* multiplied by area of influence multiplied by 8 days of activity, where: *n* is the number of sea otters per linear km of coastline and area of influence is the Level B harassment zone for impulsive underwater noise. Because the final take estimate must be a whole number, values are rounded up to the next whole number before multiplying by the number of days of exposure.

The area of influence encompasses the harbor area and the area immediately to the north and northeast of the breakwater, less than one linear km of coastline. Because, on average, 5.4 sea otters are expected per 1,640 ft (500 m) of coastline (USGS 2017), a maximum of 11 sea otters are expected to be exposed to pile-driving noise per day over 8 days, for a total of 88 takes.

Findings

We propose the following findings regarding this action:

Negligible Impact

We find that any incidental take by harassment that is reasonably likely to result from the proposed project would not adversely affect the sea otter by means of effects on rates of recruitment or survival and would, therefore, have no more than a negligible impact on the stock. In making this finding, we considered the best available scientific information, including: (1) The biological and behavioral characteristics of the species; (2) information on distribution and abundance of sea otters within the area of the proposed activity; (3) the potential sources of disturbance during the proposed activity; and (4) the potential response of sea otters to disturbance.

The estimated 88 takes (for approximately 11 sea otters) are expected to result in negligible impact because sea otters do not appear to be particularly sensitive to noise (and often do not react visibly to it) and because any behavioral reactions to noise are expected to be temporary and of short duration.

The mitigation measures outlined above are intended to minimize the number of sea otters that could be harassed by the proposed activity. Any impacts to individuals are expected to be limited to Level B harassment of short duration. Responses of sea otters to project-related noise would most likely be common behaviors such as diving and/or swimming away from the source of the disturbance. No take by injury or death is anticipated. Because any Level B harassment that occurs would be of short duration, and because no take by injury or death is anticipated, we find that the anticipated harassment caused by the proposed activities is not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival.

Our finding of negligible impact applies to incidental take associated with the proposed activity as mitigated through this authorization process. This authorization establishes monitoring and reporting requirements to evaluate the potential impacts of the authorized activities, as well as mitigation measures designed to minimize interactions with, and impacts to, sea otters.

Small Numbers

For small numbers take analysis, the statute and legislative history do not expressly require a specific type of numbers analysis, leaving the determination of ''small'' to the agency's discretion. The sea otter population in California consists of approximately 3,186 animals. The number of sea otters that could potentially be taken by harassment in association with the proposed project is approximately 11 animals (0.3 percent of the population size). While many of the same sea otters are likely to remain in the area throughout the duration of pile-driving activities, some turnover may occur, particularly if the 8 days of pile-driving activity are interspersed over several months. Turnover of sea otters in the area would slightly increase the total number of animals exposed to project-related noise; however, we expect that number would remain small. We find that the number of sea otters utilizing the affected area is small relative to the size of the population.

Impact on Subsistence

The subsistence provision of the MMPA does not apply to southern sea otters.

Endangered Species Act

The proposed activity will occur within the range of the southern sea otter, which is listed as threatened under the ESA. The Applicant has initiated interagency consultation under section 7 of the ESA with the Service's Ventura Fish and Wildlife Office. We will complete intra-Service section 7 consultation on our proposed issuance of the IHA.

National Environmental Policy Act (NEPA)

The impacts associated with the project are described in a draft supplemental environmental assessment (EA) prepared on behalf of the USCG. The Service will review the EA and decide either to adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. Our analysis will be completed prior to issuance or denial of the IHA and will be available at *http://www.fws.gov/ventura/endangered/species/info/sso.html.*

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, Secretarial Order 3206, the Department of the Interior's manual at 512 DM 2, and the Native American Policy of the Service (January 20, 2016), we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects.

Proposed Authorization

The Service proposes to issue an IHA for small numbers of sea otters harassed incidentally by the Applicant while the Applicant is completing waterfront repairs at USCG Station Monterey during a 1-year authorization period beginning on or before June 15, 2018. Authorization for incidental take beyond this period would require a request for renewal.

The final IHA would incorporate the mitigation, monitoring, and reporting requirements discussed in this proposal. The Applicant would be responsible for following those requirements. These authorizations would not allow the intentional taking of sea otters.

If the level of activity exceeded that described by the Applicant, or the level or nature of take exceeded those projected here, the Service would reevaluate its findings. The Secretary may modify, suspend, or revoke an authorization if the findings are not accurate or the conditions described in this notice are not being met.

Request for Public Comments

The Service requests interested persons to submit comments and information concerning this proposed IHA. Consistent with section 101(a)(5)(D)(iii) of the MMPA, we are opening the comment period on this proposed authorization for 30 days (see **DATES**).

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 1, 2018.

Angela Picco,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2018–08559 Filed 4–24–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GR17ND00GCT2800; OMB Control Number 1028-New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Phragmites Adaptive Management Framework

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before May 25, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to USGS, Information Collections Clearance Officer, 12201Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference 'OMB Information Collection 1028–NEW: Phragmites Adaptive Management Framework' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Clint Moore, Research Wildlife Biologist, U.S. Geological Survey, Georgia Cooperative Fish and Wildlife Research Unit, Warnell School of Forestry and Natural Resources, University of Georgia, Athens, GA 30602 (mail); 706–542–1166 (phone); or *cmoore@usgs.gov* (email). You may also view the ICR at *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: We, the USGS, in accordance with the Paperwork Reduction Act of 1995, provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 28, 2017 (82 FR 56262). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The *Phragmites* Adaptive Management Framework (PAMF) is a collaborative effort to confront and reduce the spread of invasive *Phragmites* grass in the Great Lakes watershed. *Phragmites* is associated with reduced water quality, loss of biodiversity, reduced recreational opportunities, and increased fire hazards. Reducing or eliminating *Phragmites* throughout the region will reverse these deleterious effects and help achieve the comprehensive restoration goals for the Great Lakes basin (see the Great Lakes Restoration Initiative at *https://www.glri.us/*). The PAMF initiative uses the principles of adaptive management, a learning-based form of management in which data gathered following a treatment action are used to improve the predictive models that inform the decision-making process itself. Identified as a priority by the multi-national Great Lakes *Phragmites* Collaborative (*http://www.greatlakesphragmites.net/*), PAMF is a network of public and private cooperators who share a common desire to reduce or eradicate invasive *Phragmites* on lands that they manage. Membership in PAMF is voluntary and occurs after the cooperator has decided to treat *Phragmites.* A process is being developed to deliver site-specific guidance to participants that will both help them understand what treatment approach is most likely to achieve their management objectives and support regional adaptive learning through improvements and feedbacks to underlying scientific models. Cooperators will monitor and report vegetation characteristics on lands enrolled in the program, and they will report attributes about treatments applied. The data will be used in analytical routines that will indicate a best treatment action to apply based on measured conditions and will update the set of predictive models that underlie the decision support tool. USGS is providing scientific leadership to the initiative through the development of models, monitoring design, data systems, and a workflow to process the collected data into management guidance.

Title: Phragmites Adaptive Management Framework.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: General public, NGOs, governmental entities (Federal, State, Local, Tribal, Provincial).

Total Estimated Number of Annual Respondents: 100.

Total Estimated Total Number of Annual Responses: 200.

Estimated Completion Time per Response: We estimate that it will take 1.5 hours per person to review training materials, traverse the property to observe conditions, and enter information into a web-based form.

Total Estimated Number of Annual Burden Hours: 300.

Respondent's Obligation: None, participation is voluntary.

Frequency of Collection: Information is collected twice annually for each enrolled parcel, for as long as participant is enrolled in the program.

Total Estimated Annual Non-Hour Cost: There are no ''non-hour cost'' burdens associated with this collection of information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Russell Strach,

Center Director, USGS Great Lakes Science Center.

[FR Doc. 2018–08674 Filed 4–24–18; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GR18ND00GQ44100; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Efficacy of Oak Savanna Restoration History Information Request

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before June 25, 2018.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov*. Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Noel B. Pavlovic by email at *npavlovic@usgs.gov,* or by telephone at 219–926–8336 X428.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the research being conducted by the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the information gathered enhance the quality, utility, and clarity of the research being conducted; and (5) how might the researchers minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: We will ask land managers, in the areas where we have sampled the oak savanna vegetation, a standardized set of questions to assess qualitative and quantitative history of land management actions at the site. The historic information garnered from the excel spreadsheet (provided to the managers) and interviews, if necessary, with Federal, State, and private land managers (*e.g.* The Nature Conservancy and local land trusts) will be used in the statistical analysis of patterns and state of oak savanna vegetation in response to fundamental and management actions that have occurred prior to the sampling. For example at any oak savanna site, we may sample locations where there has been no management, where burning has occurred, and/or where burning and cutting has occurred. In this example, information will be sought for each case, such as last known burn in the first case, time since last burn, and other previous burn dates for the second case, and dates of burns and cutting and cutting type in the third case. This information will allow us to understand how the lack or presence of management has influenced the quality of oak savanna recovery. Fundamental factors include things like time since last burn, fire frequency and period of fire suppression. Management actions include history of on the ground management such as time and date of tree cutting, has grazing occurred and when it was terminated if not actively being conducted, and dates and number of prescribed burns. These manager responses will be converted to variables that can be statistically analyzed, such as time since last burn in years, number of fires over a specific time period and presence or absence of cutting or thinning. These qualitative and quantitative variables will be incorporated into the statistical analysis of the quality of the vegetation, *i.e.* species richness and diversity and composition variation. The data will include time since last fire, fire frequency, fire return interval and others if available or can be calculated from the information gathered. The data collected will be critical for interpreting the results of the ordination and structural equation modeling techniques that will be employed.

Title of Collection: Efficacy of Oak Savanna Management History Information Request.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Federal, State, local government land managers and other private land management entities in southern lower Michigan, northwest Ohio, northern Indiana, northeast Illinois, and southeastern Wisconsin.

Total Estimated Number of Annual Respondents: 30.

Total Estimated Number of Annual Responses: 30.

Estimated Completion Time per Response: 2 hours.

Total Estimated Number of Annual Burden Hours: 60 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: The respondents will provide information one time.

Total Estimated Annual Non-hour Burden Cost: $0.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Russell Strach,

Director, Great Lakes Science Center.

[FR Doc. 2018–08678 Filed 4–24–18; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–24873; PPWOBSADC0, PPMVSCS1Y.Y0000]

Notice of Temporary Concession Contract for Fuel Sales, Convenience Retail Merchandise, RV and Campground Services in the Hite Area of Glen Canyon National Recreation Area, Arizona

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service intends to award a temporary concession contract to a qualified person for the conduct of certain visitor services within the Hite area of Glen Canyon National Recreation Area for a term not to exceed 3 years. The visitor services include fuel sales, convenience retail merchandise, RV, campground and other land-based services.

FOR FURTHER INFORMATION CONTACT: Jennifer Parker, Chief of Concessions, Intermountain Region, (303) 969–2661, 12795 W Alameda Parkway, Lakewood, CO 80228, or by email at *jennifer_parker@nps.gov.*

SUPPLEMENTARY INFORMATION: The National Park Service intends to award a temporary concession contract, TC–GLCA006–18, to a qualified person (as defined in 36 CFR 51.3). The National Park Service has determined that a temporary concession contract not to exceed 3 years is necessary in order to avoid interruption of visitor services, and has taken all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services.

Authority: This action is issued pursuant to 36 CFR 51.24(a). This is not a request for proposals.

Dated: April 18, 2018.

Teri Austin,

Associate Director, Business Services.

[FR Doc. 2018–08599 Filed 4–24–18; 8:45 am]

BILLING CODE 4312–53–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–18–020]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 1, 2018 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–573–574 and 731–TA–1350–1351, 1354–1355, and 1358 (Final) (Carbon and Certain Alloy Steel Wire Rod from Italy, Korea, Spain, Turkey, and the United Kingdom). The Commission is currently scheduled to complete and file its determinations and views of the Commission by May 11, 2018.
5. Vote in Inv. No. 731–TA–472 (Fourth Review) (Silicon Metal from China). The Commission is currently scheduled to complete and file its determination and views of the Commission by May 15, 2018.
6. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 23, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018–08809 Filed 4–23–18; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–18–021]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 3, 2018 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–487 and 731–TA–1197–1198 (Review)(Steel Wire Garment Hangers from Taiwan and Vietnam). The Commission is currently scheduled to complete and file its determinations and views of the Commission by May 15, 2018.
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 23, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018–08810 Filed 4–23–18; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0083]

Applied Research Laboratories of South Florida, LLC: Grant of Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to grant recognition to Applied Research Laboratories of South Florida, LLC, as a Nationally Recognized Testing Laboratory (NRTL).

DATES: Recognition as a NRTL becomes effective on April 25, 2018.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Background

Many of OSHA's workplace standards require that a NRTL test and certify certain types of equipment as safe for use in the workplace. NRTLs are independent laboratories that meet OSHA's requirements for performing safety testing and certification of products used in the workplace. To obtain and retain OSHA recognition, the NRTLs must meet the requirements in the NRTL Program regulations at 29 CFR 1910.7. More specifically, to be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of employers subject to the tested equipment requirements, and manufacturers and vendors of products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures. Recognition is an acknowledgement by OSHA that the NRTL has the capabilities to perform independent safety testing and certification of the specific products covered within the NRTL's scope of recognition. Recognition of a NRTL by OSHA also allows employers to use products certified by that NRTL to meet those OSHA standards that require product testing and certification.

The Agency processes applications for initial recognition following requirements in Appendix A of 29 CFR 1910.7. This appendix requires OSHA to publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application, provides its preliminary finding, and solicits comments on its preliminary findings. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition.

II. Notice of Final Decision

OSHA hereby gives notice of the Agency's decision to grant recognition to Applied Research Laboratories of South Florida, LLC (ARL), as a NRTL. According to its public information (see *http://www.arl-test.com*), ARL states that it is an internationally accredited testing laboratory. In its application, ARL lists the current address of its headquarters as: Applied Research Laboratories of South Florida, LLC, 5371 SW 161 Street, Miami, Florida 33014.

Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that have the technical capability to perform the product-testing and product-certification activities for the applicable test standards within the NRTL's scope of recognition; and (3) the supplemental program(s) that the NRTL may use, each of which allows the NRTL to rely on other parties to perform activities necessary for testing and certification. ARL applied on March 5, 2014, for initial recognition as a NRTL. In its initial application, ARL requested recognition for two test standards, one site, and two supplemental programs (OSHA–2007–0083–0050). This application was amended on December 1, 2014, to add one additional test standard (OSHA–2007–0083–0051).[1]

OSHA published the preliminary notice announcing ARL's application for recognition in the **Federal Register** on February 23, 2018 (83 FR 8113). The Agency requested comments by March 26, 2018, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant recognition to ARL as a NRTL.

To obtain or review copies of all public documents pertaining to ARL's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–2625, Washington, DC 20210. Docket No. OSHA–2007–0083 contains all materials in the record concerning ARL's recognition.

[1] ARL requested recognition for UL 1995, UL 1996, and UL 96. OSHA denies ARL's UL 96 application. OSHA is, on the date of publication of the current notice in the **Federal Register**, also issuing a **Federal Register** Notice removing UL 96 from OSHA's List of Appropriate Test Standards because UL 96 is not an appropriate test standard. That notice can be accessed via *www.regulations.gov* under Docket ID OSHA–2013–0012.

III. Final Decision and Order

OSHA staff performed a detailed analysis of ARL's application packet and reviewed other pertinent information. OSHA staff also performed three comprehensive on-site assessments of ARL's testing facilities on February 25–26, 2015, March 30, 2016, and November 28–29, 2017. Based on a review of this evidence, OSHA finds that ARL meets the requirements of 29 CFR 1910.7 for recognition as a NRTL, subject to the specified limitation and conditions outlined in this notice. OSHA, therefore, is proceeding with this final notice to grant recognition to ARL as a NRTL. The following sections set forth the scope of recognition included in ARL's grant of recognition.

A. Standards Requested for Recognition

OSHA limits ARL's scope of recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN ARL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 1995	Heating and Cooling Equipment.
UL 1996	Standard for Electric Duct Heaters.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

B. Sites Requested for Recognition

OSHA limits ARL's scope of recognition to include the site at:

Applied Research Laboratories of South Florida, LLC, 5371 NW 161 Street, Miami, Florida 33014.

OSHA's recognition of this site limits ARL to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for test standards in ARL's scope of recognition. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

C. Supplemental Programs

OSHA limits ARL's scope of recognition to include the following supplemental programs:

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents (for calibration services only).

D. Conditions

In addition to those conditions already required by 29 CFR 1910.7, ARL must abide by the following conditions of the recognition:

1. ARL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. In response to a proposed corrective action to the February 2015 on-site assessment, OSHA Proposed and ARL agrees to increased OSHA oversight of its operations including

- More frequent on-site assessments of ARL facilities;
- ARL providing OSHA with periodic reports listing the products that have been certified under the NRTL Program; and

3. Confirmation from ARL that products with ARL Listings (non-NRTL) will undergo re-evaluation and re-testing and/or a thorough documented review of previously gathered evaluation and testing results prior to NRTL certification.

4. ARL must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

5. ARL must continue to meet the requirements for recognition, including all previously published conditions on ARL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby grants recognition to ARL as a NRTL, subject to these limitations and conditions specified above.

IV. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on April 19, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018–08598 Filed 4–24–18; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (18–034)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, May 17, 2017, 10:30 a.m. to 11:45 a.m., Local Time.

ADDRESSES: NASA Kennedy Space Center, Headquarters Building, Room 3201, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Ms. Evette Whatley, Administrative Officer, Aerospace Safety Advisory Panel, NASA Headquarters, Washington, DC 20546, (202) 358–4733 or *evette.whatley@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its Second Quarterly Meeting for 2018. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

—Updates on the Exploration Systems Development
—Updates on the Commercial Crew Program
—Updates on the International Space Station Program

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. This meeting is also available telephonically. Any interested person may call the USA toll free conference call number (888) 390–5183; pass code 8820288 and then the # sign. Attendees will be required to sign a visitor's register and to comply with NASA KSC security requirements, including the presentation of a valid picture ID and a secondary form of ID, before receiving an access badge. All U.S. citizens desiring to attend the ASAP 2018 Second Quarterly Meeting at the Kennedy Space Center must provide their full name, date of birth, place of birth, social security number, company affiliation and full address (if applicable), residential address, telephone number, driver's license number, email address, country of citizenship, and naturalization number (if applicable) to the Kennedy Space Center Protective Services Office no later than close of business on May 7, 2018. All non-U.S. citizens must submit their name; current address; driver's license number and state (if applicable); citizenship; company affiliation (if applicable) to include address, telephone number, and title; place of birth; date of birth; U.S. visa information to include type, number, and expiration date; U.S. social security number (if applicable); Permanent Resident (green card) number and expiration date (if applicable); place and date of entry into the U.S.; and passport information to include country of issue, number, and expiration date to the Kennedy Space Center Protective Services Office no later than close of business on May 1, 2018.

If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will be required to process in through the KSC Badging Office, Building M6–0224, located just outside of KSC Gate 3, on SR 405, Kennedy Space Center, Florida. Please provide the appropriate data required above by email to Tina Delahunty at *tina.delahunty@nasa.gov* or fax 321–867–7206, noting at the top of the page ''Public Admission to the NASA Aerospace Safety Advisory Panel Meeting at KSC.'' For security questions, please email Tina Delahunty at *tina.delahunty@nasa.gov*.

At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety in NASA, not to exceed 5 minutes in length. To do so, members of the public must contact Ms. Evette Whatley at *evette.whatley@nasa.gov* or at (202) 358–4733 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2018–08688 Filed 4–24–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

[NARA–2018–036]

Notice of Open Meeting.

AGENCY: National Archives and Records Administration (NARA).

ACTION: Office of Government Information Services (OGIS) Annual Open Meeting.

SUMMARY: In accordance with the Freedom of Information Act, OGIS is conducting an open meeting during which we will discuss OGIS's reviews and reports and allow interested people from the public to present oral or written statements.

DATES: The meeting will be Friday, May 18, from 10:00 a.m. to 12:00 p.m. EDT. Please register for the meeting no later than 5:00 p.m. EDT on May 16, 2018.

Location: National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW; William G. McGowan Theater, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Amy Bennett, by mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road—OGIS; College Park, MD 20740–6001, by telephone at 202–741–5782, or by email at *amy.bennett@nara.gov.*

SUPPLEMENTARY INFORMATION: You can find summaries of OGIS's work in our Annual Reports. OGIS's Fiscal Year 2017 Annual Report was published during Sunshine Week (March 11–17, 2018).

Procedures: The meeting is open to the public. Due to access procedures, you must register in advance if you wish to attend the meeting. You will also go through security screening when you enter the building. Registration for the meeting will go live via Eventbrite on May 1, 2018, at 10:00 a.m. EDT. To register for the meeting, please do so at this Eventbrite link: *https://www.eventbrite.com/e/office-of-government-information-services-annual-open-meeting-may-18-2018-registration-45255871530*.

This program will be live-streamed on the U.S. National Archives' YouTube channel, *https://www.youtube.com/user/usnationalarchives/playlists.* The webcast will include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *ogis@nara.gov* or call 202–741–5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Amy Bennett at the phone number, mailing address, or email address listed above.

Alina M. Semo,

Director, Office of Government Information Services.

[FR Doc. 2018–08597 Filed 4–24–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Submission for OMB Review; Comment Request

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice; request for comment.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the National Endowment for the Humanities (NEH) will submit to the Office of Management and Budget (OMB) a request for approval of the information collection request (ICR) described below.

DATES: Comments on this ICR must be submitted on or before May 25, 2018.

ADDRESSES: Submit written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the National Endowment for the Humanities; or by email to *oira_submission@omb.eop.gov;* or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Joel Schwartz, Chief Guidelines Officer, National Endowment for the Humanities, at *jschwartz@neh.gov,* for further information or for a copy of this ICR and applicable supporting documentation.

SUPPLEMENTARY INFORMATION: NEH first published notice of its intent to seek OMB approval for this ICR in the **Federal Register** of February 14, 2018 (83 FR 6615). This ICR requests OMB approval for a three-year extension of NEH's currently approved generic clearance authority for all NEH information collections other than one-time evaluations, questionnaires, and surveys. Generic clearance authority would cover forms and instructions for applications to NEH grant programs; and reporting forms for NEH grantees, panelists, and reviewers, and for program evaluation purposes. OMB is particularly interested in comments about this ICR which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate information technology (*e.g.,* permitting electronic submission of responses).

This Notice also lists the following information:

Agency: National Endowment for the Humanities.

Title of Proposal: Generic Clearance Authority for the National Endowment for the Humanities.

Type of Review: Extension of a currently approved collection.

OMB Number: 3136–0134.

Affected Public: Applicants to NEH grant programs, reviewers of NEH grant applications, and NEH award recipients.

Total Respondents: 7,815.

Frequency of Collection: On occasion.

Average Time per Response: Varies according to type of information collection.

Estimated Total Burden Hours: 88,885 hours.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Comments submitted in response to this notice will become a matter of public record.

Jon Parrish Peede,

Senior Deputy Chairman.

[FR Doc. 2018–08541 Filed 4–24–18; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0068]

Mitigation Strategies for Beyond-Design-Basis External Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing the final Revision 2 to Japan Lessons-Learned Division Interim Staff Guidance (JLD–ISG), JLD–ISG–2012–01, ''Compliance with Order EA–12–049, Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events.'' This ISG provides guidance and clarification to assist nuclear power reactor licensees with the identification of measures needed to comply with requirements to mitigate challenges to key safety functions. These requirements are contained in Order EA–12–049, ''Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events.''

DATES: This guidance is effective on April 25, 2018.

ADDRESSES: Please refer to Docket ID NRC–2012–0068 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0068. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. Revision 2 to JLD–ISG–2012–01 is available in ADAMS under Accession No. ML17005A188.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Interim Staff Guidance Website: http://www.nrc.gov/reading-rm/doc-collections/isg/japan-lessons-learned.html.*

FOR FURTHER INFORMATION CONTACT: Eric Bowman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2963, email: *Eric.Bowman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The original Final Japan Lessons-Learned Project Directorate Interim Staff Guidance, JLD–ISG–2012–01 (ADAMS Accession No. ML12229A174) dated August 29, 2012, was issued to describe to the public methods acceptable to the NRC for complying with Order EA–12–049 issued March 12, 2012 (ADAMS Package Accession No. ML12054A736). This ISG endorsed the methodologies described in the industry guidance document, Nuclear Energy Institute (NEI) 12–06, ''Diverse and Flexible Coping Strategies (FLEX) Implementation Guide,'' Revision 0, (ADAMS Accession No. ML12242A378), submitted on August 21, 2012. Revision 1 to JLD–ISG–2012–01 (ADAMS Accession No. ML15357A163) was issued on January 22, 2016, and endorsed NEI 12–06, Revision 2 (ADAMS Accession No. ML16005A625), issued in December 2015. The NRC staff is now issuing Revision 2 to JLD–ISG–2012–01, which incorporates additional guidance related to reevaluated seismic hazard information and some additional changes based on lessons learned in the implementation of Order EA–12–049. This revision endorses NEI 12–06, Revision 4 (ADAMS Accession No. ML16354B421), issued in December 2016.

The NRC issued Order EA–12–049 following evaluation of the Japan earthquake and tsunami and resulting nuclear accident at the Fukushima Daiichi Nuclear Power Plant in March 2011. Order EA–12–049 requires all licensees and construction permit holders to develop a three-phase approach for mitigating beyond-design-basis external events. The initial phase requires the use of installed equipment and resources to maintain or restore core cooling, containment, and spent fuel pool cooling. The transition phase requires providing sufficient, portable, onsite equipment and consumables to maintain or restore these functions until they can be accomplished with resources brought from off site. The final phase requires obtaining sufficient offsite resources to sustain those functions indefinitely. Order EA–12–049 also specified that the NRC would issue final interim staff guidance in August 2012, to provide additional details on an acceptable approach for complying with Order EA–12–049.

The original version of this ISG, which endorsed the original NEI 12–06, was issued on August 29, 2012. Revision 1 to JLD–ISG–2012–01 incorporated acceptable alternative approaches to compliance proposed by licensees, as well as the NRC's review strategy described in COMSECY–14–0037, ''Integration of Mitigating Strategies for Beyond-Design Basis External Events and the Reevaluation of Flooding Hazards'' (ADAMS Accession No. ML14238A616), which clarified the NRC's position on the interdependency of the mitigating strategies responses and the responses to the seismic and flooding reevaluations. The NRC has further revised this ISG in Revision 2 in order to include additional guidance regarding reevaluated seismic hazard information and changes based on lessons learned related to mitigating strategies implementation. This revised guidance will be publicly available and used by members of the industry to help develop their responses to Order EA–12–049, including impacts of the reevaluated seismic and flooding information, and by the NRC in its reviews of licensee strategies. On November 10, 2016 (81 FR 79056), the NRC requested public comments on draft Revision 2 to JLD–ISG–2012–01. The NRC received comments from seven stakeholders, which were considered in the development of the final Revision 2 to JLD–ISG–2012–01. The questions, comments, and NRC resolutions of those comments are contained in ''NRC Responses to Public Comments: Revision 2 to JLD–ISG–2012–01, Compliance with Order EA–12–049, 'Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events''' (ADAMS Accession No. ML17005A187).

II. Congressional Review Act

This ISG revision is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

III. Backfitting and Issue Finality

This ISG provides guidance on an acceptable method for implementing the requirements contained in Order EA–12–049. Licensees may voluntarily use the guidance in Revision 2 to JLD–ISG–2012–01 to demonstrate compliance with Order EA–12–049. Methods or solutions that differ from those described in this ISG may be deemed acceptable if they provide sufficient basis and information for the NRC to verify that the proposed alternative demonstrates compliance with Order EA–12–049.

Issuance of this ISG does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting'' (the Backfit Rule), and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

Dated at Rockville, Maryland, this 19th day of April, 2018.

For the Nuclear Regulatory Commission.

Anita L. Lund,

Director, Division of Licensing Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–08601 Filed 4–24–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–040 and 52–041; NRC–2009–0337]

Florida Power & Light Company; Turkey Point Units 6 and 7

AGENCY: Nuclear Regulatory Commission

ACTION: Notice of intent to enter into a modified indemnity agreement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a notice of intent to enter into a modified indemnity agreement with Florida Power & Light Company (FPL) to operate Turkey Point Units 6 and 7. The NRC is publishing notice of its intent to enter into an indemnity agreement which contains provisions different from the general form found in the NRC's regulations. A modification to the general form is necessary to accommodate the unique timing provisions of a combined license (COL).

DATES: On April 5, 2018, the Commission authorized the Director of the Office of New Reactors to issue COLs to FPL to construct and operate Turkey Point Units 6 and 7. The modified indemnity agreement would be effective upon issuance of the COLs.

ADDRESSES: Please refer to Docket ID NRC–2009–0337 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0337. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then 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.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Manny Comar, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3863, email: *Manny.Comar@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 5, 2018, the Commission authorized issuance of COLs to FPL for Turkey Point Units 6 and 7. These COLs would include a license pursuant to part 70 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Special Nuclear Material.'' Pursuant to 10 CFR 140.20(a)(1)(iii), the NRC will execute and issue agreements of indemnity, effective on the date of a license under 10 CFR part 70, authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license for the reactor. The general form of indemnity agreement to be entered into by the NRC with FPL is contained in 10 CFR 140.92, ''Appendix B–Form of indemnity agreement with licensees furnishing insurance policies as proof of financial protection.''

II. Request/Action

Pursuant to 10 CFR 140.9, the NRC is publishing notice of its intent to enter into an indemnity agreement that contains provisions different from the general form found in 10 CFR 140.92. Modifications to the general indemnity agreement are addressed in the following discussion.

III. Discussion

The provisions of the general form of indemnity agreement in 10 CFR 140.92 address insurance and indemnity for a licensee that is authorized to operate as soon as an operating license is issued pursuant to 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities.'' FPL, however, has requested a COL pursuant to 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' to construct and operate Turkey Point Units 6 and 7. Unlike an operating license, which authorizes operation of the facility as soon as the license is issued, a COL authorizes the construction and operation of the facility, and also includes a condition that bars operation until the Commission makes a finding pursuant to 10 CFR 52.103(g) that the acceptance criteria in the COL are met (also called a ''§ 52.103(g) finding''). The COL holders are not required to maintain financial protection in the amount specified in 10 CFR 140.11(a)(4) before the § 52.103(g) finding is made, but must maintain financial protection in the amount specified by 10 CFR 140.13 upon receipt of a COL because the COL includes a license issued pursuant to 10 CFR part 70. Therefore, the provisions in the general form of indemnity agreement must be modified to address the timing differences applicable to COLs.

Modifications to the general form of indemnity agreement will reflect the timing distinctions applicable to COLs. In addition, other modifications and their intent are described below:

(1) References to Mutual Atomic Energy Liability Underwriters have been removed because this entity no longer exists.

(2) Monetary amounts have been updated to reflect changes that have been made to Section 170, ''Indemnification and Limitation of Liability,'' of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2210).

IV. Conclusions

Accordingly, for the reasons discussed in this notice, and in accordance with 10 CFR 140.9, the NRC hereby provides notice of its intent to enter into an agreement of indemnity with FPL for Turkey Point Units 6 and 7 with the described modifications to the general form of indemnity.

Dated at Rockville, Maryland, this 19th day of April 2018.

For the Nuclear Regulatory Commission.

Robert M. Taylor,

Acting Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2018–08593 Filed 4–24–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–040 and 52–041; NRC–2009–0337]

Florida Power & Light Company; Turkey Point Units 6 and 7

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined licenses and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Combined License (COL) Nos. NPF–104 and NPF–105 to Florida Power & Light Company (FPL) for Turkey Point Units 6 and 7. In addition, the NRC has prepared a Summary Record of Decision (ROD) that supports the NRC's decision to issue the above-named COLs.

DATES: Combined License Nos. NPF–104 and NPF–105, became effective on April 12, 2018.

ADDRESSES: Please refer to Docket ID NRC–2009–0337 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0337. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Manny Comar, telephone: 301–415–3863, email: *Manny.Comar@nrc.gov* regarding safety matters, and Alicia Williamson, telephone: 301–415–1878, email: *Alicia.Williamson@nrc.gov* regarding environmental matters. Both are staff of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 2.106 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the issuance of COL Nos. NPF–104 and NPF–105 to FPL. Under 10 CFR 50.102(c), the NRC is providing notice of the Commission's Memorandum and Order documenting its final decision on the uncontested hearing, which serves as the ROD in this proceeding. With respect to the application for COLs filed by FPL, the NRC finds that the applicable standards and requirements of the Atomic Energy Act of 1954, as amended (AEA), and the Commission's regulations have been met. The NRC finds that any required notifications to other agencies or bodies have been duly made and that there is reasonable assurance that the facilities will be constructed and will operate in conformity with the license, the provisions of the AEA, and the Commission's regulations. Furthermore, the NRC finds that FPL is technically and financially qualified to engage in the activities authorized, and that issuance of the licenses will not be inimical to the common defense and security or to the health and safety of the public. Finally, the NRC has determined that the findings required by subpart A of 10 CFR part 51 have been made.

Accordingly, the COLs were issued on April 12, 2018, and became effective immediately.

II. Further Information

The NRC has prepared a Final Safety Evaluation Report (FSER) and Final Environmental Impact Statement (FEIS) that document the information reviewed and the NRC's conclusion. The Commission has also issued its Memorandum and Order documenting its final decision on the uncontested hearing held on December 12, 2017, which serves as the ROD in this proceeding. The NRC also prepared a document summarizing the ROD to accompany its actions on the COL application; this ''Summary ROD'' incorporates by reference materials contained in the FEIS. The FSER, FEIS, Summary ROD, and accompanying documentation included in the COL package, as well as the Commission's hearing decision and ROD, are available online in the ADAMS Public Document collection at *http://www.nrc.gov/reading-rm/adams.html.* From this site, persons can access the NRC's ADAMS, which provides text and image files of NRC's public documents.

The ADAMS accession numbers for the documents related to this notice are listed below.

III. Availability of Documents

The documents identified in the following table are available to interested persons through the ADAMS Public Documents collection. A copy of the combined license application is also available for public inspection at the NRC's PDR and at *https://www.nrc.gov/reactors/new-reactors/col.html.*

Document	ADAMS accession no.
Final Safety Evaluation Report for Combined Licenses for Turkey Point Units 6 and 7.	ML16277A469.
Reader's Guide	ML16306A364.
Final Environmental Impact Statement for Combined Licenses for Turkey Point Units 6 and 7.	ML16300A104 (Volume 1), ML16300A137 (Volume 2), ML16301A018 (Volume 3), ML16300A312 (Volume 4), ML16337A147 (Supplement 1).
Commission's Memorandum and Order on the uncontested hearing (Record of Decision).	ML18095A117.
Summary Record of Decision	ML17333A164.
Letter transmitting Combined License Nos. NPF–104 and NPF–105 and accompanying documentation.	ML18058A461.
Combined Licenses Nos. NPF–104 and NPF-105	ML17088A329 (Unit 6), ML17088A330 (Unit 7).

Dated at Rockville, Maryland, this 19th day of April 2018.

For the Nuclear Regulatory Commission.

Robert M. Taylor,

Acting Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2018–08594 Filed 4–24–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2018–144 and CP2018–207]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 27, 2018.

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

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2018–144 and CP2018–207; *Filing Title:* USPS Request to Add Priority Mail Contract 432 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 19, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr; *Comments Due:* April 27, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–08629 Filed 4–24–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 25, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 19, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 432 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–144, CP2018–207.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

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BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83065; File No. SR–NYSEAMER–2018–14]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 904, Commentary .07 To Expand Position Limits for Options on Certain Exchange-Traded Funds

April 19, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b-4 thereunder,[3] notice is hereby given that on April 6, 2018, NYSE American LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 904 (Position Limits), Commentary .07 to expand position limits for options on certain Exchange-Traded Funds (ETFs). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts 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 Rule 904, Commentary .07 to expand position limits for options on certain ETFs. Specifically, the Exchange proposes to expand the position limits for options on the following ETFs: iShares China Large-Cap ETF (''FXI''), iShares MSCI EAFE ETF (''EFA''), iShares MSCI Emerging Markets ETF (''EEM''), iShares Russell 2000 ETF (''IWM''), iShares MSCI Brazil Capped ETF (''EWZ''), iShares 20+ Year Treasury Bond Fund ETF (''TLT''), PowerShares QQQ Trust (''QQQQ''), and iShares MSCI Japan ETF (''EWJ''). This is a competitive filing that is based on a proposal recently submitted by the Chicago Board Options Exchange Incorporated (''Cboe'') and approved by the Securities and Exchange Commission (''Commission'').[4]

Position Limit Increase

Position limits are designed to address potential manipulative schemes and adverse market impact surrounding the use of options, such as disrupting the market in the security underlying the options. The potential manipulative schemes and adverse market impact are balanced against the potential of setting the limits so low as to discourage participation in the options market. The level of those position limits must be balanced between curtailing potential manipulation and the cost of preventing potential hedging activity that could be used for legitimate economic purposes. Position limits for options on ETFs, such as those subject to this proposal, are determined pursuant to Rule 904, and vary according to the number of outstanding shares and the trading volume of the underlying stocks or ETFs over the past six-months. Pursuant to Rule 904, the largest in capitalization and the most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. Options on FXI, EFA, EWZ, TLT, and EWJ are currently subject to the standard position limit of 250,000 contracts as set forth in Rule 904.[5] Rule 904, Commentary .07 sets forth separate position limits for options on specific ETFs as follows:

- Options on EEM are 500,000 contracts;
- Options on IWM are 500,000 contracts; and
- Options on QQQQ are 900,000 contracts.

The purpose of this proposal is to amend Rule 904, Commentary .07 to double the position and exercise limits for FXI, EEM, IWM, EFA, EWZ, TLT, QQQQ, and EWJ.[6] The Exchange notes

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 82770 (February 23, 2018), 83 FR 8907 (March 1, 2018) (Order Granting Accelerated Approval SR–SR–CBOE–2017–057) (the ''Cboe Approval Order'').

[5] *See https://www.theocc.com/webapps/delo-search.*

[6] By virtue of Rule 905 (Exercise Limits), which is not being amended by this filing, the exercise limit for FXI, EEM, IWM, EFA, EWZ, TLT, QQQQ, and EWJ options would be similarly increased. The Exchange notes that it also proposes to make non-substantive changes corrections to the names of IWM and EEM and to assign letters (a)–(f) to the paragraphs in current Commentary .07 to the Rule to make it easier to follow (and reference). *See* proposed Commentary .07(a)–(f) to Rule 904. The Exchange does not propose to alter the substances of new paragraphs (a)–(e) of the Commentary. Proposed changes to paragraph (f) are discussed

Continued

that it also proposes to make non-substantive changes corrections to the names of IWM and EEM (replacing ''Index Fund with ETF'') and to assign letters (a)—(f) to the paragraphs in current Commentary .07 to the Rule to make it easier to follow (and reference).[7]

As such, options on FXI, EFA, EWZ, TLT, and EWJ would no longer be subject to the standard position limits set forth under Rule 904. Accordingly, Commentary .07(f) would be amended to set forth that the position limits for options on FXI, EFA, EWZ, TLT, and EWJ would be 500,000 contracts. These position limits equal the current position limits for option on IWM and EMM and are similar to the current position limit for options on QQQQ set forth in Rule 904, Commentary .07. Further, Rule 904 would also be amended to increase the position limits for the remaining options subject to this proposal as follows:

- The position limits for options on EEM would be increased from 500,000 contracts to 1,000,000 contracts;
- The position limits on options on IWM would be increased from 500,000 contracts to 1,000,000 contracts;
- The position limits on options on QQQQ would be increased from 900,000 contracts to 1,800,000 contracts.[8]

In support of this proposal, the Exchange represents that the above listed ETFs qualify for either: (i) The initial listing criteria set forth in Rule 915, Commentary .06(b) for ETFs holding non-U.S. component securities; or (ii) for ETFs listed pursuant to generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (''CSA'') is not required.[9] FXI tracks the performance of the FTSE China 50 Index, which is composed of the 50 largest Chinese stocks.[10] EEM tracks the performance of the MSCI Emerging Markets Index, which is composed of approximately 800 component securities.[11] ''The MSCI Emerging Markets Index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.'' [12] IWM tracks the performance of the Russell 2000 Index, which is composed of 2,000 small-cap domestic stocks.[13] EFA tracks the performance of MSCI EAFE Index, which has over 900 component securities.[14] ''The MSCI EAFE Index is designed to represent the performance of large and mid-cap securities across 21 developed markets, including countries in Europe, Australasia and the Far East, excluding the U.S. and Canada.'' [15] EWZ tracks the performance of the MSCI Brazil 25/50 Index, which is composed of shares of large and mid-size companies in Brazil.[16] TLT tracks the performance of ICE U.S. Treasury 20+ Year Bond Index, which is composed of long-term U.S. Treasury bonds.[17] QQQQ tracks the performance of the Nasdaq-100 Index, which is composed of 100 of the largest domestic and international nonfinancial companies listed on the Nasdaq Stock Market LLC (''Nasdaq'').[18] EWJ tracks the MSCI Japan Index, which tracks the performance of large and mid-sized companies in Japan.[19]

The Exchange represents that more than 50% of the weight of the securities held by the options subject to this proposal are also subject to a CSA.[20] Additionally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any one country that is not subject to a CSA do not represent 20% or more of the weight of the MSCI Emerging Markets Index.[21] Finally, the component securities of the MSCI Emerging Markets Index on which EEM is based, for which the primary market is in any two countries that are not subject to CSAs do not represent 33% of more of the weight of the MSCI Emerging Markets Index.[22]

In seeking to expand position limits for the same ETFs at issue in this proposal, Cboe represented that market participants have increased their demand for options on FXI, EFA, EWZ, TLT, and EWJ for hedging and trading purposes and, in support of this claim, presented the trading statistics set forth in the table below.[23]

ETF	2017 ADV (Mil. shares)	2017 ADV (option contracts)	Shares outstanding (Mil.)	Fund market cap ($Mil.)
FXI	15.08	71,944	78.6	$3,343.6
EEM	52.12	287,357	797.4	34,926.1
IWM	27.46	490,070	253.1	35,809.1
EFA	19.42	98,844	1178.4	78,870.3
EWZ	17.08	95,152	159.4	6,023.4
TLT	8.53	80,476	60.0	7,442.4
QQQQ	26.25	579,404	351.6	50,359.7
EWJ	6.06	4,715	303.6	16,625.1
SPY [24]	64.63	2,575,153	976.23	240,540.0

herein. *See* proposed Commentary .07(f) to Rule 904.

[7] *See* proposed Commentary .07(a)–(f) to Rule 904. The Exchange does not propose to alter the substances of new paragraphs (a)–(e) of the Commentary. Proposed changes to paragraph (f) are discussed herein. *See* proposed Commentary .07(f) to Rule 904.

[8] *See* proposed Commentary .07(f) to Rule 904.

[9] The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. *See* Rule 915, Commentary .06(b)(ii)(A); Rule 915, Commentary .06.

[10] *See https://www.ishares.com/us/products/239536/ishares-china-largecap-etf.*

[11] *See http://us.ishares.com/productinfo/fund/overview/EEM.htm.*

[12] *See http://www.msci.com/products/indices/tools/index.html#EM.*

[13] *See https://www.ishares.com/us/products/239710/ishares-russell-2000-etf.*

[14] *See https://www.ishares.com/us/products/239623/.*

[15] *See https://www.msci.com/eafe.*

[16] *See https://www.ishares.com/us/products/239612/ishares-msci-brazil-capped-etf.*

[17] *See https://www.ishares.com/us/products/239454.*

[18] *See https://www.invesco.com/portal/site/us/financial-professional/etfs/product detail?productId=QQQ&ticker=QQQ&title=powershares-qqq.*

[19] *See https://www.ishares.com/us/products/239665/EWJ.*

[20] *See* Rule 915, Commentary .06.

[21] *See* Rule 915, Commentary .06(b)(ii)(A).

[22] *See* Rule 915, Commentary .06(b)(ii)(B).

[23] *See* Cboe Approval Order, *supra* note 4.

[24] SPDR S&P 500 ETF (''SPY'') is included here for comparison purposes.

The Exchange agrees and believes the current position limits are too low and may be a deterrent to successful trading of options on these securities. The analysis that follows was likewise conducted by Cboe in support of its proposal. The Exchange agrees with Cboe's analysis discussed below.

In support of its proposal to increase the position limits for QQQQ to 1,800,000 contracts, Cboe compared the trading characteristics of QQQQ to that of SPY, which has no position limits. As shown in Cboe's above table, the average daily trading volume through August 14, 2017 for QQQQ was 26.25 million shares compared to 64.63 million shares for SPY. The total shares outstanding for QQQQ are 351.6 million compared to 976.23 million for SPY. The fund market cap for QQQQ is $50,359.7 million compared to $240,540 million for SPY. SPY is one of the most actively trading ETFs and is subject to no position limits. QQQQ is also very actively traded, and while not to the level of SPY, should be subject to the proposed higher position limits based its trading characteristics when compared to SPY. The proposed position limit coupled with QQQQ's trading behavior would continue to address potential manipulative schemes and adverse market impact surrounding the use of options and trading in securities underlying the options.

In support of its proposal to increase the position limits for EEM and IWM from 500,000 contracts to 1,000,000 contracts, Cboe also compared the trading characteristics of EEM and IWM to that of QQQQ, which currently has a position limit of 900,000 contracts. As shown in the above table, the average daily trading volume through July 31, 2017 for EEM was 52.12 million shares and IWM was 27.46 million shares compared to 26.25 million shares for QQQQ. The total shares outstanding for EEM are 797.4 million and for IWM are 253.1 million compared to 351.6 million for QQQQ. The fund market cap for EEM is $34,926.1 million and IWM is $35,809 million compared to $50,359.7 million for QQQQ. EEM, IWM and QQQQ have similar trading characteristics and subjecting EEM and IWM to the proposed higher position limit would continue be designed to address potential manipulative schemes that may arise from trading in the options and their underlying securities. These above trading characteristics for QQQQ when compared to EEM and IWM also justify increasing the position limit for QQQQ. QQQQ has a higher options ADV than EEM and IWM, a higher number of shares outstanding than IWM and a much higher market cap than EEM and IWM which justify doubling the position limit for QQQQ. Based on these statistics, and as stated above, the proposed position limit coupled with QQQQ's trading behavior would continue to address potential manipulative schemes and adverse market impact surrounding the use of options and trading in the securities underlying the options.

In support of its proposal to increase the position limits for FXI, EFA, EWZ, TLT, and EWJ from 250,000 contracts to 500,000 contracts, Cboe compared the trading characteristics of FXI, EFA, EWZ, TLT and EWJ to that of EEM and IWM, both of which currently have a position limit of 500,000 contracts. As shown in the above table, the average daily trading volume through July 31, 2017 for FXI is 15.08 million shares, EFA is 19.42 million shares, EWZ is 17.08 million shares, TLT is 8.53 million shares, and EWJ is 6.06 million shares compared to 52.12 million shares for EEM and 27.46 million shares for IWM. The total shares outstanding for FXI is 78.6 million, EFA is 1178.4 million, EWZ is 159.4 million, TLT is 60 million and EWJ is 303.6 million compared to 797.4 million for EEM and 253.1 million for IWM. The fund market cap for FXI is $3,343.6 million, EFA is $78,870.3 million, EWZ is $6,023.4 million, TLT is $7,442.4 million, and EWJ is $16,625.1 million compared to $34,926.1 million for EEM and $35,809.1 million for IWM. The above trading characteristics of FXI, EFA, EWZ, TLT and EWJ is either similar to that of EEM and IWM or sufficiently active enough so that the proposed limit would continue to address potential manipulation that may arise. EFA has far more shares outstanding and a larger fund market cap than EEM, IWM, and QQQQ. EWJ has a more shares outstanding than IWM and only slightly less shares outstanding than QQQQ.

On the other hand, while FXI, EWZ, and TLT do not exceed EEM, IWM or QQQQ in any of the specified areas, they are all actively trading so that market participant's trading activity has been impacted by them being restricted by the current position limits. The Exchange believes that the trading activity and these securities being based on a broad basket of underlying securities alleviates any potential manipulative activity that may arise. In addition, as discussed in more detail below, the Exchange's existing surveillance procedures and reporting requirements at the Exchange, other options exchanges, and at several clearing firms are capable of properly identifying unusual and/or illegal trading activity.

According to Cboe, market participants' trading activity has been adversely impacted by the current position limits for FXI, EFA, EWZ, TLT, and EWJ and such limits have caused options trading in these symbols to move from exchanges to the over-the-counter market.[25] The Exchange understands that certain market participants wishing to make trades involving a large number of options contracts in the symbols subject to the proposal are opting to execute those trades in the over-the-counter market. The over-the-counter transactions occur via bi-lateral agreements, the terms of which are not publicly disclosed to other market participants. Therefore, these large trades do not contribute to the price discovery process performed on a lit market.

The Exchange notes that the ETFs that underlie options subject to this proposal are highly liquid, and are based on a broad set of highly liquid securities and other reference assets.[26] The Exchange notes that the Commission has generally looked through to the liquidity of securities comprising an index in establishing position limits for cash-settled index options. The Exchange further notes that options on certain broad-based security indexes have no position limits. Likewise, the Commission has recognized the liquidity of the securities comprising the underlying interest of SPY in permitting no position limits on SPY options since 2012,[27] and expanded position limits for options on EEM, IWM, and QQQQ.

The proposed position limits set forth in the proposal would continue to address potential manipulative activity while allowing for potential hedging activity for appropriate economic purposes. The creation and redemption process for these ETFs also lessen the potential for manipulative activity. When an ETF company wants to create more ETF shares, it looks to an Authorized Participant, which is a market maker or other large financial institution, to acquire the securities the ETF is to hold. For instance, IWM is designed to track the performance of the Russell 2000 Index, the Authorized Participant will purchase all the Russell 2000 constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the Authorized Participant a block of

[25] *See* SR–CBOE–2017–057, Partial Amendment No. 1 (November 22, 2017).

[26] *See supra* nn. 9–18 (providing trading statistics for each ETF at issue in this proposal).

[27] *See* Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012).

equally valued ETF shares, on a one-for-one fair value basis. The price is based on the net asset value, not the market value at which the ETF is trading. This process can also work in reverse where the ETF company seeks to decrease the number of shares that are available to trade. The creation and redemption process, therefore, creates a direct link to the underlying components of the ETF, and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits.

The ETF creation and redemption seeks to keep ETF share prices trading in line with the ETF's underlying net asset value. Because an ETF trades like a stock, its price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, the ETF's share price might rise above the value of its underlying securities. When this happens, the Authorized Participant believes the ETF may now be overpriced, and can buy the underlying shares that compose the ETF and then sell ETF shares on the open market. This should help drive the ETF's share price back toward fair value. Likewise, if the ETF starts trading at a discount to the securities it holds, the Authorized Participant can buy shares of the ETF and redeem them for the underlying securities. Buying undervalued ETF shares should drive the price of the ETF back toward fair value. This arbitrage process helps to keep an ETF's price in line with the value of its underlying portfolio.

Some of the ETFs underlying options subject to the proposal are based on broad-based indices that underlie cash settled options that are economically equivalent to the ETF options that are the subject of the proposal and have no position limits. Other ETFs are based on broad-based indexes that underlie cash-settled options with position limits reflecting notional values that are larger than the current position limits for ETF analogues (EEM, EFA). Where there was no approved index analogue, the Exchange believes, based on the liquidity, breadth and depth of the underlying market, that the index referenced by the ETF would be considered a broad-based index.[28] The Exchange argues that if certain position limits are appropriate for the options overlying the same index or is an analogue to the basket of securities that the ETF tracks, then those same economically equivalent position limits should be appropriate for the option overlying the ETF. In addition, the market capitalization of the underlying index or reference asset is large enough to absorb any price movements that may be caused by an oversized trade. Also, the Authorized Participant or issuer may look to the stocks comprising the analogous underlying index or reference asset when seeking to create additional ETF shares are part of the creation/redemption process to address supply and demand or to mitigate the price movement the price of the ETF.

QQQQ

For example, the PowerShares QQQ Trust or QQQQ is an ETF that tracks the Nasdaq 100 Index or NDX, which is an index composed of 100 of the largest non-financial securities listed on the Nasdaq Stock Market LLC (''Nasdaq''). Options on NDX are currently subject to the standard position limit of 25,000 contracts for broad-based index options but share similar trading characteristics as QQQQ.[29] Based on QQQQ's share price of $154.54 [30] and NDX's index level of 6,339.14, approximately 40 contracts of QQQQ equals one contract of NDX. Based on the above comparison of notional values, this would result in a position limit equivalent to 1,000,000 contracts for QQQQ as NDX's analogue. NDX is subject to the standard position limit of 25,000 contracts for broad-based index options and has an average daily trading volume of 15,300 contracts. QQQQ is currently subject to a position limit of 900,000 contracts but has a much higher average daily trading volume of 579,404 contracts. Furthermore, NDX currently has a market capitalization of $17.2 trillion and QQQQ has a market capitalization of $50,359.7 million, and the component securities of NDX, in aggregate, have traded an average of 440 million shares per day in 2017, both large enough to absorb any price movement caused by a large trade in the QQQQ. The Exchange notes that other exchanges allow no position limits for NDX,[31] although it has a much lower average daily trading volume than its analogue, the QQQQ. Therefore, the Exchange believes it is reasonable to increase the position limit for options on the QQQQ from 900,000 to 1,800,000 contracts.

IWM

The iShares Russell 2000 ETF or IWM, is an ETF that also tracks the Russell 2000 Index or RUT, which is an index that composed of 2,000 small-cap domestic companies in the Russell 3000 index. Options on RUT are currently subject to the standard position limit of 25,000 contracts for broad-based index options but share similar trading characteristics as IWM.[32] Based on IWM's share price of $144.77 and RUT's index level of 1,486.88, approximately 10 contracts of IWM equals one contract of RUT. Based on the above comparison of notional values, this would result in a position limit equivalent to 250,000 contracts for IWM as RUT's analogue. The Exchange notes that at other exchanges RUT is not subject to position limits and has an average daily trading volume of 66,200 contracts.[33] IWM is currently subject to a position limit of 500,000 contracts but has a much higher average daily trading volume of 490,070 contracts. As mentioned above, other exchanges have no position limits for RUT,[34] although it has a much lower average daily trading volume than its analogue, the IWM. Furthermore, RUT currently has a market capitalization of $2.4 trillion and IWM has a market capitalization of $35,809.1 million, and the component securities of RUT, in aggregate, have traded an average of 270 million shares per day in 2017, both large enough to absorb any price movement cause by a large trade in the IWM. Therefore, the Exchange believes it is reasonable to increase the position limit for options on the IWM from 500,000 to 1,000,000 contracts.

EEM

EEM tracks the performance of the MSCI Emerging Markets Index or MXEF, which is composed of approximately 800 component securities following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey. Below makes the same notional value comparison as made above. Based on EEM's share price of $47.06 and MXEF's index level of 1,136.45, approximately 24 contracts of EEM equals one contract of MXEF. MXEF is currently subject to the standard position limit of 25,000 contracts for Broad Stock Index Group options under Rule 904C(b). Based on the above comparison of notional values, this would result in a position limit economically equivalent to 604,000 contracts for EEM as MXEF's

[28] *See* Rule 904C(b) (Position Limits) (describing position limits for Broad Stock Index Group).

[29] *See id.*

[30] All share prices used herein are based on the closing price of the security on November 16, 2017. Source: Yahoo Finance.

[31] *See* Cboe Rule 24.4 sets forth position limits for broad-based index options.

[32] *See* Rule 904C(b) (Position Limits) (describing position limits for Broad Stock Index Group).

[33] *See* Cboe Rule 24.4.

[34] *See id.*

analogue. However, MXEF has an average daily trading volume of 180 contracts. EEM is currently subject to a position limit of 500,000 contracts but has a much higher average daily trading volume of 287,357 contracts. Furthermore, MXEF currently has a market capitalization of $5.18 trillion and EEM has a market capitalization of $34,926.1 million, and the component securities of MXEF, in aggregate, have traded an average of 33.6 billion shares per day in 2017, both large enough to absorb any price movement cause by a large trade in the EEM. Therefore, based on the comparison of average daily trading volume, the Exchange believes it is reasonable to increase the position limit for options on the EEM from 500,000 to 1,000,000 contracts.

EFA

EFA tracks the performance of MSCI EAFE Index or MXEA, which has over 900 component securities designed to represent the performance of large and mid-cap securities across 21 developed markets, including countries in Europe, Australasia and the Far East, excluding the U.S. and Canada. Below makes the same notional value comparison as made above. Based on EFA's share price of $69.16 and MXEA's index level of 1,986.15, approximately 29 contracts of EFA equals one contract of MXEA. MXEA is currently subject to the standard position limit of 25,000 contracts for Broad Stock Index Group options under Rule 904C(b). Based on the above comparison of notional values, this would result in a position limit economically equivalent to 721,000 contracts for EFA as MXEA's analogue. Furthermore, MXEA currently has a market capitalization of $18.7 trillion and EFA has a market capitalization of $78,870.3 million, and the component securities of MXEA, in aggregate, have traded an average of 4.6 billion shares per day in 2017, both large enough to absorb any price movement cause by a large trade in the EEM. However, MXEA has an average daily trading volume of 270 contracts. EFA is currently subject to a position limit of 250,000 contracts but has a much higher average daily trading volume of 98,844 contracts. Based on the above comparisons, the Exchange believes it is reasonable to increase the position limit for options on the EFA from 250,000 to 500,000 contracts.

FXI

FXI tracks the performance of the FTSE China 50 Index, which is composed of the 50 largest Chinese stocks. There is currently no index analogue for FXI approved for options trading. However, the FTSE China 50 Index currently has a market capitalization of $1.7 trillion and FXI has a market capitalization of $2,623.18 million, both large enough to absorb any price movement cause by a large trade in FXI. The components of the FTSE China 50 Index, in aggregate, have an average daily trading volume of 2.3 billion shares. FXI is currently subject to a position limit of 000 contracts but has a much higher average daily trading volume of 15.08 million shares. Based on the above comparisons, the Exchange believes it is reasonable to increase the position limit for options on the FXI from 250,000 to 500,000 contracts.

EWZ

EWZ tracks the performance of the MSCI Brazil 25/50 Index, which is composed of shares of large and mid-size companies in Brazil. There is currently no index analogue for EWZ approved for options trading. However, the MSCI Brazil 25/50 Index currently has a market capitalization of $700 billion and EWZ has a market capitalization of $6,023.4 million, both large enough to absorb any price movement cause by a large trade in EWZ. The components of the MSCI Brazil 25/50 Index, in aggregate, have an average daily trading volume of 285 million shares. EWZ is currently subject to a position limit of 250,000 contracts but has a much higher average daily trading volume of 17.08 million shares. Based on the above comparisons, the Exchange believes it is reasonable to increase the position limit for options on the EWZ from 250,000 to 500,000 contracts.

TLT

TLT tracks the performance of ICE U.S. Treasury 20+ Year Bond Index, which is composed of long-term U.S. Treasury bonds. There is currently no index analogue for TLT approved for options trading. However, the U.S. Treasury market is one of the largest and most liquid markets in the world, with over $14 trillion outstanding and turnover of approximately $500 billion per day. TLT currently has a market capitalization of $7,442.4 million, both large enough to absorb any price movement cause by a large trade in TLT. Therefore, the potential for manipulation will not increase solely due the increase in position limits as set forth in this proposal. Based on the above comparisons, the Exchange believes it is reasonable to increase the position limit for options on the TLT from 250,000 to 500,000 contracts.

EWJ

EWJ tracks the MSCI Japan Index, which tracks the performance of large and mid-sized companies in Japan. There is currently no index analogue for EWJ approved for options trading. However, the MSCI Japan Index has a market capitalization of $3.5 trillion and EWJ has a market capitalization of $16,625.1 million, and the component securities of the MSCI Japan Index, in aggregate, have traded an average of 1.1 billion shares per day in 2017, both large enough to absorb any price movement caused by a large trade in EWJ. EWJ is currently subject to a position limit of 250,000 contracts and has an average daily trading volume of 6.6 million shares. Based on the above comparisons, the Exchange believes it is reasonable to increase the position limit for options on EWJ from 250,000 to 500,000 contracts.

Exchange Analysis and Conclusions

The Exchange believes that increasing the position limits for the options subject to this proposal would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in this product. Under the proposal, the reporting requirement for the above options would be unchanged. Thus, the Exchange would still require that each ATP Holder that maintains a position in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' position, whether such position is hedged and, if so, a description of the hedge, and the collateral used to carry the position, if applicable. Exchange Market Makers [35] would continue to be exempt from this reporting requirement, as Market Maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more options contracts would remain at

[35] A Market Maker ''A Market Maker is an ATP Holder that is registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange or for the purpose of submitting quotes electronically and making transactions as a dealer specialist through the System. A Market Maker submitting quotes remotely is not eligible to participate in trades affected in open outcry except to the extent that such Market Maker's quotation represents the BBO. Market Makers are designated as specialists on the Exchange for all purposes under the Securities Exchange Act of 1934 and the Rules and Regulations thereunder.'' *See* Rule 920(a).

this level for the options subject to this proposal.[36]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.[37]

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[38] The positions for options subject to this proposal are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that ATP Holders file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that an ATP Holder or its customer may try to maintain an inordinately large un-hedged position in the options subject to this proposal. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that an ATP Holder must maintain for a large position held by itself or by its customer.[39] In addition, Rule 15c3–1 [40] imposes a capital charge on ATP Holders to the extent of any margin deficiency resulting from the higher margin requirement.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [41] in general, and furthers the objectives of Section 6(b)(5) of the Act,[42] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[43]

The current position limits for the options subject to this proposal have inhibited the ability of Market Makers to make markets on the Exchange. Specifically, the proposal is designed to encourage Market Makers to shift liquidity from over the counter markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow. The proposal will also benefit institutional investors as well as retail traders, and public customers, by providing them with a more effective trading and hedging vehicle. In addition, the Exchange believes that the structure of the ETFs subject to this proposal and the considerable liquidity of the market for options on those ETFs diminishes the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against. Increased position limits for select actively traded options, such as that proposed herein, is not novel and has been previously approved by the Commission. For example, the Commission has previously approved, on a pilot basis, eliminating position limits for options on SPY.[44] Additionally, the Commission has approved similar proposed rule changes to increase position limits for options on highly liquid, actively-traded ETFs,[45] including a proposal to permanently eliminate the position and exercise limits for options overlaying the S&P 500 Index, S&P 100 Index, Dow Jones Industrial Average, and Nasdaq 100 Index.[46] In approving the permanent elimination of position and exercise limits, the Commission relied heavily upon Cboe's surveillance capabilities, the Commission expressed trust in the enhanced surveillance and reporting safeguards that Cboe took in order to detect and deter possible manipulative behavior which might arise from eliminating position and exercise limits.[47] Furthermore, as described more fully above, options on other ETFs have the position limits proposed herein, but their trading volumes are significantly lower than the ETFs subject to the proposed rule change.

Lastly, the Commission expressed the belief that removing position and exercise limits may bring additional depth and liquidity without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[48] The Exchange's enhanced surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior which might arise from eliminating position and exercise limits.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will result in additional opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

Further, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Cboe that was recently approved by the Commission.[49]

[36] *See* Rule 906 (Reporting of Options Positions).

[37] These procedures have been effective for the surveillance of trading the options subject to this proposal and will continue to be employed.

[38] 17 CFR 240.13d–1.

[39] *See* Rule 462 (Minimum Margins).

[40] 17 CFR 240.15c3–1.

[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(5).

[43] *Id.*

[44] *See* Securities Exchange Act Release Nos. 67937 (September 27, 2012), 77 FR 60489 (October 3, 2012) (SR–CBOE–2012–091); 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (SR–BOX–2012–013); 68001 (October 5, 2012), 77 FR 62303 (October 12, 2012) (SR–NYSEArca–2012–112); 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR–NYSEAmex–2012–29).

[45] *See* Securities Exchange Act Release Nos. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066); 64928 (July 20, 2011), 76 FR 44633 (July 26, 2011) (SR–CBOE–2011–065); 64695 (June 17, 2011), 76 FR 36942 (June 23, 2011) (SR–PHLX–2011–58); and 55155 (January 23, 2007), 72 FR 4741 (February 1, 2017) (SR–CBOE–2007–008).

[46] *See* Securities Exchange Act Release Nos. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR–CBOE–2001–22); 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (SR–CBOE–2005–41) (''NDX Approval'').

[47] *See id.*, NDX Approval, 70 FR 62147, at 62149.

[48] *Id.*

[49] *See supra* note 4.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [50] and Rule 19b–4(f)(6) thereunder.[51]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [52] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [53] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to immediately increase the position limits for the products subject to this proposal, which the Exchange believes will provide consistency for ATP Holders that are also members at CBOE where these increased position limits are currently in place. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[54]

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–NYSEAMER–2018–14 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–NYSEAMER–2018–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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–NYSEAMER–2018–14, and should be submitted on or before May 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Eduardo A. Aleman,

Assistant Secretary.

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BILLING CODE 8011–01–P

[50] 15 U.S.C. 78s(b)(3)(A).

[51] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[52] 17 CFR 240.19b–4(f)(6).

[53] 17 CFR 240.19b–4(f)(6)(iii).

[54] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83066; File No. SR–NYSEArca–2018–23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 6.8–O, Commentary .06 To Expand Position Limits for Options on Certain Exchange-Traded Funds

April 19, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 13, 2018, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 6.8–O (Position Limits), Commentary .06 to expand position limits for options on certain Exchange-Traded Funds (ETFs). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts 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 Rule 6.8–O, Commentary .06 to expand position limits for options on certain ETFs. Specifically, the Exchange proposes to expand the position limits for options on the following ETFs: iShares China Large-Cap ETF (''FXI''), iShares MSCI EAFE ETF (''EFA''), iShares MSCI Emerging Markets ETF (''EEM''), iShares Russell 2000 ETF (''IWM''), iShares MSCI Brazil Capped ETF (''EWZ''), iShares 20+ Year Treasury Bond Fund ETF (''TLT''), PowerShares QQQ Trust (''QQQQ''), and iShares MSCI Japan ETF (''EWJ''). This is a competitive filing that is based on a proposal recently submitted by the Chicago Board Options Exchange Incorporated (''Cboe'') and approved by the Securities and Exchange Commission (''Commission'').[4]

Position Limit Increase

Position limits are designed to address potential manipulative schemes and adverse market impact surrounding the use of options, such as disrupting the market in the security underlying the options. The potential manipulative schemes and adverse market impact are balanced against the potential of setting the limits so low as to discourage participation in the options market. The level of those position limits must be balanced between curtailing potential manipulation and the cost of preventing potential hedging activity that could be used for legitimate economic purposes. Position limits for options on ETFs, such as those subject to this proposal, are determined pursuant to Rule 6.8–O, and vary according to the number of outstanding shares and the trading volume of the underlying stocks or ETFs over the past six-months. Pursuant to Rule 6.8–O, the largest in capitalization and the most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. Options on FXI, EFA, EWZ, TLT, and EWJ are currently subject to the standard position limit of 250,000 contracts as set forth in Rule 6.8–O.[5] Rule 6.8–O, Commentary .06(f–(i) sets forth separate position limits for options on specific ETFs as follows:

- Options on EEM are 500,000 contracts;
- Options on IWM are 500,000 contracts; and
- Options on QQQQ are 900,000 contracts.

The purpose of this proposal is to amend Rule 6.8–O, Commentary .06 to double the position and exercise limits for FXI, EEM, IWM, EFA, EWZ, TLT, QQQQ, and EWJ.[6]

As such, options on FXI, EFA, EWZ, TLT, and EWJ would no longer be subject to the standard position limits set forth under Rule 6.8–O. Accordingly, Commentary .06 would be amended to set forth that the position limits for options on FXI, EFA, EWZ, TLT, and EWJ would be 500,000 contracts. These position limits equal the current position limits for option on IWM and EMM and are similar to the current position limit for options on QQQQ set forth in Rule 6.8–O, Commentary .06. Further, Rule 6.8–O would also be amended to increase the position limits for the remaining options subject to this proposal as follows:

- The position limits for options on EEM would be increased from 500,000 contracts to 1,000,000 contracts;
- The position limits on options on IWM would be increased from 500,000 contracts to 1,000,000 contracts;
- The position limits on options on QQQQ would be increased from 900,000 contracts to 1,800,000 contracts.[7]

In support of this proposal, the Exchange represents that the above listed ETFs qualify for either: (i) The initial listing criteria set forth in Rule 5.3–O(g)(2) for ETFs holding non-U.S. component securities; or (ii) for ETFs listed pursuant to generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (''CSA'') is not required.[8] FXI tracks the performance of the FTSE China 50 Index, which is composed of the 50 largest Chinese stocks.[9] EEM tracks the performance of the MSCI Emerging Markets Index, which is composed of approximately 800 component securities.[10] ''The MSCI Emerging Markets Index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.'' [11] IWM tracks the performance of the Russell 2000 Index, which is composed of 2,000 small-cap domestic stocks.[12] EFA tracks the performance of MSCI EAFE Index, which has over 900 component securities.[13] ''The MSCI EAFE Index is designed to represent the performance of large and mid-cap securities across 21 developed markets, including countries in Europe, Australasia and the Far East, excluding the U.S. and Canada.'' [14] EWZ tracks the performance of the MSCI Brazil 25/50 Index, which is composed of shares of large and mid-size companies in Brazil.[15] TLT tracks the performance of ICE U.S. Treasury 20+ Year Bond Index, which is composed of long-term U.S. Treasury bonds.[16] QQQQ tracks the performance of the Nasdaq-100 Index, which is composed of 100 of

[4] *See* Securities Exchange Act Release No. 82770 (February 23, 2018), 83 FR 8907 (March 1, 2018) (Order Granting Accelerated Approval SR–SR–CBOE–2017–057) (the ''Cboe Approval Order'').

[5] *See https://www.theocc.com/webapps/delo-search.*

[6] By virtue of Rule 6.9–O (Exercise Limits), which is not being amended by this filing, the exercise limit for FXI, EEM, IWM, EFA, EWZ, TLT, QQQQ, and EWJ options would be similarly increased. The Exchange notes that it also proposes to make non-substantive changes corrections to the names of IWM and EEM and to collapse into one proposed paragraph the list of ETFs and applicable position limits, which would result in the deletion of current paragraphs (f)–(i) in Commentary .06 to the Rule. *See* proposed Commentary .06(f) to Rule 6.8–O.

[7] *See id.*

[8] The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. *See* Rule 5.3–O(g)(2); Rule 5.3–O(g).

[9] *See https://www.ishares.com/us/products/239536/ishares-china-largecap-etf.*

[10] *See http://us.ishares.com/productinfo/fund/overview/EEM.htm.*

[11] *See http://www.msci.com/products/indices/tools/index.html#EM.*

[12] *See https://www.ishares.com/us/products/239710/ishares-russell-2000-etf.*

[13] *See https://www.ishares.com/us/products/239623/.*

[14] *See https://www.msci.com/eafe.*

[15] *See https://www.ishares.com/us/products/239612/ishares-msci-brazil-capped-etf.*

[16] *See https://www.ishares.com/us/products/239454.*

the largest domestic and international nonfinancial companies listed on the Nasdaq Stock Market LLC (''Nasdaq'').[17] EWJ tracks the MSCI Japan Index, which tracks the performance of large and mid-sized companies in Japan.[18]

The Exchange represents that more than 50% of the weight of the securities held by the options subject to this proposal are also subject to a CSA.[19] Additionally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any one country that is not subject to a CSA do not represent 20% or more of the weight of the MSCI Emerging Markets Index.[20] Finally, the component securities of the MSCI Emerging Markets Index on which EEM is based, for which the primary market is in any two countries that are not subject to CSAs do not represent 33% of more of the weight of the MSCI Emerging Markets Index.[21]

In seeking to expand position limits for the same ETFs at issue in this proposal, Cboe represented that market participants have increased their demand for options on FXI, EFA, EWZ, TLT, and EWJ for hedging and trading purposes and, in support of this claim, presented the trading statistics set forth in the table below.[22]

ETF	2017 ADV (Mil. Shares)	2017 ADV (option contracts)	Shares outstanding (Mil.)	Fund market cap ($Mil.)
FXI	15.08	71,944	78.6	$3,343.6
EEM	52.12	287,357	797.4	34,926.1
IWM	27.46	490,070	253.1	35,809.1
EFA	19.42	98,844	1178.4	78,870.3
EWZ	17.08	95,152	159.4	6,023.4
TLT	8.53	80,476	60.0	7,442.4
QQQQ	26.25	579,404	351.6	50,359.7
EWJ	6.06	4,715	303.6	16,625.1
SPY[23]	64.63	2,575,153	976.23	240,540.0

The Exchange agrees and believes the current position limits are too low and may be a deterrent to successful trading of options on these securities. The analysis that follows was likewise conducted by Cboe in support of its proposal. The Exchange agrees with Cboe's analysis discussed below.

In support of its proposal to increase the position limits for QQQQ to 1,800,000 contracts, Cboe compared the trading characteristics of QQQQ to that of SPY, which has no position limits. As shown in Cboe's above table, the average daily trading volume through August 14, 2017 for QQQQ was 26.25 million shares compared to 64.63 million shares for SPY. The total shares outstanding for QQQQ are 351.6 million compared to 976.23 million for SPY. The fund market cap for QQQQ is $50,359.7 million compared to $240,540 million for SPY. SPY is one of the most actively trading ETFs and is subject to no position limits. QQQQ is also very actively traded, and while not to the level of SPY, should be subject to the proposed higher position limits based its trading characteristics when compared to SPY. The proposed position limit coupled with QQQQ's trading behavior would continue to address potential manipulative schemes and adverse market impact surrounding the use of options and trading in securities underlying the options.

In support of its proposal to increase the position limits for EEM and IWM from 500,000 contracts to 1,000,000 contracts, Cboe also compared the trading characteristics of EEM and IWM to that of QQQQ, which currently has a position limit of 900,000 contracts. As shown in the above table, the average daily trading volume through July 31, 2017 for EEM was 52.12 million shares and IWM was 27.46 million shares compared to 26.25 million shares for QQQQ. The total shares outstanding for EEM are 797.4 million and for IWM are 253.1 million compared to 351.6 million for QQQQ. The fund market cap for EEM is $34,926.1 million and IWM is $35,809 million compared to $50,359.7 million for QQQQ. EEM, IWM and QQQQ have similar trading characteristics and subjecting EEM and IWM to the proposed higher position limit would continue be designed to address potential manipulative schemes that may arise from trading in the options and their underlying securities. These above trading characteristics for QQQQ when compared to EEM and IWM also justify increasing the position limit for QQQQ. QQQQ has a higher options ADV than EEM and IWM, a higher number of shares outstanding than IWM and a much higher market cap than EEM and IWM which justify doubling the position limit for QQQQ. Based on these statistics, and as stated above, the proposed position limit coupled with QQQQ's trading behavior would continue to address potential manipulative schemes and adverse market impact surrounding the use of options and trading in the securities underlying the options.

In support of its proposal to increase the position limits for FXI, EFA, EWZ, TLT, and EWJ from 250,000 contracts to 500,000 contracts, Cboe compared the trading characteristics of FXI, EFA, EWZ, TLT and EWJ to that of EEM and IWM, both of which currently have a position limit of 500,000 contracts. As shown in the above table, the average daily trading volume through July 31, 2017 for FXI is 15.08 million shares, EFA is 19.42 million shares, EWZ is 17.08 million shares, TLT is 8.53 million shares, and EWJ is 6.06 million shares compared to 52.12 million shares for EEM and 27.46 million shares for IWM. The total shares outstanding for FXI is 78.6 million, EFA is 1178.4 million, EWZ is 159.4 million, TLT is 60 million and EWJ is 303.6 million compared to 797.4 million for EEM and 253.1 million for IWM. The fund market cap for FXI is $3,343.6 million, EFA is $78,870.3 million, EWZ is $6,023.4 million, TLT is $7,442.4 million, and EWJ is $16,625.1 million compared to $34,926.1 million for EEM and $35,809.1 million for IWM. The above trading characteristics of FXI, EFA, EWZ, TLT and EWJ is either similar to that of EEM and IWM or sufficiently active enough so that the proposed limit would continue to address potential manipulation that may arise. EFA has far more shares outstanding and a larger

[17] *See https://www.invesco.com/portal/site/us/financial-professional/etfs/productdetail?productId=QQQ&ticker=QQQ&title=powershares-qqq.*

[18] *See https://www.ishares.com/us/products/239665/EWJ.*

[19] *See* Rule 5.3–O(g)(2).

[20] *See* Rule 5.3–O(g)(2)(B)(ii).

[21] *See* Rule 5.3–O(g)(2)(B)(iii).

[22] *See* Cboe Approval Order, *supra* note 4.

[23] SPDR S&P 500 ETF (''SPY'') is included here for comparison purposes.

fund market cap than EEM, IWM, and QQQQ. EWJ has a more shares outstanding than IWM and only slightly less shares outstanding than QQQQ.

On the other hand, while FXI, EWZ, and TLT do not exceed EEM, IWM or QQQQ in any of the specified areas, they are all actively trading so that market participant's trading activity has been impacted by them being restricted by the current position limits. The Exchange believes that the trading activity and these securities being based on a broad basket of underlying securities alleviates any potential manipulative activity that may arise. In addition, as discussed in more detail below, the Exchange's existing surveillance procedures and reporting requirements at the Exchange, other options exchanges, and at several clearing firms are capable of properly identifying unusual and/or illegal trading activity.

According to Cboe, market participants' trading activity has been adversely impacted by the current position limits for FXI, EFA, EWZ, TLT, and EWJ and such limits have caused options trading in these symbols to move from exchanges to the over-the-counter market.[24] The Exchange understands that certain market participants wishing to make trades involving a large number of options contracts in the symbols subject to the proposal are opting to execute those trades in the over-the-counter market. The over-the-counter transactions occur via bi-lateral agreements, the terms of which are not publicly disclosed to other market participants. Therefore, these large trades do not contribute to the price discovery process performed on a lit market.

The Exchange notes that the ETFs that underlie options subject to this proposal are highly liquid, and are based on a broad set of highly liquid securities and other reference assets.[25] The Exchange notes that the Commission has generally looked through to the liquidity of securities comprising an index in establishing position limits for cash-settled index options. The Exchange further notes that options on certain broad-based security indexes have no position limits. Likewise, the Commission has recognized the liquidity of the securities comprising the underlying interest of SPY in permitting no position limits on SPY options since 2012,[26] and expanded position limits for options on EEM, IWM, and QQQQ.

The proposed position limits set forth in the proposal would continue to address potential manipulative activity while allowing for potential hedging activity for appropriate economic purposes. The creation and redemption process for these ETFs also lessen the potential for manipulative activity. When an ETF company wants to create more ETF shares, it looks to an Authorized Participant, which is a market maker or other large financial institution, to acquire the securities the ETF is to hold. For instance, IWM is designed to track the performance of the Russell 2000 Index, the Authorized Participant will purchase all the Russell 2000 constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the net asset value, not the market value at which the ETF is trading. This process can also work in reverse where the ETF company seeks to decrease the number of shares that are available to trade. The creation and redemption process, therefore, creates a direct link to the underlying components of the ETF, and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits.

The ETF creation and redemption seeks to keep ETF share prices trading in line with the ETF's underlying net asset value. Because an ETF trades like a stock, its price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, the ETF's share price might rise above the value of its underlying securities. When this happens, the Authorized Participant believes the ETF may now be overpriced, and can buy the underlying shares that compose the ETF and then sell ETF shares on the open market. This should help drive the ETF's share price back toward fair value. Likewise, if the ETF starts trading at a discount to the securities it holds, the Authorized Participant can buy shares of the ETF and redeem them for the underlying securities. Buying undervalued ETF shares should drive the price of the ETF back toward fair value. This arbitrage process helps to keep an ETF's price in line with the value of its underlying portfolio.

Some of the ETFs underlying options subject to the proposal are based on broad-based indices that underlie cash settled options that are economically equivalent to the ETF options that are the subject of the proposal and have no position limits. Other ETFs are based on broad-based indexes that underlie cash-settled options with position limits reflecting notional values that are larger than the current position limits for ETF analogues (EEM, EFA). Where there was no approved index analogue, the Exchange believes, based on the liquidity, breadth and depth of the underlying market, that the index referenced by the ETF would be considered a broad-based index.[27] The Exchange argues that if certain position limits are appropriate for the options overlying the same index or is an analogue to the basket of securities that the ETF tracks, then those same economically equivalent position limits should be appropriate for the option overlying the ETF. In addition, the market capitalization of the underlying index or reference asset is large enough to absorb any price movements that may be caused by an oversized trade. Also, the Authorized Participant or issuer may look to the stocks comprising the analogous underlying index or reference asset when seeking to create additional ETF shares are part of the creation/redemption process to address supply and demand or to mitigate the price movement the price of the ETF.

QQQQ

For example, the PowerShares QQQ Trust or QQQQ is an ETF that tracks the Nasdaq 100 Index or NDX, which is an index composed of 100 of the largest non-financial securities listed on the Nasdaq Stock Market LLC (''Nasdaq''). Options on NDX are currently subject to the standard position limit of 25,000 contracts for broad-based index options but share similar trading characteristics as QQQQ.[28] Based on QQQQ's share price of $154.54 [29] and NDX's index level of 6,339.14, approximately 40 contracts of QQQQ equals one contract of NDX. Based on the above comparison of notional values, this would result in a position limit equivalent to 1,000,000 contracts for QQQQ as NDX's analogue. NDX is subject to the standard position limit of 25,000 contracts for broad-based index options and has an average daily

[24] *See* SR–CBOE–2017–057, Partial Amendment No. 1 (November 22, 2017).

[25] *See supra* nn. 9–18 (providing trading statistics for each ETF at issue in this proposal).

[26] *See* Securities Exchange Act Release No. 68001 (October 5, 2012), 77 FR 62303 (October 12, 2012) (SR–NYSEArca–2012–112).

[27] *See* Rule 5.15–O (Position Limits for Broad-Based Index Options).

[28] *See id.*

[29] All share prices used herein are based on the closing price of the security on November 16, 2017. Source: Yahoo Finance.

trading volume of 15,300 contracts. QQQQ is currently subject to a position limit of 900,000 contracts but has a much higher average daily trading volume of 579,404 contracts. Furthermore, NDX currently has a market capitalization of $17.2 trillion and QQQQ has a market capitalization of $50,359.7 million, and the component securities of NDX, in aggregate, have traded an average of 440 million shares per day in 2017, both large enough to absorb any price movement caused by a large trade in the QQQQ. The Exchange notes that other exchanges allow no position limits for NDX,[30] although it has a much lower average daily trading volume than its analogue, the QQQQ. Therefore, the Exchange believes it is reasonable to increase the position limit for options on the QQQQ from 900,000 to 1,800,000 contracts.

IWM

The iShares Russell 2000 ETF or IWM, is an ETF that also tracks the Russell 2000 Index or RUT, which is an index that composed of 2,000 small-cap domestic companies in the Russell 3000 index. Options on RUT are currently subject to the standard position limit of 25,000 contracts for broad-based index options but share similar trading characteristics as IWM.[31] Based on IWM's share price of $144.77 and RUT's index level of 1,486.88, approximately 10 contracts of IWM equals one contract of RUT. Based on the above comparison of notional values, this would result in a position limit equivalent to 250,000 contracts for IWM as RUT's analogue. The Exchange notes that at other exchanges RUT is not subject to position limits and has an average daily trading volume of 66,200 contracts.[32] IWM is currently subject to a position limit of 500,000 contracts but has a much higher average daily trading volume of 490,070 contracts. As mentioned above, other exchanges have no position limits for RUT,[33] although it has a much lower average daily trading volume than its analogue, the IWM. Furthermore, RUT currently has a market capitalization of $2.4 trillion and IWM has a market capitalization of $35,809.1 million, and the component securities of RUT, in aggregate, have traded an average of 270 million shares per day in 2017, both large enough to absorb any price movement caused by a large trade in the IWM. Therefore, the Exchange believes it is reasonable to increase the position limit for options on the IWM from 500,000 to 1,000,000 contracts.

EEM

EEM tracks the performance of the MSCI Emerging Markets Index or MXEF, which is composed of approximately 800 component securities following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey. Below makes the same notional value comparison as made above. Based on EEM's share price of $47.06 and MXEF's index level of 1,136.45, approximately 24 contracts of EEM equals one contract of MXEF. MXEF is currently subject to the standard position limit of 25,000 contracts for broad-based index options under Rule 5.15–O(a). Based on the above comparison of notional values, this would result in a position limit economically equivalent to 604,000 contracts for EEM as MXEF's analogue. However, MXEF has an average daily trading volume of 180 contracts. EEM is currently subject to a position limit of 500,000 contracts but has a much higher average daily trading volume of 287,357 contracts. Furthermore, MXEF currently has a market capitalization of $5.18 trillion and EEM has a market capitalization of $34,926.1 million, and the component securities of MXEF, in aggregate, have traded an average of 33.6 billion shares per day in 2017, both large enough to absorb any price movement caused by a large trade in the EEM. Therefore, based on the comparison of average daily trading volume, the Exchange believes it is reasonable to increase the position limit for options on the EEM from 500,000 to 1,000,000 contracts.

EFA

EFA tracks the performance of MSCI EAFE Index or MXEA, which has over 900 component securities designed to represent the performance of large and mid-cap securities across 21 developed markets, including countries in Europe, Australasia and the Far East, excluding the U.S. and Canada. Below makes the same notional value comparison as made above. Based on EFA's share price of $69.16 and MXEA's index level of 1,986.15, approximately 29 contracts of EFA equals one contract of MXEA. MXEA is currently subject to the standard position limit of 25,000 contracts for broad-based index options under Rule 5.15–O(a). Based on the above comparison of notional values, this would result in a position limit economically equivalent to 721,000 contracts for EFA as MXEA's analogue. Furthermore, MXEA currently has a market capitalization of $18.7 trillion and EFA has a market capitalization of $78,870.3 million, and the component securities of MXEA, in aggregate, have traded an average of 4.6 billion shares per day in 2017, both large enough to absorb any price movement cause by a large trade in the EEM. However, MXEA has an average daily trading volume of 270 contracts. EFA is currently subject to a position limit of 250,000 contracts but has a much higher average daily trading volume of 98,844 contracts. Based on the above comparisons, the Exchange believes it is reasonable to increase the position limit for options on the EFA from 250,000 to 500,000 contracts.

FXI

FXI tracks the performance of the FTSE China 50 Index, which is composed of the 50 largest Chinese stocks. There is currently no index analogue for FXI approved for options trading. However, the FTSE China 50 Index currently has a market capitalization of $1.7 trillion and FXI has a market capitalization of $2,623.18 million, both large enough to absorb any price movement caused by a large trade in FXI. The components of the FTSE China 50 Index, in aggregate, have an average daily trading volume of 2.3 billion shares. FXI is currently subject to a position limit of 000 contracts but has a much higher average daily trading volume of 15.08 million shares. Based on the above comparisons, the Exchange believes it is reasonable to increase the position limit for options on the FXI from 250,000 to 500,000 contracts.

EWZ

EWZ tracks the performance of the MSCI Brazil 25/50 Index, which is composed of shares of large and mid-size companies in Brazil. There is currently no index analogue for EWZ approved for options trading. However, the MSCI Brazil 25/50 Index currently has a market capitalization of $700 billion and EWZ has a market capitalization of $6,023.4 million, both large enough to absorb any price movement caused by a large trade in EWZ. The components of the MSCI Brazil 25/50 Index, in aggregate, have an average daily trading volume of 285 million shares. EWZ is currently subject to a position limit of 250,000 contracts but has a much higher average daily trading volume of 17.08 million shares. Based on the above comparisons, the Exchange believes it is reasonable to

[30] *See* Cboe Rule 24.4 sets forth position limits for broad-based index options.

[31] *See* Rule 5.15–O (Position Limits for Broad-Based Index Options).

[32] *See* Cboe Rule 24.4.

[33] *See id.*

increase the position limit for options on the EWZ from 250,000 to 500,000 contracts.

TLT

TLT tracks the performance of ICE U.S. Treasury 20+ Year Bond Index, which is composed of long-term U.S. Treasury bonds. There is currently no index analogue for TLT approved for options trading. However, the U.S. Treasury market is one of the largest and most liquid markets in the world, with over $14 trillion outstanding and turnover of approximately $500 billion per day. TLT currently has a market capitalization of $7,442.4 million, both large enough to absorb any price movement caused by a large trade in TLT. Therefore, the potential for manipulation will not increase solely due the increase in position limits as set forth in this proposal. Based on the above comparisons, the Exchange believes it is reasonable to increase the position limit for options on the TLT from 250,000 to 500,000 contracts.

EWJ

EWJ tracks the MSCI Japan Index, which tracks the performance of large and mid-sized companies in Japan. There is currently no index analogue for EWJ approved for options trading. However, the MSCI Japan Index has a market capitalization of $3.5 trillion and EWJ has a market capitalization of $16,625.1 million, and the component securities of the MSCI Japan Index, in aggregate, have traded an average of 1.1 billion shares per day in 2017, both large enough to absorb any price movement cause by a large trade in EWJ. EWJ is currently subject to a position limit of 250,000 contracts and has an average daily trading volume of 6.6 million shares. Based on the above comparisons, the Exchange believes it is reasonable to increase the position limit for options on EWJ from 250,000 to 500,000 contracts.

Exchange Analysis and Conclusions

The Exchange believes that increasing the position limits for the options subject to this proposal would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in this product. Under the proposal, the reporting requirement for the above options would be unchanged. Thus, the Exchange would still require that each OTP Holder or OTP Firm that maintains a position in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' position, whether such position is hedged and, if so, a description of the hedge, and the collateral used to carry the position, if applicable. Exchange Market Makers [34] would continue to be exempt from this reporting requirement, as Market Maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more options contracts would remain at this level for the options subject to this proposal.[35]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.[36]

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[37] The positions for options subject to this proposal are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that OTP Holders and OTP Firms file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that an OTP Holder or OTP Firm or its customer may try to maintain an inordinately large un-hedged position in the options subject to this proposal. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that an OTP Holder or OTP Firm must maintain for a large position held by itself or by its customer.[38] In addition, Rule 15c3–1 [39] imposes a capital charge on OTP Holders or OTP Firms to the extent of any margin deficiency resulting from the higher margin requirement.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [40] in general, and furthers the objectives of Section 6(b)(5) of the Act,[41] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[42]

The current position limits for the options subject to this proposal have inhibited the ability of Market Makers to make markets on the Exchange. Specifically, the proposal is designed to encourage Market Makers to shift liquidity from over the counter markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow. The proposal will also benefit institutional investors as well as retail traders, and public customers, by providing them with a more effective trading and hedging vehicle. In addition, the Exchange believes that the structure of the ETFs subject to this proposal and the considerable liquidity of the market for options on those ETFs diminishes the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against. Increased position limits for

[34] A Market Maker ''is an individual who is registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange or for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the NYSE Arca OX electronic trading system. Registered Market Makers are designated as specialists on the Exchange for all purposes under the Securities Exchange Act of 1934 and the Rules and Regulations thereunder.'' *See* Rule 6.3–O(a)(31).

[35] *See* Rule 6.6–O (Reporting of Options Positions).

[36] These procedures have been effective for the surveillance of trading the options subject to this proposal and will continue to be employed.

[37] 17 CFR 240.13d–1.

[38] *See* Rule 5.25–O (Margins).

[39] 17 CFR 240.15c3–1.

[40] 15 U.S.C. 78f(b).

[41] 15 U.S.C. 78f(b)(5).

[42] *Id.*

select actively traded options, such as that proposed herein, is not novel and has been previously approved by the Commission. For example, the Commission has previously approved, on a pilot basis, eliminating position limits for options on SPY.[43] Additionally, the Commission has approved similar proposed rule changes to increase position limits for options on highly liquid, actively-traded ETFs,[44] including a proposal to permanently eliminate the position and exercise limits for options overlaying the S&P 500 Index, S&P 100 Index, Dow Jones Industrial Average, and Nasdaq 100 Index.[45] In approving the permanent elimination of position and exercise limits, the Commission relied heavily upon Cboe's surveillance capabilities, the Commission expressed trust in the enhanced surveillance and reporting safeguards that Cboe took in order to detect and deter possible manipulative behavior which might arise from eliminating position and exercise limits.[46] Furthermore, as described more fully above, options on other ETFs have the position limits proposed herein, but their trading volumes are significantly lower than the ETFs subject to the proposed rule change.

Lastly, the Commission expressed the belief that removing position and exercise limits may bring additional depth and liquidity without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[47] The Exchange's enhanced surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior which might arise from eliminating position and exercise limits.

[43] *See* Securities Exchange Act Release Nos. 67937 (September 27, 2012), 77 FR 60489 (October 3, 2012) (SR–CBOE–2012–091); 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (SR–BOX–2012–013); 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012)(SR–NYSEAmex–2012–29); 68001 (October 5, 2012), 77 FR 62303 (October 12, 2012) (SR–NYSEArca–2012–112).

[44] *See* Securities Exchange Act Release Nos. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012)(SR–CBOE–2012–066); 64928 (July 20, 2011), 76 FR 44633 (July 26, 2011) (SR–CBOE–2011–065); 64695 (June 17, 2011), 76 FR 36942 (June 23, 2011) (SR–PHLX–2011–58); and 55155 (January 23, 2007), 72 FR 4741 (February 1, 2017) (SR–CBOE–2007–008).

[45] *See* Securities Exchange Act Release Nos. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR–CBOE–2001–22); 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (SR–CBOE–2005–41) (''NDX Approval'').

[46] *See id.,* NDX Approval, 70 FR 62147, at 62149.

[47] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will result in additional opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

Further, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Cboe that was recently approved by the Commission.[48]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [49] and Rule 19b–4(f)(6) thereunder.[50]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [51] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [52] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to immediately increase the position limits for the products subject to this proposal, which the Exchange believes will provide consistency for OTP Holders and OTP Firms that are also members at CBOE where these increased position limits are currently in place. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[53]

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.

[48] *See supra* note 4.

[49] 15 U.S.C. 78s(b)(3)(A).

[50] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[51] 17 CFR 240.19b–4(f)(6).

[52] 17 CFR 240.19b–4(f)(6)(iii).

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–NYSEArca–2018–23 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–NYSEArca-2018–23. 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/*

[53] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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–NYSEArca–2018–23, and should be submitted on or before May 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83072; File No. SR–ICEEU–2018–006]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to Amendments to the ICE Clear Europe CDS End-of-Day Pricing Policy

April 19, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2018, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes revisions to its CDS End-of-Day Price Discovery Policy (''Price Discovery Policy'') related to the bid-offer width (''BOW'') methodology for credit default swap (''CDS'') contracts.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe proposes revising its Price Discovery Policy to enhance the methodology used to determine bid-offer widths (''BOWs'') for CDS Contracts to incorporate a new variability band methodology, and to make certain other updates and clarifications.

Each business day, ICE Clear Europe determines end-of-day (''EOD'') levels for CDS Contracts through its Price Discovery Policy, based on EOD submissions from its CDS Clearing Members. ICE Clear Europe uses these levels for mark-to-market and risk management purposes. As part of this price discovery process, ICE Clear Europe determines BOWs for each eligible CDS Contract. The BOW is intended to estimate the bid-offer width for the two-way market available for each clearing-eligible instrument at the specified determination time on each business day. The BOWs are then used in ICE Clear Europe's price discovery process as inputs in the determination of EOD levels and firm trades, and other risk management matters.

The current methodology for determining BOWs is based on observed intraday quotes and an assessment of the current level of market variability. Based on this information, ICE Clear Europe determines a consensus BOW for each relevant instrument. The amendments remove from the Price Discovery Policy an alternative approach for calculating consensus BOWs using exponentially weighting moving averages that was planned but never implemented. The amendments restate the current methodology in use (which is based on specified averages of BOW time series).

The amendments also adopt a new variability band approach for widening BOWs in certain market conditions. Under volatile or fast-moving market conditions, BOWs may temporarily be wider than observed in intraday quotes. Currently, ICE Clear Europe's clearing risk department monitors market conditions and may apply manual adjustments to BOWs as appropriate to take into account such conditions. ICE Clear Europe proposes to capture such market conditions in a more comprehensive and automated way through a methodology that computes a variability level and a variability band for each of the main risk factors based on a time series of intraday quote mid-levels for the most actively traded instrument (''MATI'') of the considered risk factor. The BOW will be automatically adjusted based on the variability band, as discussed herein.

For index instruments, under the revised approach, ICE Clear Europe will compute a variability level for each of the main index risk factors. For each instrument, ICE Clear Europe's systems establish a time series of intraday quote mid-levels for the MATI. If the last mid-level in the time series is below the prior day's EOD level by more than one pre-defined BOW for regime 3, the variability level is the difference between the prior day's EOD level and the minimum mid-level in the time series, divided by the pre-defined BOW. For intraday mid-levels falling within one pre-defined regime 3 BOW from the prior day's EOD level, the variability level is set to 1.0 if the range of mid-levels in the time series is less than or equal to the pre-defined regime 3 BOW, and set to 1.2 if the range of mid-levels in the time series is greater than the pre-defined regime 3 BOW.

Under the revised policy, ICE Clear Europe will establish variability bands (from zero to three) that correspond to specific ranges of variability level (with band zero having the lowest range of variability level). ICE Clear Europe will then group index risk factors into specific market-proxy groups, CDX (covering the North American investment grade and high yield index risk factors) and iTraxx (covering the

[54] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

iTraxx main, cross over, senior financial, sub financials and high volatility index risk factors). For each market proxy group, ICE Clear Europe will determine a market proxy variability band by using the largest variability band computed for the index risk factors within that proxy group.

For index instruments, ICE Clear Europe will continue to maintain three different predefined BOWs, each of which corresponds to one of three specific market regimes (regime 1, regime 2 and regime 3, with the BOW for regime 1 being the smallest and regime 3 the largest). As under the current approach, ICE Clear Europe first selects the market regime for each index risk sub-factor based on its MATI. Under the revised approach, ICE Clear Europe will then adjust the regime for each index risk sub-factor's MATI depending on the applicable market proxy variability band for the instrument. The adjustment (referred to as an index variability increment) can be none, one regime (moving from Regime 1 to Regime 2 or from Regime 2 to Regime 3), or two regimes (moving from Regime 1 to Regime 3 or from Regime 2 to Regime 3). Higher market proxy variability bands result in a larger adjustment. The clearing risk department has the discretion to adjust market regimes as it determines best reflects current market conditions.

For single-name instruments, the revised policy applies a new scaling factor, referred to as an SN variability factor, to the consensus EOD BOWs for single name instruments calculated under the existing methodology. The SN variability factor will be determined based on a market proxy variability band. ICE Clear Europe will assign each single name risk factor to a specific market proxy group (CDX for standard North American corporates, iTraxx for standard European corporates and standard Western European sovereigns). The scaling factor will range from 1 to 1.5, depending on the market proxy variability band (with higher bands having a higher variability factor). The clearing risk department also has discretion to override the scaling actor with any factor it deems appropriate to best reflect market conditions.

In connection with these changes, ICE Clear Europe is removing from the policy an alternative approach to variability adjustments that was planned but had not been implemented.

The amendments also contain various typographical corrections, updates to cross-references and similar clarifications.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act [3] and the regulations thereunder applicable to it. Section 17A(b)(3)(F) of the Act [4] in particular requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency, and the protection of investors and the public interest. The proposed amendments are designed to enhance the Clearing House's Price Discovery Policy, which is a key aspect of the risk management and daily settlement procedures of the Clearing House for CDS Contracts. The proposed amendments in particular will provide a more comprehensive and automated approach for adjusting BOWs used in the EOD price discovery process for both index and single-name CDS Contracts to reflect market conditions, particularly during periods of high market variability. ICE Clear Europe believes that the amendments will thus promote prompt and accurate clearing and settlement, within the meaning of Section 17A(b)(3)(F). For similar reasons, ICE Clear Europe believes that the amendments are also consistent with the risk-based margining requirements of Commission Rule 17Ad–22(e)(6),[5] including the requirement to use reliable sources of timely price data and procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The proposed changes to the Price Discovery Policy, and in particular the revised BOW variability methodology for Single Name and Index instruments, will apply uniformly across all CDS Clearing Members and market participants. ICE Clear Europe does not believe the amendments will adversely affect competition among CDS Clearing Members, the cost of clearing, or the ability of market participants to clear CDS Contracts generally. Similarly, the Clearing House does not believe the amendments will reduce access to clearing of CDS Contracts or limit market participants' choices for clearing CDS Contracts. Therefore, ICE Clear Europe does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–ICEEU–2018–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2018–006. This file number should be included on the

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 240.17Ad–22(e)(6).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings*.

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–ICEEU–2018–006 and should be submitted on or before May 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–08618 Filed 4–24–18; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83071; File No. SR–ICC–2018–003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to Amendments to the ICC Operational Risk Management Framework

April 19, 2018.

I. Introduction

On February 23, 2018, ICE Clear Credit LLC (''ICC'') 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 update the ICC Operational Risk Management Framework (''Framework''). The proposed rule change was published for comment in the **Federal Register** on March 7, 2018.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The Framework details ICC's program of operational risk assessment and oversight.[4] The proposed rule change would modify the Framework to remove the role of the Operational Risk Manager (''ORM'') and assign several of its responsibilities to the ICE, Inc. Enterprise Risk Management Chief Risk Officer for North American Clearing Houses (''ERM'').[5] The ORM was an ICC employee responsible for implementing the Framework across ICC, and reported directly to ICC's Chief Compliance Officer. The ERM, in contrast, is an ICE, Inc. employee and is responsible for the ICE, Inc. Enterprise Risk Management Department's (''ERM Department'') coverage of ICC,[6] which provides the oversight and framework for identifying, assessing, managing, monitoring, and reporting on risk across the ICE, Inc. organization as a whole.[7] Going forward, responsibility for overseeing the management of the Framework will rest with the ERM, in conjunction with the ICC Compliance Committee.[8]

The proposed rule change would remove from the risk assessment process all references to the ORM and assign to the ERM the ORM's responsibilities under the identify, monitor, mitigate, and report components of the Operational Risk Lifecycle.[9] Similarly, the proposed rule change would remove from the performance objective setting and monitoring process all references to the ORM and assign to ICC Systems Operations and the ERM the ORM's responsibilities under the mitigate and report components of the Operational Risk Lifecycle.[10] The proposed rule change would eliminate the ORM's responsibilities related to business continuity planning (''BCP'') and disaster recovery (''DR'') from the ''Business Continuity Planning and Disaster Recovery'' risk focus area and reassign those responsibilities to ICC, the ICC BCP and DR Oversight Committee, and the ICC Compliance Committee.[11] Finally, the proposed rule change would remove from the ''New Products, Processes and Initiatives'' risk focus area reference to the ORM's role on the ICC New Initiative Approval Committee and note that the ERM conducts post-implementation reviews of new initiatives.[12]

The proposed rule change would revise the ''Vendor Assessment'' risk focus area of the Framework to clarify that the ICC BCP and DR Oversight Committee will replace the ORM in performing the following functions: (1) Reviewing and recommending that the ICC Compliance Committee approve the inventory of critical vendors and (2) conducting a service provider risk assessment for each critical vendor.[13] The proposed rule change would also add to the Framework procedures for the assessment process of critical vendors.[14]

The proposed rule change would modify the ''ICE Information Security'' risk focus area of the Framework to refer to the ICE Information Security Department's overall governing document and to reflect changes to the membership of the Department's governance committee.[15]

Finally, the proposed rule change would make clarifying edits to the Framework to reflect current practices and other non-material changes.[16] For example, the proposed rule change would make minor grammatical and structural changes to the Framework and update the appendix to more clearly summarize and describe the regulatory requirements and industry guidance to which ICC is subject.[17]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 82798 (March 1, 2018), 83 FR 9786 (March 7, 2018) (SR–ICC–2018–003) (''Notice'').

[4] Notice, 83 FR at 9787. Capitalized terms used herein but not otherwise defined have the meaning set forth in the ICE Clear Europe rulebook, which is available at *https://www.theice.com/clear-europe/regulation#rulebook.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* ICC's operational risk program is framed by an Operational Risk Lifecycle, the goal of which is to actively identify, assess, monitor, mitigate, and report on all plausible sources of operational risk. *See* Securities Exchange Act Release No. 77769 (May 5, 2016), 81 FR 29312 (May 11, 2016) (SR–ICC–2016–003) (describing the Framework).

[10] Notice, 83 FR at 9787.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] Notice, 83 FR at 9787.

[16] *Id.*

[17] *Id.* at 9787–9788.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[18] For the reasons given below, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act[19] and Rules 17Ad–22(d)(4) and 17Ad–22(d)(8) thereunder.[20]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.[21] Sound policies, practices, and procedures with respect to assessment and oversight of operational risk are an important component of a registered clearing agency's ability to comply with these requirements because disruptions to clearing agency operations can impair the prompt and accurate clearance and settlement of securities transactions, safeguarding of securities and funds, and protection of investors and the public interest.[22]

The Commission believes the proposed rule change will enhance ICC's ability to control its operational risk, and consequently promote the prompt and accurate clearance and settlement of securities transactions, by ensuring that the Framework accurately reflects the current assignment of responsibilities among ICC and ICE, Inc. personnel. It also will add to the Framework procedures for the assessment of critical vendors, which will both increase ICC's ability to identify critical vendors and enable ICC to manage the risks posed by its critical vendors. Finally, by eliminating the ORM from, and incorporating the ERM Department into, the oversight process for the management of the Framework, the personnel overseeing the management of the Framework will no longer be limited to the ICC organization, but instead will have a broad view of how the Framework interacts with and is affected by the ICE, Inc. organization as a whole. This will, among other things, allow ICC to rely on the ERM Department in responding to broad risks that affect ICC as part of the larger ICE, Inc. organization while simultaneously focusing on operational risks unique to ICC.

Taken together, the Commission believes these proposed changes will improve ICC's ability to assess and manage operational risks, including by identifying sources of operational risk and minimizing them through the development of appropriate systems, controls, and procedures, thereby enhancing ICC's ability to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible and, in general, protect investors and the public interest. Therefore, the Commission finds that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible and, in general, protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.[23]

B. Consistency With Rule 17Ad–22(d)(4)

Rule 17Ad–22(d)(4) requires that a registered clearing agency that is not a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures.[24] As discussed in detail above in Section III.A, the proposed rule change will make a number of enhancements to the Framework that, taken together, will improve ICC's ability to assess and manage operational risks, including by identifying sources of operational risk and minimizing them through the development of appropriate systems, controls, and procedures. Accordingly, the Commission finds that the proposed rule change is reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures, consistent with Rule 17Ad–22(d)(4).[25]

C. Consistency With Rule 17Ad–22(d)(8)

Rule 17Ad–22(d)(8) requires that a registered clearing agency that is not a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act[26] applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.[27] By updating the Framework so that it identifies and refers to appropriate personnel and accurately reflects the assignment of responsibilities among ICC and ICE, Inc. personnel, the proposed rule change will ensure that ICC's governance of the Framework is clear, transparent, and documented accurately. Therefore, the Commission finds that the proposed rule change establishes governance arrangements that are clear and transparent to fulfill the public interest requirements of Section 17A of the Act[28] applicable to clearing agencies and the objectives of participants and to promote the effectiveness of the clearing agency's risk management procedures, consistent with Rule 17Ad–22(d)(8).[29]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[30] and Rules 17Ad–22(d)(4) and (8) thereunder.[31]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[32] that the proposed rule change (SR–ICC–2018–003) be, and hereby is, approved.[33]

[18] 15 U.S.C. 78s(b)(2)(C).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 17 CFR 240.17Ad–22(d)(4) and (8).

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] *See* Clearing Agency Standards, Securities Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220, 66249 (Nov. 2, 2012) (noting that efforts to ''address risks posed by potential operational deficiencies to a clearing agency and its participants'' support ''the requirement in Section 17A of the Exchange Act that a clearing agency must be so organized and have the capacity to be able to facilitate prompt and accurate clearance and settlement'').

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] 17 CFR 240.17Ad–22(d)(4).

[25] 17 CFR 240.17Ad–22(d)(4).

[26] 15 U.S.C. 78q–1.

[27] 17 CFR 240.17Ad–22(d)(8).

[28] 15 U.S.C. 78q–1.

[29] 17 CFR 240.17Ad–22(d)(8).

[30] 15 U.S.C. 78q–1.

[31] 17 CFR 240.17Ad–22(d)(4) and (8).

[32] 15 U.S.C. 78s(b)(2).

[33] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–08617 Filed 4–24–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83064; File No. SR–BX–2018–014]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarify the Requirements for Delivery of a Contrary Exercise Advice

April 19, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 2018, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the rules of the Exchange, at Chapter VIII, Exercises and Deliveries.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to correct Chapter VIII, Exercises and Deliveries, Section 1, Exercise of Options Contracts, to clarify the requirements for delivery of a Contrary Exercise Advice. Section 1(b) currently provides that option holders desiring to exercise or not exercise expiring options must either (i) take no action and allow exercise determinations to be made in accordance with the Options Clearing Corporation's Ex-by- Ex procedure where applicable, or (ii) submit a ''Contrary Exercise Advice'' to the Options Clearing Corporation through the participant's clearing firm. In actual practice, however, an option holder delivers a Contrary Exchange Advice to the Exchange, not to the Options Clearing Corporation. The Exchange therefore proposes to replace the words ''Options Clearing Corporation through the participants clearing firm'' in Section 1(b)(ii) with a reference to the Exchange and make similar, conforming changes to Section 1(e)(i). As amended, Section 1(b) would be consistent with Nasdaq ISE Rule 1100(b) which directs option holders to submit Contrary Exercise Advices to the Exchange (not to the Options Clearing Corporation).

The Exchange proposes to further replace the words ''by the deadline specified in paragraph (d) below'' with the words ''as specified in paragraph (d) below'' given that paragraph (d) contains a number of requirements associated with submission of Contrary Exercise Advices in addition to the deadline. As revised, Section (b)(ii) tracks the language of ISE Rule 1100(b)(ii) which permits an options holder desiring to exercise or not exercise expiring options to ''submit a ''Contrary Exercise Advice'' to the Exchange as specified in paragraph (d) . . . .'' (which, like the counterpart BX paragraph (d) rule, specifies various requirements associated with submitting Contrary Exercise Advices).

Finally, the Exchange proposes to make a number of minor nonsubstantive revisions to Chapter VIII which are designed simply to facilitate administration of the rules. References to ''BX'' and to ''BX Regulation'' are proposed to be replaced with references to ''the Exchange.''[3] Substituting the word ''Exchange'' for BX in various places will provide the Exchange flexibility to determine the most appropriate department or individual within the Exchange to oversee the particular rule, and will also facilitate the incorporation by reference of the amended rule into the rules of BX's affiliated exchanges in the future.[4]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, 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, by identifying the correct entity to which option holders must deliver Contrary Exercise Advices and by substituting the word ''Exchange'' for BX in various places which will enable the amended rule to be incorporated by reference into rules of affiliated exchanges in the future, which should enhance the ability of members of BX and affiliated exchanges to understand and comply with a uniform set of rules across the exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes will apply equally to all option holders desiring to exercise options under the BX rules. Further, the proposed changes merely correct an incorrect reference to OCC and conform the wording of the rule more closely to that of a Nasdaq ISE rule for the sake of administrative convenience. The Exchange does not

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[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The changes are proposed to be made in Section 1(b), (d), (e), (f), (g), (h), (i), (k) and (l), as well as in Section 2(a) and (b), of Chapter VIII. The Exchange notes that Chapter 11, Exercises and Deliveries, of the ISE Rulebook likewise uses the generic term ''the Exchange'' throughout that chapter.

[4] Recently, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, Nasdaq Stock Market LLC; Nasdaq PHLX LLC; Nasdaq ISE, LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC (''Affiliated Exchanges''). See Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR–BX–2017–054). The changes proposed herein are being made in connection with that effort, to align the BX rules with those of the Affiliated Exchanges more closely.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

intend for or expect that such changes will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2018–014 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2018–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2018–014, and should be submitted on or before May 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–08614 Filed 4–24–18; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15495 and #15496; OHIO Disaster Number OH–00054]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of OHIO

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of
OHIO (FEMA–4360–DR), dated 04/17/2018.

Incident: Severe Storms, Flooding, and Landslides.

Incident Period: 02/14/2018 through 02/25/2018.

DATES: Issued on 04/17/2018.

Physical Loan Application Deadline Date: 06/18/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 01/17/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/17/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adams, Athens, Belmont, Brown, Columbiana, Gallia, Hamilton, Jackson, Lawrence, Meigs, Monroe, Muskingum, Noble, Perry, Pike, Scioto, Vinton, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 154956 and for economic injury is 154960.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–08563 Filed 4–24–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15493 and #15494; WEST VIRGINIA Disaster Number WV–00048]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of West Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of WEST VIRGINIA (FEMA–4359–DR), dated 04/17/2018.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 02/14/2018 through 02/20/2018.

DATES: Issued on 04/17/2018.

Physical Loan Application Deadline Date: 06/18/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 01/17/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/17/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Brooke, Cabell, Calhoun, Doddridge, Hancock, Harrison, Lincoln, Logan, Marshall, Mason, Monongalia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tyler, Wayne, Wetzel, Wirt, Wood

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 154936 and for economic injury is 154940.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–08573 Filed 4–24–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15485 and #15486; KENTUCKY Disaster Number KY–00067]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of KENTUCKY

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of KENTUCKY (FEMA–4358–DR), dated 04/12/2018.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 02/09/2018 through 02/14/2018.

DATES: Issued on 04/12/2018.

Physical Loan Application Deadline Date: 06/11/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 01/14/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/12/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bell, Breathitt, Clay, Estill, Floyd, Harlan, Johnson, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Magoffin,, Martin, Metcalfe, Owsley, Perry, Pike, Powell, Whitley, Wolfe

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 154856 and for economic injury is 154860.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–08576 Filed 4–24–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 10397]

Title: Bureau of Political-Military Affairs; Statutory Debarment Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment under the International Traffic in Arms Regulations (''ITAR'') on persons convicted of violating, or conspiracy to violate, Section 38 of the Arms Export Control Act (AECA).

DATES: Debarment imposed as of April 25, 2018.

FOR FURTHER INFORMATION CONTACT: Jae E. Shin, Acting Chief Compliance and Civil Enforcement, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State. (202) 632–2107.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), restricts the Department of State from issuing licenses for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including section 38 of the AECA. The statute permits the President to make certain exceptions on a case-by-case basis. Section 127.7(b) of the ITAR also provides for ''statutory debarment'' of any person who has been convicted of violating or conspiring to violate the AECA. Under this policy, persons subject to statutory debarment are prohibited from participating directly or indirectly in any activities that are regulated by the ITAR.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

It is the policy of the Department of State that statutory debarment lasts for a three year period following conviction. Unless export privileges are reinstated, however, the person remains debarred. Reinstatement is not automatic, and in all cases the debarred person must submit a request for reinstatement to the Department of State and be approved for reinstatement before engaging in any activities subject to this subchapter.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements of Section 38(g)(4) of the AECA have been satisfied.

Certain exceptions, known as transaction exceptions, may be made to this debarment determination on a case-by-case basis. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following persons, having been convicted in a U.S. District Court, are statutorily debarred as of the date of this notice (Name; Date of Judgment; Judicial District; Case No.; Month/Year of Birth):

(1) Edwin Acety; November 10, 2016; Southern District of New York; 1:15–cr–00369; November 1975.
(2) Jesus Alberto Acosta; September 28, 2016; Southern District of Texas; 7:16–cr–00543; September 1968.
(3) William Ali; July 27, 2017; Western District of Washington; 2:16–cr–00142; August 1978.
(4) AMA United Group; January 13, 2017; Eastern District of New York; 1:13–cr–00612.
(5) Syed Vaqar Ashraf (aka Vaqar A Jaffery; Vaqar-A-Jaffery); September 2, 2016; District of Arizona; 4:15–cr–01431; January 1945.
(6) Mahmoud Abdel-Ghani Mohammad Assaf; February 2, 2016; Middle District of Florida; 8:14–cr–00307.
(7) Alexandre Astakhov; May 11, 2015; Eastern District of Pennsylvania; 2:12–cr–00572; February 1985.
(8) Omar Alejandro Avilez-Mancinas; April 13, 2017; District of Arizona; 4:16–cr–02272; August 1995.
(9) Oguzhan Aydin; April 5, 2016; Northern District of Georgia; 1:12–cr–00221; June 1975.
(10) Jose Abraham Benavides-Cira; June 1, 2016; Southern District of Texas; 7:15–cr–00281; July 1984.
(11) Jose Luis Benavides-Cira; December 11, 2015; Southern District of Texas; 7:15–cr–00281; August 1982.
(12) Marcelo Bettim; May 31, 2017; Southern District of Flordia; 1:17–cr–20134; October 1970.
(13) Su Bin; July 18, 2016; Central District of California; 8:14–cr–00131; February 1960.
(14) Sergey Boltutskiy (aka Siarhei Baltutski); December 19, 2013; Eastern District of Pennsylvania; 2:11–cr–00553.
(15) Oliver Bouzas-Delie; December 11, 2015; Southern District of Texas; 7:15–cr–00281; October 1983.
(16) Alhaji Boye; March 29, 2017; Eastern District of North Carolina; 5:16–cr–00146; December 1970.
(17) Louis Joseph Brothers; March 2, 2016; Eastern District of Kentucky; 2:14–cr–00035; May 1952.
(18) Steven Paul Browning; April 4, 2016; Eastern District of North Carolina; 7:15–cr–00059; June 1986.
(19) Alex Bryukhov; April 8, 2016; Southern District of New York; 1:15–cr–00369; August 1969.
(20) Pheerayuth Burden (aka Siriwongs Burden; Pheerayuth Chan; Tony Burden); March 8, 2017; District of Columbia; 1:14–cr–00069; December 1969.
(21) Mike Mangao Cabatingan; April 13, 2015; Central District of California; 2:10–cr–00184; September 1953.
(22) Bo Cai; April 23, 2015; District of New Mexico; 1:13–cr–04044; August 1985.
(23) Wentong Cai; April 28, 2015; District of New Mexico; 1:13–cr–04044; December 1984.
(24) Cassandra Camacho; October 10, 2014; Southern District of Texas; 7:14–cr–00421; August 1989.
(25) Benjamin James Cance; January 15, 2016; Western District of Michigan; 1:15–cr–00141; December 1984.
(26) Kurt Carter; December 16, 2008; District of Maine; 1:07–cr–00054; March, 1965.
(27) Jose Roberto Celaya-Mendez; June 16, 2014; District of Arizona; 4:14–cr–00036; May 1962.
(28) Juan Jose Cesena-Espericueta; May 19, 2015; Southern District of Texas; 7:14–cr–01805; October 1982.
(29) Huan Ling Chang (aka Alice Chang); January 6, 2015; District of New Jersey; 2:14–cr–00548; December 1970.
(30) Kan Chen; June 30, 2016; District of Delaware; 1:16–cr–00011; March 1990.
(31) Rodrigo Chico-Rodriguez; April 21, 2016; Southern District of Texas; 7:14–cr–01618; August 1988.
(32) Carlos Alberto Dominguez Chicote (aka Carlos Alberto Dominguez-Chicote); May 9, 2016; District of Arizona; 2:14–cr–01632; August 1967.
(33) See Kee Chin; November 10, 2014; Western District of Washington; 2:14–cr–00043; December 1957.
(34) Wei Jiun Chu; August 25, 2014; District of Arizona; 2:13–cr–01524; September 1961.
(35) Jose Orence Cocchiola; August 20, 2014; Southern District of Florida; 1:14–cr–20216; January 1986.
(36) Luis Armando Collins-Avila; September 25, 2014; District of Arizona; 4:13–cr–01376; July 1971.
(37) Demetrio Sebastian Cortez-Ordaz; March 28, 2014; Eastern District of California; 1:11–cr–00376.
(38) Michael Curlett; August 19, 2016; Middle District of Tennessee; 3:11–cr–00015; March 1967.
(39) Irina Cvetkovic; April 26, 2017; District of Arizona; 4:14–cr–01362; March 1959.
(40) Jian Dai; September 25, 2014; Central District of California; 2:14–cr–00184; October 1985.
(41) Joseph Debose; October 29, 2013; Eastern District of New York; 1:12–cr–00271; July 1982.
(42) Heriberto Del Fierro-Moreno; February 28, 2017; Southern District of Texas; 7:16–cr–00712; May 1980.
(43) Dane Francisco Delgado; December 5, 2014; Southern District of Texas; 1:14–cr–00008. February 1976.
(44) Ronald Alexander Dobek; September 10, 2014; Eastern District of Wisconsin; 2:13–cr–00231; May 1975.
(45) Salatiel Duran-Reyes; June 18, 2014; Southern District of Texas; 7:13–cr–01800; January 1971.
(46) Gilbert Oscar Elian; November, 3, 2016; Western District of Michigan; 1:15–cr–00149; November 1960.
(47) Everardo Abraham Escamilla-Salas; May 24, 2016; Southern District of Texas; 1:15–cr–00913; September 1987.
(48) Juan Jose Estrada; August 5, 2014; Southern District of Texas; 7:13–cr–01584; December 1968.
(49) Papa Faal; May 13, 2016; District of Minnesota; 0:15–cr–00028; July 1968.
(50) Eyad Farah; December 15, 2015; Middle District of Florida; 8:14–cr–00382; September 1973.
(51) Alexander Fishenko; August 29, 2016; Eastern District of New York; 1:12–cr–00626; March 1966.
(52) Robert Herman Fleischer; August 4, 2017; District of Arizona; 4:16–cr–02273; October 1995.
(53) Aurel Fratila; September 16, 2013; Southern District of California; 3:06–cr–02255; October 1971.

(54) Cruz Moises Garcia; July 1, 2014; Southern District of Texas; 1:13–cr–00897.
(55) Hector De Jesus Garcia; November 19, 2014; Southern District of Texas; 7:13–cr–01801; December 1993.
(56) Edgar Garza-Sanchez; April 3, 2017; Southern District of Texas; 7:16–cr–00708; June 1997.
(57) Ellias Abdl Halim Ghandi; August 4, 2016; Eastern District of Virginia; 1:16–cr–00117; September 1988.
(58) Sam Rafic Ghanem; August 14, 2015; District of Maryland; 8:14–cr–00008; February 1970.
(59) Joseph Esequiel Gonzalez; September 16, 2016; Southern District of Texas; 7:16–cr–00150.
(60) Ramon Gonzalez-Azuara; May 30, 2015; Southern District of Texas; 7:14–cr–00322.
(61) Javier Gonzalez; June 11, 2014; Southern District of Texas; 1:13–cr–00768.
(62) Josafat Gonzalez-Rodriguez; December 14, 2016; Southern District of Texas; 7:15–cr–01591; May 1986.
(63) Jose Luis Gonzalez-Salinas; October 3, 2015; Southern District of Texas; 7:13–cr–00004; November 1972.
(64) Christopher M. Gray; October 15, 2013; District of Columbia; 1:13–cr–00107.
(65) Yhoshua Guzman; May 21, 2015; Southern District of Texas; 7:14–cr–01322; September 1995.
(66) Dennis Haag; October 2, 2014; Eastern District of Michigan; 2:14–cr–20089; June 1955.
(67) Mark Anthony Hammond; October 3, 2016; District of Arizona; 4:15–cr–01284; April 1980.
(68) Roberto Carlo Hasbun-Villarreal; October 5, 2013; Southern District of Texas; 7:11–cr–01581; October 1973.
(69) Philip Chaohui He (aka Philip Hope; Philip Chaohui); December 20, 2013; District of Colorado; 1:11–cr–00519; December 1969.
(70) Mark Henry; November 23, 2015; Eastern District of New York; 1:13–cr–00091; December 1963.
(71) Adrian Manuel Hernandez; October 13, 2015; District of Arizona; 2:15–cr–00189.
(72) Ernesto Hernandez; March 2, 2015; Southern District of Texas; 7:14–cr–00757.
(73) Adam Al Herz; October 18, 2016; Northern District of Iowa; 1:15–cr–00054; January 1985.
(74) Ali Afif Al Herz; November 1, 2016; Northern District of Iowa; 1:15–cr–00054; February 1965.
(75) Bassem Afif Herz; December 12, 2016; Northern District of Iowa; 1:15–cr–00054; January 1985.
(76) Elmer Hill; August 19, 2016; Middle District of Tennessee; 3:11–cr–00015; July 1947.
(77) Justin Gage Jangraw; November, 21, 2014; District of Columbia; 1:14–cr–00174; January 1980.
(78) Gregory Allen Justice; September 19, 2017; Central District of California; 2:16–cr–00499; October 1966.
(79) David Ray Kelley; February 10, 2015; District of Maryland; 1:13–cr–00588; January 1969.
(80) Amanullah Khan (aka Anthony Fernandez; Steven Joseph; Robert Joseph; Gerald Jousuf; Solomon Jousuf; Amanullah Kahn; Aman Khan; Aman Ullah Khan; Amanulla Khan; Amanullah J. Khan; Armand Khan; George Paal; Joseph Salmon; Jousuf Solomon; Yousuf Solomon; Joseph Sulman; Solomon Yousef); December 1, 2005; Central District of California; 8:04–cr–00152.
(81) Mozaffar Khazaee (aka Mozzaffar Khazaee; Arash Khazaie); October 27, 2015; District of Connecticut; 3:14–cr–00009; August 1954.
(82) Song Il Kim; February 29, 2016; District of Utah; 2:15–cr–00417.
(83) Jean Baptiste Kingery; September 20, 2016; District of Arizona; 2:13–cr–01607; October 1970.
(84) Siripong Klongsirithaworn; February 10, 2015; Western District of Washington; 2:14–cr–00220; January 1986.
(85) Hamza Kolsuz; October 7, 2016; Eastern District of Virginia; 1:16–cr–00053; January 1973.
(86) Roman Georgiyevich Kvinikadze; January 21, 2014; District of Wyoming; 1:13–cr–00178; December 1981.
(87) Nestor Leal-Cedillo; October 10, 2014; Southern District of Texas; 7:14–cr–00421; July 1990.
(88) Nares Lekhakul; January 24, 2014; Western District of Washington; 2:13–cr–00030; May 1977.
(89) Naris Lekhakul; January 24, 2014; Western District of Washington; 2:13–cr–00032; October 1970.
(90) Zhifu Lin; March 11, 2014; Eastern District of New York; 1:12–cr–00271; September 1986.
(91) Yu Long; June 27, 2017; District of Connecticut; 3:16–cr–00229; October 1977.
(92) Robert Luba; April 25, 2016; District of New Jersey; 3:13–cr–00693; July 1966.
(93) Guadalupe Edgar Lucio-Amador; October 27, 2014; Southern District of Texas; 1:14–cr–00097; June 1978.
(94) Kamran Ashfaq Malik; July 8, 2015; District of Maryland; 8:14–cr–00075; November 1978.
(95) Wenxia Man; August 19, 2016; Southern District of Florida; 0:14–cr–60195; December 1970.
(96) Rex Gene Maralit; March 27, 2015; Eastern District of New York; 1:13–cr–00534; March 1979.
(97) Wilfredo Maralit; March 27, 2015; Eastern District of New York; 1:13–cr–00534; March 1965.
(98) David L. Maricola; September 2, 2016; District of Massachusetts; 4:15–cr–40023; October 1955.
(99) Enrique Medina; December 9, 2014; Southern District of Texas; 1:14–cr–00008; November 1978.
(100) Genaro Mejia; April 28, 2017; Southern District of Florida; 1:16–cr–20224.
(101) Rosa Maria Melendez-Jimenez; December 1, 2015; Southern District of Texas; 1:15–cr–00168; August 1962.
(102) Guiseppe Luciano Menegazzo-Carrasquel; August 20, 2013; District of Arizona; 2:10–cr–01462; May 1964.
(103) Daniel Miranda-Mendoza; September 1, 2015; Southern District of Texas; 7:14–cr–01405; March 1994.
(104) Ambar Esthela Morales; March 23, 2016; District of Arizona; 4:15–cr–00996; April 1992.
(105) Manuel Morales; June 1, 2016; District of Arizona; 4:15–cr–00593.
(106) Jesus Morales-Reyes; May 24, 2016; Southern District of Texas; 1:15–cr–00913; December 1980.
(107) Jose Ricardo Nacif Cury; November 24, 2014; Southern District of Florida; 1:14–cr–20501; April 1971.
(108) Luis Alberto Najera-Citalan; June 23, 2015; Southern District of Texas; 7:14–cr–01805; March 1986.
(109) Netria Corporation; January 13, 2015; District of New Hampshire; 1:14–cr–00059.
(110) Thach Hoang Nguyen; May 14, 2015; Eastern District of Virginia; 1:14–cr–00426; June 1956.
(111) Solomon Benson Nkwocha; November 3, 2016; District of South Carolina; 2:14–cr–00860; April 1960.
(112) Yasser Ahmad Obeid; December 22, 2014; Middle District of Florida; 8:14–cr–00307; September 1994.
(113) Jose Antonio Ortiz-Lopez; May 30, 2015; Southern District of Texas; 7:14–cr–00322.
(114) Yahor Osin (aka Egor Osin); March 7, 2014; Eastern District of Pennsylvania; 2:11–cr–00449; October 1982.
(115) Jung Shic Park (aka Alex Park); November 30, 2015; District of New Jersey; 2:14–cr–00441; July 1984.
(116) Paweena Pechner; July 18, 2014; District of New Hampshire; 1:13–cr–00116; August 1979..
(117) Miguel Angel Perez; January 22, 2014; Western District of Texas; 4:13–cr–00432.
(118) Erik Antonio Perez-Bazan; October 10, 2014; Southern District of Texas; 7:13–cr–01011; December 1985.
(119) Hunter Perry; July 28, 2016; Western District of Kentucky; 3:15–cr–00142; March 1982.
(120) Luis Donaldo Pina; February 13, 2017; Southern District of Texas; 7:16–cr–00070; April 1995.
(121) Peter Steve Plesinger; April 26, 2017; District of Arizona; 4:14–cr–01362; December 1961.
(122) Volodomyr Ponomarenko; May 21, 2013; Eastern District of New York; 1:12–cr–00254.
(123) Alexander Posobilov; March 22, 2017; Eastern District of New York; 1:12–cr–00626.
(124) Joel Prado, Jr.; February 23, 2017; Southern District of Texas; 7:16–cr–00712; August 1980.
(125) Precision Image Corporation, (aka Precision Industries, Inc.; CK Enterprises, Inc.); October 28, 2013; Western District of Washington; 2:13–cr–00226.
(126) Kolar Rahman Anees Ur Rahman; January 31, 2017; District of Utah; 2:15–cr–00714; May 1971.
(127) Armando Ramirez-Vazquez; July 13, 2015; Southern District of Texas; 1:15–cr–00167; July 1983.
(128) Javier Nenos Rea; January 13, 2015; Southern District of Florida; 1:14–cr–

20646; March 1982.
(129) Romulo Arca Reclusado; December 31, 2013; Central District of California; 2:10–cr–00184; September 1950.
(130) Ismael Reta; June 19, 2015; Southern District of Texas; 7:14–cr–01618; July 1986.
(131) Arjyl Revereza; March 4, 2014; Central District of California; 2:12–cr–00037; October 1985.
(132) Earl Henry Richmond; December 2, 2016; District of Arizona; 4:14–cr–01362.
(133) Hannah Robert; April 15, 2016; District of New Jersey; 3:13–cr–00671; July 1965.
(134) Tul Robroo (aka Tul Robrhoo); November 10, 2016; Southern District of Texas; 4:14–cr–00015; October 1974.
(135) Roy Wayne Roby; April 28, 2014; District of Arizona; 2:10–cr–01462; March 1958.
(136) Marleen Rochin; November 16, 2015; District of Arizona; 2:15–cr–00189; November 1986.
(137) Juan Ivan Rodriguez; October 10, 2014; Southern District of Texas; 7:14–cr–00421; August 1981.
(138) Gregorio Rodriguez-Aranda; February 18, 2014; Southern District of Texas; 7:13–cr–01441; November 1988.
(139) Edgar Alejandro Salazar; November 6, 2013; Southern District of Texas; 7:13–cr–00170.
(140) Ernesto Salgado-Guzman; May 7, 2014; Eastern District of California; 1:11–cr–00376; November 1967.
(141) Maria Luisa Sanchez-Lopez; February 18, 2014; Southern District of Texas; 7:13–cr–01441; August 1989.
(142) Jorge Santana, Jr.; May 15, 2014; Southern District of Texas; 1:13–cr–00768; October 1978.
(143) Kirby C. Santos; November 2, 2016; District of New Jersey; 1:15–cr–00525; March 1977.
(144) Arnold See, Jr.; August 19, 2016; Middle District of Tennessee; 3:11–cr–00015; August 1957.
(145) Charles Shearon; August 19, 2016; Middle District of Tennessee; 3:11–cr–00015; July 1956.
(146) Hui Sheng Shen (aka Charlie Shen); January 9, 2015; District of New Jersey; 2:14–cr–00549; December 1966.
(147) Robert J. Shubert, Sr.; October 22, 2014; Middle District of Georgia; 5:13–cr–00050; April 1965.
(148) Norma Angelica Rodriguez Silvestre; October 5, 2016; District of Arizona; 4:15–cr–02066; May 1991.
(149) Nutveena Sirirojnananont; August 26, 2014; District of New Hampshire; 1:13–cr–00115; August 1973.
(150) Stephen Edward Smith; April 14, 2017; District of Arizona; 4:14–cr–01362; January 1954.
(151) Julio Cesar Solis-Castilleja; July 1, 2014; Southern District of Texas; 1:13–cr–00897; October 1969.
(152) John Francis Stribling; July 6, 2016; Eastern District of Virginia; 2:16–cr–00007; July 1960.
(153) Sergio Santiago de Leon Syjuco; February 27, 2014; Central District of California; 2:12–cr–00037; November 1986.
(154) Daniel Tijerina-Salinas; May 30, 2015; Southern District of Texas; 7:14–cr–00322; June 1991.
(155) Gerardo Trevino-Moncivais; November 17, 2016; Southern District of Texas; 7:16–cr–00802; November 1967.
(156) Veronica Trujillo; August 11, 2017; District of Arizona; 4:16–cr–01851; November 1973.
(157) Cesar Paolo Ubaldo; February 27, 2014; Central District of California; 2:12–cr–00037; July 1985.
(158) Luis Antonio Urdaneta Pozo; June 27, 2017; Southern District of Florida; 1:17–cr–20126.
(159) Dmitry Ustinov; October 10, 2014; District of Delaware; 1:13–cr–00034; June 1966.
(160) Manuel Valencia-Hermosillo; October 13, 2017; District of Arizona; 4:16–cr–01972; August 1995.
(161) Ricardo Humberto Varela; February 16, 2016; Southern District of Texas; 7:15–cr–00281; September 1983.
(162) Alberto Veroneze; November 24, 2014; Southern District of Florida; 1:14–cr–20501; September 1974.
(163) Jose Edmundo Villa-Bon; January 15, 2016; District of Arizona; 4:15–cr–01383; June 1969.
(164) Wing-On LLC; July 11, 2017; District of Columbia; 1:14–cr–00069.
(165) Yue Wu; August 25, 2015; Western District of Washington; 2:14–cr–00306; August 1973.
(166) Bin Yang, (aka Raymond Yang); November 19, 2013; Southern District of California; 3:12–cr–00165; January 1981.
(167) Kitibordee Yindeear-Rom (aka Kitibordee Yindeer-Rom); April 2, 2015; District of Columbia; 1:14–cr–00069; March 1986.
(168) Sarah Majid Zeaiter; October 17, 2016; Northern District of Iowa; 1:15–cr–00054; February 1991.

As noted above, at the end of the three-year period following the date of this notice, the above named persons/entities remain debarred unless export privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see *e.g.,* sections 120.1(c) and (d), and 127.11(a)). Also, under Section 127.1(d) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any ITAR-controlled transaction where such ineligible person may obtain benefit therefrom or have a direct or indirect interest therein.

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and any export from or temporary import into the United States of defense articles, technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Tina S. Kaidanow,

Principal Deputy Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2018–08684 Filed 4–24–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 10396]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''The Chiaroscuro Woodcut in Renaissance Italy'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''The Chiaroscuro Woodcut in Renaissance Italy,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, California, from on or about June 3, 2018, until on or about September 16, 2018, at the National Gallery of Art, Washington, District of Columbia, from on or about October 14, 2018, until on or about January 20, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and

Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–08639 Filed 4–24–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 10384]

30-Day Notice of Proposed Information Collection: Foreign Service Officer Test Registration Form

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to May 25, 2018.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Foreign Service Officer Test Registration Form.
- *OMB Control Number:* 1405–0008.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Human Resources, Board of Examiners.
- *Form Number:* DS–1998E.
- *Respondents:* Registrants for the Foreign Service Officer Test.
- *Estimated Number of Respondents:* 12,000.
- *Estimated Number of Responses:* 12,000.
- *Average Time per Response:* 2 hours.
- *Total Estimated Burden Time:* 24,000.
- *Frequency:* Annually.
- *Obligation To Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Individuals registering for the Foreign Service Officer Test will complete a Registration Form that consists of an application form. This includes information about their name, date of birth, Social Security Number, contact information, gender, race, national origin, disability status, education, work history, and military experience. The information will be used to prepare and issue admission to the Foreign Service Officer Test, to provide data useful for improving future tests, and to conduct research studies based on the test results.

Methodology

The registration process, which includes concurrent application submission and seat selection, opens approximately four (4) weeks prior to each testing window. To register, individuals go to *peasonvue.com/fsot/* during the four-week period prior to a specific testing window to create an account, submit completed eligibility verification and application forms, and select a location and seat for the specific test date.

John K. Moyer,

Executive Director, Bureau of Human Resources, Department of State.

[FR Doc. 2018–08680 Filed 4–24–18; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice: 10398]

Notice of Determinations; Culturally Significant Object Imported for Exhibition Determinations: "Picture in Focus: Hugo van der Goes or a Member of His Circle's Virgin and Child With Saint Thomas, John the Baptist, Jerome, and Louis" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object to be included in the exhibition ''Picture in Focus: Hugo van der Goes or a member of his circle's Virgin and Child with Saint Thomas, John the Baptist, Jerome, and Louis,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Art Institute of Chicago, in Chicago, Illinois, from on or about May 2, 2018, until on or about April 15, 2021, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–08638 Filed 4–24–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10395]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: "Art of Iron: Objects From the Musée Le Secq des Tournelles, Rouen, Normandy" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Art of Iron: Objects from the Musée Le Secq des Tournelles, Rouen, Normandy,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Sterling and Francine Clark Art Institute, Williamstown, Massachusetts, from on or about June 9, 2018, until on or about September 16, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–08637 Filed 4–24–18; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the approved by rule projects rescinded by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: March 1–31, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, being rescinded for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 806.22(f) for the time period specified above:

Rescinded ABR Issued

1. Pennsylvania General Energy Company, L.L.C., Pad ID: SGL75 PAD C, ABR–201308005, McHenry Township, Lycoming County, Pa.; Rescind Date: March 1, 2018.
2. Pennsylvania General Energy Company, L.L.C., Pad ID: SGL75 PAD D, ABR–201308006, Pine Township, Lycoming County, Pa.; Rescind Date: March 1, 2018.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: April 20, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–08645 Filed 4–24–18; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: March 1–31, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, 717–238–0423, ext. 1312, *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 806.22 (f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. SWN Production Company, LLC, Pad ID: Marichini-Zingieser (Pad 9), ABR–201303012.R1, Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 5, 2018.
2. Repsol Oil & Gas USA, LLC, Pad ID: MONRO (03 142) G, ABR–201803001, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 12, 2018.
3. SWN Production Company, LLC, Pad ID: TI–20 Fall Creek B, ABR–201803002, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 20, 2018.
4. SWN Production Company, LLC, Pad ID: TI–17 Hoffman, ABR–201803003, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 20, 2018.
5. SWN Production Company, LLC, Pad ID: TI–23 Camp Woodhouse, ABR–201803004, Morris Township, Tioga County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 20, 2018.
6. SWN Production Company, LLC, Pad ID: TI–25 Long Run Timber A, ABR–201803005, Morris Township, Tioga County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 20, 2018.
7. Pennsylvania General Energy Company, L.L.C., Pad ID: COP Tract 322 Pad C, ABR–201304006.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.5000 mgd; Approval Date: March 21, 2018.
8. Pennsylvania General Energy Company, L.L.C., Pad ID: SGL75 PAD B, ABR–201308004.R1, McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 4.5000 mgd; Approval Date: March 21, 2018.
9. Cabot Oil & Gas Corporation, Pad ID: MolnarM P1, ABR–201303007.R1, Brooklyn and Lathrop Townships, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 22, 2018.
10. Cabot Oil & Gas Corporation, Pad ID: CastrogiovanniaA P3, ABR–201303011.R1, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 22, 2018.
11. Cabot Oil & Gas Corporation, Pad ID: CarpenettiR P1, ABR–201303014.R1, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 22, 2018.
12. Cabot Oil & Gas Corporation, Pad ID:

PritchardD P1, ABR–201304005.R1, Hartford Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 22, 2018.

13. SWN Production Company, LLC, Pad ID: FLICKS RUN EAST PAD, ABR–201302003.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 23, 2018.
14. SWN Production Company, LLC, Pad ID: DRANN PAD, ABR–201303006.R1, New Milford and Great Bend Townships, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 27, 2018.
15. Chief Oil & Gas, LLC, Pad ID: Lathrop Farm Trust B Drilling Pad, ABR–201309009.R1, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: March 27, 2018.
16. JKLM Energy, LLC, Pad ID: Headwaters 146, ABR–201803006, Ulysses Township, Potter County, Pa.; Consumptive Use of Up to 3.2000 mgd; Approval Date: March 27, 2018.
17. Chief Oil & Gas, LLC, Pad ID: SGL 36 Drilling Pad, ABR–201803007, Overton Township, Bradford County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: March 27, 2018.
18. SWN Production Company, LLC, Pad ID: McMahon (VW Pad), ABR–201304003R1, Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 30, 2018.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: April 20, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–08644 Filed 4–24–18; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Minor Modifications

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for a previously approved project by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: March 1–31, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modifications, described below, pursuant to 18 CFR 806.18 for the time period specified above:

Minor Modifications Issued Under 18 CFR 806.18

1. Panda Hummel Station LLC, Docket No. 20081222–4, Shamokin Dam Borough and Monroe Township, Snyder County, Pa.; approval to add Shamokin Dam Borough public water supply as an additional source of water for consumptive use; Approval Date: March 1, 2018.
2. Sugar Hollow Water Services LLC (Bowman Creek), Docket No. 20140612–1, Eaton Township, Wyoming County, Pa.; approval to changes in the authorized water uses; Approval Date: March 30, 2018.
3. Sugar Hollow Water Services LLC (Martins Creek), Docket No. 20150304–1, Hop Bottom Borough, Susquehanna County, Pa.; approval to changes in the authorized water uses; Approval Date: March 30, 2018.
4. Sugar Hollow Water Services LLC (Susquehanna River), Docket No. 20151204–1, Eaton Township, Wyoming County, Pa.; approval to changes in the authorized water uses; Approval Date: March 30, 2018.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: April 20, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–08643 Filed 4–24–18; 8:45 am]

BILLING CODE –P

TENNESSEE VALLEY AUTHORITY

Charter Renewal of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the TVA Board of Directors has renewed the Regional Resource Stewardship Council (RRSC) charter for an additional two-year period beginning on April 27, 2018.

FOR FURTHER INFORMATION CONTACT: Barbie Perdue, 865–632–6113, *baperdue@tva.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to FACA and its implementing regulations, and following consultation with the Committee Management Secretariat, General Services Administration (GSA) in accordance with 41 CFR 102–3.60(a), notice is hereby given that the RRSC has been renewed for a two-year period beginning April 27, 2018. The RRSC will provide advice to TVA on its issues affecting natural resource stewardship activities. The RRSC was originally established in 1999 to advise TVA on its natural resource stewardship activities through balanced and broad range of diverse views and interests. Numerous public and private entities are traditionally involved in the stewardship of the natural resources of the Tennessee Valley region. It has been determined that the RRSC continues to be needed to provide an additional mechanism for public input regarding stewardship issues.

Dated: April 19, 2018.

Barbara A. Perdue,

Committee Management Officer.

[FR Doc. 2018–08631 Filed 4–24–18; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–35]

Petition for Exemption; Summary of Petition Received; Croman Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 15, 2018.

ADDRESSES: Send comments identified by docket number FAA–2017–0789 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of

Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brent Hart (202) 267–4034, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 5, 2018.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2017–0789.

Petitioner: Croman Corporation.

Section(s) of 14 CFR Affected: 43.3(i).

Description of Relief Sought: Croman Corporation is seeking relief to allow pilots employed by Croman Corporation to remove and install the cabin/cockpit doors on Croman Corporation's Bell 206B helicopters.

[FR Doc. 2018–08667 Filed 4–24–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–36]

Petition for Exemption; Summary of Petition Received; Minnesota Department of Natural Resources

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 15, 2018.

ADDRESSES: Send comments identified by docket number FAA–2016–9358 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brenda Robeson, (202) 267–4712, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 18, 2018.

Dale Bouffiou,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–9358.

Petitioner: Minnesota Department of Natural Resources (MN DNR).

Section(s) of 14 CFR Affected: §§ 43.3(g), 43.5(a), 43.7(f), 91.407(a).

Description of Relief Sought: The proposed exemption, if granted, would allow trained pilots to remove cabin and fuselage doors without the aid of an airframe and/or poweplant mechanic. MN DNR is requesting an exemption as an organization from the above rules during wildfire suppression activities on behalf of the companies that it contracts with for said services.

[FR Doc. 2018–08666 Filed 4–24–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2018–0028]

Agency Information Collection Activities: Request for Comments for the Renewal of a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that FHWA will submit the collection of information described below to the Office of Management and Budget (OMB) for review and comment. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 23, 2018. The PRA submission describes the nature of the information collection and its expected cost and burden.

DATES: Please submit comments by May 25, 2018.

ADDRESSES: You may submit comments identified by DOT Docket ID 2018–0028 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Clark, 703–404–6306, Realty Specialist, FHWA–HEPR–10, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave., Washington DC. Office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: ''Right-of-Way Cost Estimation Processes; State of the Practice''.

Government agencies that acquire real property for a Federal-aid highway program typically consider the cost of many alternatives for a potential project. As a part of this consideration, estimates of the cost of right-of-way needed for potential highway alignments must be determined and documented. Agencies may use several different methods to determine the estimate and document these costs. The methods range from a process using only paper and pencil, all the way to a process utilizing Geographic Information System (GIS) mapping and electronic data capture methods. The electronic methods presumably include an electronic calculation method which tabulates and calculates total costs, area to be acquired, and the numbers of relocations of residential and business property owners and tenants. Utilizing the paper-based method necessarily requires manual collection, organization and calculation which are likely expensive and inefficient, both in terms of dedicated staff time and dollars spent.

Respondents: Each State DOT will be asked to respond, as well as a limited number (5–10) of local government agencies that have large and complex transportation programs. Each invited agency will be asked to respond to a one-time survey containing questions about the agency's ROW cost estimation process and management.

Frequency: There will be one survey only.

Estimated Average Burden per Response: Approximately 8–16 person-hours to fully and accurately respond to the survey, depending on the size and complexity of an individual agency's transportation program.

Estimated Total Annual Burden Hours: Approximately 900 hours. (This is the estimated total burden, for approximately 60 State and local government transportation agencies to respond to a single survey.)

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: April 19, 2018.

Michael Howell,

FHWA Information Collection Officer.

[FR Doc. 2018–08651 Filed 4–24–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2018 Competitive Funding Opportunity: Low or No Emission Grant Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for $84,450,000 in competitive grants under the fiscal year (FY) 2018 Low or No Emission Grant Program (Low-No Program; Catalog of Federal Domestic Assistance (CFDA) number: 20.526). In addition to $55 million authorized by federal transit law, the Consolidated Appropriations Act, 2018 authorizes an additional $29,450,000 for the Low-No Program for FY 2018. As required by Federal transit law, funds will be awarded competitively for the purchase or lease of low or no emission vehicles that use advanced technologies for transit revenue operations, including related equipment or facilities. Projects may include costs incidental to the acquisition of buses or to the construction of facilities, such as the costs of related workforce development and training activities, and project administration expenses. FTA may award additional funding that is made available to the program prior to the announcement of project selections.

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* ''APPLY'' function by 11:59 p.m. Eastern time on June 18, 2018. Prospective applicants should initiate the process by registering on the *GRANTS.GOV* website promptly to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at *http://transit.dot.gov/howtoapply* and in the ''FIND'' module of *GRANTS.GOV*. The funding opportunity ID is FTA–2018–003-LowNo. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Tara Clark, FTA Office of Program Management, 202–366–2623, or *tara.clark@dot.gov*.

SUPPLEMENTARY INFORMATION:

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A. Program Description

Section 5339(c) of Title 49, United States Code, as amended by the Fixing America's Surface Transportation (FAST) Act, (Pub. L. 114–94, Dec. 4, 2015), authorizes FTA to award grants for low or no emission buses through a competitive process, as described in this notice. The Low or No Emission Bus Program (Low-No Program) provides funding to State and local governmental authorities for the purchase or lease of zero-emission and low-emission transit buses, including acquisition, construction, and leasing of required supporting facilities such as recharging, refueling, and maintenance facilities. FTA recognizes that a significant transformation is occurring in the transit bus industry, with the increasing availability of low and zero emission bus vehicles for transit revenue operations.

B. Federal Award Information 5339(c) Low or No Emission Discretionary Program

Federal transit law authorizes $55 million in FY 2018 for grants under the Low-No Program. The Consolidated Appropriations Act, 2018 authorizes an additional $29,450,000 for the Low-No Program for FY 2018, for a total authorization of $84,450,000. In FY 2017, the program received applications for 129 projects requesting a total of $515 million. Fifty-one projects were funded at a total of $55 million.

FTA will grant pre-award authority starting on the date of project announcement for the FY 2018 awards. Funds are available for obligation until September 30, 2021. Funds are only available for projects that have not incurred costs prior to the announcement of project selections.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants include designated recipients, States, local governmental authorities, and Indian Tribes. Except for projects proposed by Indian Tribes, proposals for funding projects in rural (non-urbanized) areas must be submitted as part of a consolidated State proposal. To be considered eligible, applicants must be able to demonstrate the requisite legal, financial and technical capabilities to receive and administer Federal funds under this program. States and other eligible applicants also may submit consolidated proposals for projects in urbanized areas. Proposals may contain projects to be implemented by the recipient or its eligible subrecipients. Eligible subrecipients are entities that are otherwise eligible recipients under this program.

An eligible recipient may submit an application in partnership with other entities that intend to participate in the implementation of the project, including, but not limited to, specific vehicle manufacturers, equipment vendors, owners or operators of related facilities, or project consultants. If an application that involves such a partnership is selected for funding, the competitive selection process will be deemed to satisfy the requirement for a competitive procurement under 49 U.S.C. 5325(a) for the named entities. Applicants are advised that any changes to the proposed partnership will require advanced FTA written approval, must be consistent with the scope of the approved project, and may necessitate a competitive procurement.

2. Cost Sharing or Matching

All eligible expenses under the Low-No Program are attributable to compliance with the Clean Air Act. Therefore, under the provisions of 49 U.S.C. 5323(i), the maximum Federal participation in the costs of leasing or acquiring a transit bus financed under the Low-No Program is 85 percent of the total transit bus cost. Further, the maximum Federal participation in the cost of leasing or acquiring low or no emission bus-related equipment and facilities under the Low-No Program, such as recharging or refueling facilities, is 90 percent of the net project cost of the equipment or facilities that are attributable to compliance with the Clean Air Act. FTA may prioritize projects proposed with a higher local share.

Eligible sources of local match include the following: cash from non-Government sources other than revenues from providing public transportation services; revenues derived from the sale of advertising and concessions; amounts received under a service agreement with a State or local social service agency or private social service organization; revenues generated from value capture financing mechanisms; funds from an undistributed cash surplus; replacement or depreciation cash fund or reserve; new capital; or in-kind contributions. In addition, transportation development credits or documentation of in-kind match may substitute for local match if identified in the application.

3. Eligible Projects

Under 49 U.S.C. 5339 (c)(1)(B), eligible projects include projects or programs of projects in an eligible area for: (1) Purchasing or leasing low or no emission buses; (2) acquiring low or no emission buses with a leased power source; (3) constructing or leasing facilities and related equipment for low or no emission buses; (4) constructing new public transportation facilities to accommodate low or no emission buses; (5) or rehabilitating or improving existing public transportation facilities to accommodate low or no emission buses. As specified under 49 U.S.C. 5339(c)(5)(A), FTA will only consider eligible projects relating to the acquisition or leasing of low or no emission buses or bus facilities that make greater reductions in energy consumption and harmful emissions than comparable standard buses or other low or no emission buses. As specified under 49 U.S.C. 5339(c)(5)(B), all proposed projects must be part of the intended recipient's long-term integrated fleet management plan.

If a single project proposal involves multiple public transportation providers, such as when an agency acquires vehicles that will be operated by another agency, the proposal must include a detailed statement regarding the role of each public transportation provider in the implementation of the project.

Under 49 U.S.C. 5339(c)(1)(E), a low or no-emission bus is defined as "a passenger vehicle used to provide public transportation that significantly reduces energy consumption or harmful emissions, including direct carbon emissions, when compared to a standard vehicle." The statutory definition includes zero-emission transit buses, which are defined as buses that produce no direct carbon emissions and no particulate matter emissions under any and all possible operational modes and conditions. Examples of zero emission bus technologies include, but are not limited to, hydrogen fuel-cell buses and battery-electric buses. All new transit bus models procured with funds awarded under the Low-No Program must complete FTA bus testing for production transit buses pursuant to 49 U.S.C. 5318. All transit vehicles must be procured from certified transit vehicle manufacturers in accordance with the Disadvantaged Business Enterprise (DBE) regulations at 49 CFR part 26. The development or deployment of prototype vehicles is not eligible for funding under the Low-No program.

Recipients are permitted to use up to 0.5 percent of their requested grant award for workforce development activities eligible under 49 U.S.C 5314(b) and an additional 0.5 percent for costs associated with training at the National Transit Institute. Applicants must identify the proposed use of funds for these activities in the project proposal and identify them separately in the project budget.

D. Application and Submission Information

1. Address To Request Application

Applications must be submitted electronically through *GRANTS.GOV*. General information for submitting applications through *GRANTS.GOV* can be found at *www.fta.dot.gov/howtoapply* along with specific instructions for the forms and attachments required for submission. Mail and fax submissions will not be accepted. A complete proposal submission consists of two forms: the SF424 Application for Federal Assistance (available at *GRANTS.GOV*) and the supplemental form for the FY 2018 Low-No Program (downloaded from *GRANTS.GOV* or the FTA website at *https://www.transit.dot.gov/funding/grants/lowno*). Failure to submit the information as requested can delay review or disqualify the application.

2. Content and Form of Application Submission

(i) Proposal Submission

A complete proposal submission consists of two forms: (1) The SF424 Application for Federal Assistance; and (2) the supplemental form for the FY 2018 Low-No Program. The supplemental form and any supporting documents must be attached to the ''Attachments'' section of the SF–424. The application must include responses to all sections of the SF424 Application for Federal Assistance and the supplemental form, unless indicated as optional. The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in part E of this notice.

FTA will accept only one supplemental form per SF–424 submission. FTA encourages States and other applicants to consider submitting a single supplemental form that includes multiple activities to be evaluated as a consolidated proposal. If a State or other applicant chooses to submit separate proposals for individual consideration by FTA, each proposal must be submitted using a separate SF–424 and supplemental form. Applicants may attach additional supporting information to the SF–424 submission, including but not limited to letters of support, project budgets, fleet status reports, or excerpts from relevant planning documents. Any supporting documentation must be described and referenced by file name in the appropriate response section of the supplemental form, or it may not be reviewed.

Information such as proposer name, Federal amount requested, local match amount, description of areas served, etc. may be requested in varying degrees of detail on both the SF424 and Supplemental Form. Proposers must fill in all fields unless stated otherwise on the forms. If information is copied into the supplemental form from another source, applicants should verify that pasted text is fully captured on the supplemental form and has not been truncated by the character limits built into the form. Proposers should use both the ''Check Package for Errors'' and the ''Validate Form'' validation buttons on both forms to check all required fields on the forms, and ensure that the federal and local amounts specified are consistent.

(ii) Application Content

The SF424 Application for Federal Assistance and the Supplemental Form will prompt applicants for the required information, including:

a. Applicant Name
b. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number
c. Key contact information (including contact name, address, email address, and phone)
d. Congressional district(s) where project will take place
e. Project Information (including title, an executive summary, and type)
f. A detailed description of the need for the project
g. A detailed description on how the project will support the Low-No program objectives
h. Evidence that the project is consistent with local and regional planning documents
i. Evidence that the applicant can provide the local cost share
j. A description of the technical, legal, and financial capacity of the applicant
k. A detailed project budget
l. An explanation of the scalability of the project
m. Details on the local matching funds
n. A detailed project timeline

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) Be registered in SAM before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. These requirements do not apply if the applicant: (1) Is an individual; (2) is excepted from the requirements under 2 CFR 25.110(b) or (c); or (3) has an exception approved by FTA under 2 CFR 25.110(d). FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. All applicants must provide a unique entity identifier provided by SAM. Registration in SAM may take as little as 3–5 business days, but since there could be unexpected steps or delays (for example, if you need to obtain an Employer Identification Number), FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *www.sam.gov.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* by 11:59 p.m. Eastern time on June 18, 2018. *GRANTS.GOV* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will only be considered under extraordinary circumstances not under the applicant's control. Mail and fax submissions will not be accepted.

Within 48 hours after submitting an electronic application, the applicant should receive two email messages from *GRANTS.GOV*: (1) Confirmation of successful transmission to *GRANTS.GOV*, and (2) confirmation of successful validation by *GRANTS.GOV.* If confirmations of successful validation are not received or a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and *resubmit before the submission deadline.* If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

FTA urges proposers to submit applications at least 72 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website. Deadlines will not be extended due to scheduled website maintenance.

Proposers are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered proposers may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) Registration in the System for Award Management (SAM) is renewed annually; and, (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

5. Funding Restrictions

Funds under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA award of a Grant Agreement until FTA has issued pre-award authority for selected projects.

6. Other Submission Requirements

Applicants are encouraged to identify scaled funding options in case insufficient funding is available to fund a project at the full requested amount. If an applicant indicates that a project is scalable, the applicant must provide an appropriate minimum funding amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how the project budget would be affected by a reduced award. FTA may award a lesser amount whether a scalable option is provided.

E. Application Review

Projects will be evaluated primarily on the responses provided in the supplemental form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found. FTA will evaluate proposals for the Low-No Program based on the criteria described in this notice.

i. Demonstration of Need

Since the purpose of this program is to fund vehicles and facilities, applications will be evaluated based on the quality and extent to which they demonstrate how the proposed project will address an unmet need for capital investment in vehicles and/or supporting facilities. For example, an applicant may demonstrate that it requires additional or improved charging or maintenance facilities for low or no emission vehicles, that it intends to replace existing vehicles that have exceeded their minimum useful life, or that it requires additional vehicles to meet current ridership demands. FTA will consider an applicant's responses to the following criteria when assessing need for capital investment underlying the proposed project:

a. Consistency with Long-Term Fleet Management Plan: As required by 49 U.S.C. 5339 (c)(5)(b), all project proposals must demonstrate that they are part of the intended recipient's long-term integrated fleet management plan, as demonstrated through an existing transit asset management program, fleet procurement plan, or similarly documented program or policy. These plans must be attached to the application. FTA will evaluate the consistency of the proposed project with the applicant's long-term fleet management plan, as well as the applicant's previous experience with the relevant low or no emissions vehicle technologies.

b. For low or no emission bus projects (replacement and/or or expansion): Applicants must provide information on the age, condition and performance of the vehicles to be replaced by the proposed project. Vehicles to be replaced must have met their minimum useful life at the time of project completion. For service expansion requests, applicants must provide information on the proposed service expansion and the benefits for transit riders and the community from the new service. For all vehicle projects, the proposal must address whether the project conforms to FTA's spare ratio guidelines. Low or no emission vehicles funded under this program are not exempted from FTA's standard spare ratio requirements which apply to and are calculated on the agency's entire fleet.

c. For bus facility and equipment projects (replacement, rehabilitation, and/or expansion): Applicants must provide information on the age and condition of the asset to be rehabilitated or replaced relative to its minimum useful life.

ii. Demonstration of Benefits

Applicants must demonstrate how the proposed project will support statutory requirements of 49 U.S.C 5339(c)(5)(A). In particular, FTA will consider the quality and extent to which applications demonstrate how the proposed project will: (1) Reduce Energy Consumption; (2) Reduce Harmful Emissions; and (3) Reduce Direct Carbon Emissions.

a. Reduce Energy Consumption: Applicants must describe how the proposed project will reduce energy consumption. FTA will evaluate applications based on the degree to which the proposed technology reduces energy consumption as compared to more common vehicle propulsion technologies.

b. Reduce Harmful Emissions: Applicants must demonstrate how the proposed vehicles or facility will reduce the emission of particulates that create local air pollution, which leads to local environmental health concerns, smog, and unhealthy ozone concentrations. FTA will evaluate the rate of particulate emissions by the proposed vehicles or vehicles to be supported by the proposed facility, compared to the emissions from the vehicles that will be replaced or moved to the spare fleet as a result of the proposed project, as well as comparable standard buses.

c. Reduce Direct Carbon Emissions: Applicants should demonstrate how the proposed vehicles or facility will reduce emissions of greenhouse gases from transit vehicle operations. FTA will evaluate the rate of direct carbon emissions by the proposed vehicles or vehicles to be supported by the proposed facility, compared to the emissions from the vehicles that will be replaced or moved to the spare fleet as a result of the proposed project, as well as comparable standard buses.

iii. Planning and Local/Regional Prioritization

Applicants must demonstrate how the proposed project is consistent with local and regional long range planning documents and local government priorities. FTA will evaluate applications based on the quality and extent to which they assess whether the project is consistent with the transit priorities identified in the long range plan; and/or contingency/illustrative projects included in that plan; or the locally developed human services public transportation coordinated plan. Applicants are not required to submit copies of such plans, but FTA will consider how the project will support regional goals and applicants may submit support letters from local and regional planning organizations attesting to the consistency of the proposed project with these plans.

Evidence of additional local or regional prioritization may include letters of support for the project from local government officials, public agencies, and non-profit or private sector partners.

iv. Local Financial Commitment

Applicants must identify the source of the local cost share and describe whether such funds are currently available for the project or will need to be secured if the project is selected for funding. FTA will consider the availability of the local cost share as evidence of local financial commitment to the project. Applicants should submit evidence of the availability of funds for the project, for example by including a board resolution, letter of support from the State, or other documentation of the source of local funds such as a budget document highlighting the line item or section committing funds to the proposed project. In addition, an applicant may propose a local cost share that is greater than the minimum requirement or provide documentation of previous local investments in the project, which cannot be used to satisfy local matching requirements, as evidence of local financial commitment. Additional consideration will be given to those projects that propose a larger local cost share. FTA will also note if an applicant proposes to use grant funds only for the incremental cost of new technologies over the cost of replacing vehicles with standard propulsion technologies.

v. Project Implementation Strategy

FTA will rate projects higher if grant funds can be obligated within 12 months of selection and the project can be implemented within a reasonable time frame. In assessing when funds can be obligated FTA will consider whether the project qualifies for a Categorical Exclusion (CE), or whether the required environmental work has been initiated or completed for projects that require an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under the National Environmental Policy Act of 1969 (NEPA), as amended. The proposal must state when grant funds can be obligated and indicate the timeframe under which the Metropolitan Transportation Improvement Program (TIP) and/or Statewide Transportation Improvement Program (STIP) can be amended to include the proposed project.

In assessing whether the proposed implementation plans are reasonable and complete, FTA will review the proposed project implementation plan, including all necessary project milestones and the overall project timeline. For projects that will require formal coordination, approvals or permits from other agencies or project partners, the applicant must demonstrate coordination with these organizations and their support for the project, such as through letters of support.

For project proposals that involve a partnership with a manufacturer, vendor, consultant, or other third party, applicants must identify by name any project partners, including but not limited to other transit agencies, bus manufacturers, owners or operators of related facilities, or any expert consultants. FTA will evaluate the experience and capacity of the named project partners to successfully implement the proposed project based on the partners' experience and qualifications. Applicants are advised to submit information on the partners' qualification and experience as a part of the application. Entities involved in the project that are not named in the application will be required to be selected through a competitive procurement.

For project proposals that will require a competitive procurement, applicants must demonstrate familiarity with the current market availability of the proposed advanced vehicle propulsion technology.

vi. Technical, Legal, and Financial Capacity

Applicants must demonstrate that they have the technical, legal and financial capacity to undertake the project. FTA will review relevant oversight assessments and records to determine whether there are any outstanding legal, technical, or financial issues with the applicant that would affect the outcome of the proposed project.

vii. Review and Selection Process

In addition to other FTA staff that may review the proposals, a technical evaluation committee will evaluate proposals based on the published evaluation criteria. Members of the technical evaluation committee and other FTA staff may request additional information from applicants, if necessary. Based on the findings of the technical evaluation committee, the FTA Administrator will determine the final selection of projects for program funding. FTA may consider geographic diversity, diversity in the size of the transit systems receiving funding, and/or the applicant's receipt of other competitive awards in determining the allocation of program funds. FTA may consider capping the amount a single applicant may receive and prioritizing investments in rural areas. Projects that have a higher local financial commitment may also be prioritized.

After applying the above preferences, the FTA Administrator will consider the following key Departmental objectives:

(A) Supporting economic vitality at the national and regional level;

(B) Utilizing alternative funding sources and innovative financing models to attract non-Federal sources of infrastructure investment;

(C) Accounting for the life-cycle costs of the project to promote the state of good repair;

(D) Using innovative approaches to improve safety and expedite project delivery; and,

(E) Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM. FTA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, 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 the 2 CFR 200.205 Federal awarding agency review of risk posed by applicants.

F. Federal Award Administration

The FTA Administrator will announce the final project selections on the FTA website. Recipients should contact their FTA Regional Offices for additional information regarding allocations for projects under the Low-No Program. At the time the project selections are announced, FTA will extend pre-award authority for the selected projects. There is no blanket pre-award authority for these projects before announcement.

1. Federal Award Notices

Funds under the Low-No Program are available to States, designated recipients, local governmental authorities and Indian Tribes. There is no minimum or maximum grant award amount; however, FTA intends to fund as many meritorious projects as possible. Only proposals from eligible recipients for eligible activities will be considered for funding. Due to funding limitations, proposers that are selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate that the proposed projects are still viable and can be completed with the amount awarded.

2. Administrative and National Policy Requirements

i. Pre-Award Authority

FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. FTA does not provide pre-award authority for discretionary funds until projects are selected, and even then there are Federal requirements that must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the FY 2017 Apportionment Notice published on January 19, 2017. *https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-01194.pdf.*

ii. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). All Low-No Emission recipients are subject to the grant requirements of Section 5307 Urbanized Area Formula Grant program, including those of FTA Circular 9030.1E. All recipients must follow the Grants Management Requirements of FTA Circular 5010.1 and the labor protections of 49 U.S.C. 5333(b). Technical assistance regarding these requirements is available from each FTA regional office.

iii. Buy America

FTA requires that all capital procurements meet FTA's Buy America requirements, which require that all iron, steel, or manufactured products be produced in the U.S. These requirements help create and protect manufacturing jobs in the U.S. The Low-No Program will have a significant economic impact on meeting the objectives of the Buy America law. Federal transit law amended the Buy America requirements to provide for a phased increase in the domestic content for rolling stock. For FY 2018 and FY 2019, the cost of components and subcomponents produced in the United States must be more than 65 percent of the cost of all components. For FY 2020 and beyond, the cost of components and subcomponents produced in the United States must be more than 70 percent of the cost of all components. There is no change to the requirement that final assembly of rolling stock must occur in the United States. FTA issued guidance on the implementation of the phased increase in domestic content on September 1, 2016. A copy of the policy guidance may be found in 81 **Federal Register** 60278 (September 1, 2016). Applicants should read the policy guidance carefully to determine the applicable domestic content requirement for their project. Any proposal that will require a waiver must identify the items for which a waiver will be sought in the application. Applicants should not proceed with the expectation that waivers will be granted, nor should applicants assume that selection of a project under the Low-No Program that includes a partnership with a manufacturer, vendor, consultant, or other third party constitutes a waiver of the Buy America requirements applicable at the time the project is undertaken.

iv. Disadvantaged Business Enterprise

FTA requires that its recipients receiving planning, capital and/or operating assistance that will award prime contracts exceeding $250,000 in FTA funds in a Federal fiscal year comply with the Disadvantaged Business Enterprise (DBE) program regulations at 49 CFR part 26. Applicants should expect to include any funds awarded, excluding those to be used for vehicle procurements, in setting their overall DBE goal. Note, however, that projects including vehicle procurements remain subject to the DBE program regulations. The rule requires that, prior to bidding on any FTA-assisted vehicle procurement, entities that manufacture vehicles, perform post-production alterations or retrofitting must submit a DBE Program plan and goal methodology to FTA. Further, to the extent that a vehicle remanufacturer is responding to a solicitation for new or remanufactured vehicles with a vehicle to which the remanufacturer has provided post-production alterations or retro-fitting (*e.g.,* replacing major components such as an engine to provide a ''like new'' vehicle), the vehicle remanufacturer is considered a transit vehicle manufacturer and must also comply with the DBE regulations.

The FTA will then issue a transit vehicle manufacturer (TVM) concurrence/certification letter. Grant recipients must verify each entity's compliance with these requirements before accepting its bid. A list of compliant, certified TVMs is posted on FTA's web page at *https://www.fta.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-tvms-list.* Please note, that this list is nonexclusive and recipients must contact FTA before accepting bids from entities not listed on this web-posting. Recipients may also establish project specific DBE goals for vehicle procurements. FTA will provide additional guidance as grants are awarded. For more information on DBE requirements, please contact Janelle Hinton, Office of Civil Rights, 202–366–9259, email: *janelle.hinton@dot.gov.*

v. Planning

FTA encourages proposers to notify the appropriate State Departments of Transportation and MPOs in areas likely to be served by the project funds made available under these initiatives and programs. Selected projects must be incorporated into the long-range plans and transportation improvement programs of States and metropolitan areas before they are eligible for FTA funding. As described under the evaluation criteria, FTA may consider whether a project is consistent with or already included in these plans when evaluating a project.

vi. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

3. Reporting

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system.

G. Federal Awarding Agency Contacts

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' FTA will consider applications for funding only from eligible recipients for eligible projects listed in Section C. Complete applications must be submitted through *GRANTS.GOV* by 11:59 p.m. Eastern time on June 18, 2018. For issues with *GRANTS.GOV* please contact *GRANTS.GOV* by phone at 1–800–518–4726 or by email at *support@grants.gov.* Contact information for FTA's regional offices can be found on FTA's website at *www.fta.dot.gov.*

H. Technical Assistance and Other Program Information

For further information concerning this notice, please contact the Low-No Program manager Tara Clark by phone at 202–366–2623, or by email at *tara.clark@dot.gov.* A TDD is available for individuals who are deaf or hard of hearing at 800–877–8339. In addition, FTA will post answers to questions and requests for clarifications on FTA's website at *https://www.transit.dot.gov/funding/grants/lowno.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact FTA directly, rather than through intermediaries or third parties, with questions. FTA staff may also conduct briefings on the FY 2018 discretionary grants selection and award process upon request.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2018–08636 Filed 4–24–18; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No.: PHMSA–2018–0004; Notice No. 2018–04]

Hazardous Materials: Public Meeting Notice for the Research and Development Forum

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is designed to inform the interested public that the Office of Hazardous Materials Safety (OHMS) of the Pipeline and Hazardous Materials Safety Administration (PHMSA) will hold a public Research and Development Forum that will be held May 16 and 17, 2018, in Washington, DC. OHMS will host the forum to present the results of recently completed projects, brief new project plans with stakeholder input, and discuss the direction of current and future research projects.

During the meeting, OHMS will solicit comments related to new research topics that may be considered for inclusion in its future work. OHMS also reviews research needs statements from industry, academia, and other stakeholders. OHMS is particularly interested in the research gaps associated with energetic materials characterization and transport, safe transport of energy products, safe containment and transportation of compressed gasses, safe packaging and transportation of charge storage devices, and others. One focus will be a discussion on the safety gaps recently identified in a 2017 cooperative research report completed by the National Academy of Sciences titled ''*Safely Transporting Hazardous Liquids and Gases in a Changing U.S. Energy Landscape.*'' The identification of other research gaps related to the transportation of hazardous materials will be encouraged in an effort to meet the holistic needs of the transportation community and the U.S. Department of Transportation's (DOT) strategic goals: Safety, investment in infrastructure, innovation and accountability.

DATES: May 16 and 17, 2018 from 8:30 a.m. to 4:30 p.m. Eastern Standard Time on both days.

ADDRESSES: The meeting will be held at the National Transportation Safety Board Boardroom and Conference Center at 420 10th Street SW, Washington, DC 20594.

Registration: The DOT requests that attendees pre-register for these meetings by completing the form at *https://www.surveymonkey.com/r/P7CMR3R.*

Conference call-in and ''live meeting'' capability will be provided. Specific information about conference call-in and live meeting access will be posted, when available, at: *https://www.phmsa.dot.gov/research-and-development/hazmat/rd-meetings-and-events* under ''Upcoming Events.''

FOR FURTHER INFORMATION CONTACT: Eva Rodezno or Rick Boyle, Office of Hazardous Materials Safety, Research and Development, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC. Telephone: (202) 366–8799 and (202) 366–2993. Email: *eva.rodezno@dot.gov* or *rick.boyle@dot.gov.*

Signed on April 19, 2018 in Washington, DC.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2018–08586 Filed 4–24–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Credit Risk Retention

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 ''Credit Risk Retention.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by May 25, 2018.

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:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0249, 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 ''1557–0249'' in your comment. In general, the OCC will publish them on *www.reginfo.gov* without change, including any business or personal information that you provide, 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.

Additionally, please send a copy of your comments by mail to: OCC Desk

Officer, 1557–0249, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0249'' or ''Credit Risk Retention.'' 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.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

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 is asking OMB to extend its approval of the following information collection.

Title: Credit Risk Retention.

OMB Control No.: 1557–0249.

Affected Public: Business or other for-profit.

Type of Review: Regular review.

Abstract: This information collection request relates to 12 CFR part 43, which implements section 941(b) of the Dodd-Frank Act.[2] Section 941(b) of the Dodd-Frank Act required the OCC, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Securities and Exchange Commission (SEC), and, in the case of the securitization of any residential mortgage asset, the Federal Housing Finance Agency (FHFA), and the Department of Housing and Urban Development (HUD) to issue rules that, subject to certain exemptions: require a securitizer to retain not less than 5% of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party; and prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under the statute and implementing regulations.

Part 43 sets forth permissible forms of risk retention for securitizations that involve issuance of asset-backed securities. Section 15G of the Exchange Act also exempts certain types of securitization transactions from these risk retention requirements and authorizes the agencies to exempt or establish a lower risk retention requirement for other types of securitization transactions. Section 15G also states that the agencies must permit a securitizer to retain less than five percent of the credit risk of commercial mortgages, commercial loans, and automobile loans that are transferred, sold, or conveyed through the issuance of ABS by the securitizer if the loans meet underwriting standards established by the federal banking agencies.[3]

Part 43 sets forth permissible forms of risk retention for securitizations that involve issuance of asset-backed securities, as well as exemptions from the risk retention requirements, and contains requirements subject to the PRA.

Section 43.4 sets forth the conditions that must be met by sponsors electing to use the standard risk retention option, which may consist of an eligible vertical interest or an eligible horizontal residual interest, or any combination thereof. Sections 43.4(c)(1) and 43.4(c)(2) specify the disclosures required with respect to eligible horizontal residual interests and eligible vertical interests, respectively.

A sponsor retaining any eligible horizontal residual interest (or funding a horizontal cash reserve account) is required to disclose: The fair value (or a range of fair values and the method used to determine such range) of the eligible horizontal residual interest that the sponsor expects to retain at the closing of the securitization transaction (§ 43.4(c)(1)(i)(A)); the material terms of the eligible horizontal residual interest (§ 43.4(c)(1)(i)(B)); the methodology used to calculate the fair value (or range of fair values) of all classes of ABS interests (§ 43.4(c)(1)(i)(C)); the key inputs and assumptions used in measuring the estimated total fair value (or range of fair values) of all classes of ABS interests (§ 43.4(c)(1)(i)(D)); the reference data set or other historical information used to develop the key inputs and assumptions (§ 43.4(c)(1)(i)(G)); the fair value of the eligible horizontal residual interest retained by the sponsor (§ 43.4(c)(1)(ii)(A)); the fair value of the eligible horizontal residual interest required to be retained by the sponsor (§ 43.4(c)(1)(ii)(B)); a description of any material differences between the methodology used in calculating the fair value disclosed prior to sale and the methodology used to calculate the fair value at the time of closing (§ 43.4(c)(1)(ii)(C)); and the amount placed by the sponsor in the horizontal cash reserve account at closing, the fair value of the eligible horizontal residual interest that the sponsor is required to fund through such account, and a description of such account (§ 43.4(c)(1)(iii)).

For eligible vertical interests, the sponsor is required to disclose: The form of the eligible vertical interest (§ 43.4(c)(2)(i)(A)); the percentage that the sponsor is required to retain (§ 43.4(c)(2)(i)(B)); a description of the material terms of the vertical interest and the amount the sponsor expects to retain at closing(§ 43.4(c)(2)(i)(C)); and the amount of vertical interest retained by the sponsor at closing ((§ 43.4(c)(2)(ii)).

Section 43.4(d) requires a sponsor to retain the certifications and disclosures required in paragraphs (a) and (c) of this section in its records and must provide the disclosures upon request to the SEC and the sponsor's appropriate federal

[1] On January 29, 2018, the OCC published a 60-Day notice for this information collection. The comments can be viewed on *www.reginfo.gov.* Please follow the instructions listed in this notice to view them.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010)).

[3] 15 U.S.C. 78o–11(c)(1)(B)(ii) and (2).

banking agency, if any, until three years after all ABS interests are no longer outstanding.

Section 43.5(k) requires sponsors relying on the master trust (or revolving pool securitization) risk retention option to disclose: The material terms of the seller's interest and the percentage of the seller's interest that the sponsor expects to retain at the closing of the transaction (§ 43.5(k)(1)(i)); the percentage of the seller's interest that the sponsor retained at closing (§ 43.5(k)(1)(ii)); the material terms of any horizontal risk retention offsetting the seller's interest under § 43.5(g), § 43.5(h) and § 43.5(i) (§ 43.5(k)(1)(iii)); and the fair value of any horizontal risk retention retained by the sponsor (§ 43.5(k)(1)(iv)). Additionally, a sponsor must retain the disclosures required in § 43.5(k)(1) in its records and must provide the disclosures upon request to the SEC and the sponsor's appropriate federal banking agency, if any, until three years after all ABS interests are no longer outstanding (§ 43.5(k)(3)).

Section 43.6 addresses the requirements for sponsors utilizing the eligible ABCP conduit risk retention option. The requirements for the eligible ABCP conduit risk retention option include disclosure to each purchaser of ABCP and periodically to each holder of commercial paper issued by the ABCP conduit of the name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the material terms of such liquidity coverage, and notice of any failure to fund; and with respect to each ABS interest held by the ABCP conduit, the asset class or brief description of the underlying securitized assets, the standard industrial category code for each originator-seller that retains an interest in the securitization transaction, and a description of the percentage amount and form of interest retained by each originator-seller (§ 43.6(d)(1)). An ABCP conduit sponsor relying upon this section shall provide, upon request, to the SEC and the sponsor's appropriate Federal banking agency, if any, the information required under § 43.6(d)(1) in addition to the name and form of organization of each originator-seller that retains an interest in the securitization transaction (§ 43.6(d)(2)).

A sponsor relying on the eligible ABCP conduit risk retention option shall maintain and adhere to policies and procedures to monitor compliance by each originator-seller which is satisfying a risk retention obligation in respect to ABS interests acquired by an eligible ABCP conduit (§ 43.6(f)(2)(i)). If the ABCP conduit sponsor determines that an originator-seller is no longer in compliance, the sponsor must promptly notify the holders of the ABCP, and upon request, the SEC and the sponsor's appropriate federal banking agency, in writing of the name and form of organization of any originator-seller that fails to retain, and the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit (§ 43.6(f)(2)(ii)(A)(1)); the name and form of organization of any originator-seller that hedges, directly or indirectly through an intermediate SPV, its risk retention in violation of the rule, and the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit (§ 43.6(f)(2)(ii)(A)(2)); and any remedial actions taken by the ABCP conduit sponsor or other party with respect to such ABS interests (§ 43.6(f)(2)(ii)(A)(3)).

Section 43.7 sets forth the requirements for sponsors relying on the commercial mortgage-backed securities risk retention option, and includes disclosures of: The name and form of organization of each initial third-party purchaser (§ 43.7(b)(7)(i)); each initial third-party purchaser's experience in investing in commercial mortgage-backed securities (§ 43.7(b)(7)(ii)); other material information (§ 43.7(b)(7)(iii)); the fair value and purchase price of the eligible horizontal residual interest retained by each third-party purchaser, and the fair value of the eligible horizontal residual interest that the sponsor would have retained if the sponsor had relied on retaining an eligible horizontal residual interest under the standard risk retention option (§ 43.7(b)(7)(iv) and (v)); a description of the material terms of the eligible horizontal residual interest retained by each initial third-party purchaser, including the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to § 43.4 (§ 43.7(b)(7)(vi)); the material terms of the applicable transaction documents with respect to the Operating Advisor (§ 43.7(b)(7)(vii)); and representations and warranties concerning the securitized assets, a schedule of any securitized assets that are determined not to comply with such representations and warranties, and the factors used to determine that such securitized assets should be included in the pool notwithstanding that they did not comply with the representations and warranties (§ 43.7(b)(7)(viii)). A sponsor relying on the commercial mortgage-backed securities risk retention option is also required to provide in the underlying securitization transaction documents certain provisions related to the Operating Advisor (§ 43.7(b)(6)), to maintain and adhere to policies and procedures to monitor compliance by third-party purchasers with regulatory requirements (§ 43.7(c)(2)(A)), and to notify the holders of the ABS interests in the event of noncompliance by a third-party purchaser with such regulatory requirements (§ 43.7(c)(2)(B)).

Section 43.8 requires that a sponsor relying on the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation risk retention option must disclose a description of the manner in which it has met the credit risk retention requirements (§ 43.8(c)).

Section 43.9 sets forth the requirements for sponsors relying on the open market CLO risk retention option, and includes disclosures of a complete list of, and certain information related to, every asset held by an open market CLO (§ 43.9(d)(1)), and the full legal name and form of organization of the CLO manager (§ 43.9(d)(2)).

Section 43.10 sets forth the requirements for sponsors relying on the qualified tender option bond risk retention option, and includes disclosures of the name and form of organization of the qualified tender option bond entity, a description of the form and subordination features of the retained interest in accordance with the disclosure obligations in § 43.4(d), the fair value of any portion of the retained interest that is claimed by the sponsor as an eligible horizontal residual interest, and the percentage of ABS interests issued that is represented by any portion of the retained interest that is claimed by the sponsor as an eligible vertical interest (§ 43.10(e)(1)-(4)). In addition, to the extent any portion of the retained interest claimed by the sponsor is a municipal security held outside of the qualified tender option bond entity, the sponsor must disclose the name and form of organization of the qualified tender option bond entity, the identity of the issuer of the municipal securities, the face value of the municipal securities deposited into the qualified tender option bond entity, and the face value of the municipal securities retained outside of the qualified tender option bond entity by the sponsor or its majority-owned affiliates (§ 43.10(e)(5)).

Section 43.11 sets forth the conditions that apply when the sponsor of a securitization allocates to originators of securitized assets a portion of the credit risk the sponsor is required to retain, including disclosure of the name and form of organization of any originator that acquires and retains an interest in the transaction, a description of the form, amount and nature of such interest, and the method of payment for such interest (§ 43.11(a)(2)). A sponsor relying on this section is required to maintain and adhere to policies and procedures that are reasonably designed to monitor originator compliance with retention amount and hedging, transferring and pledging requirements (§ 43.11(b)(2)(A)), and to promptly notify the holders of the ABS interests in the transaction in the event of originator non-compliance with such regulatory requirements (§ 43.11(b)(2)(B)).

Sections 43.13 and 43.19(g) provide exemptions from the risk retention requirements for qualified residential mortgages and qualifying 3-to-4 unit residential mortgage loans that meet certain specified criteria, including that the depositor with respect to the securitization transaction certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that the controls are effective (§§ 43.13(b)(4)(i) and 43.19(g)(2)), and that the sponsor provide a copy of the certification to potential investors prior to sale of asset-backed securities in the issuing entity (§§ 43.13(b)(4)(iii) and 43.19(g)(2)). In addition, §§ 43.13(c)(3) and 43.19(g)(3) provide that a sponsor that has relied upon the exemptions will not lose the exemptions if, after closing of the transaction, it is determined that one or more of the residential mortgage loans does not meet all of the criteria; provided that the depositor complies with certain specified requirements, including prompt notice to the holders of the asset-backed securities of any loan that is required to be repurchased by the sponsor, the amount of such repurchased loan, and the cause for such repurchase.

Section 43.15 provides exemptions from the risk retention requirements for qualifying commercial loans that meet the criteria specified in § 43.16, qualifying CRE loans that meet the criteria specified in § 43.17, and qualifying automobile loans that meet the criteria specified in § 43.18. Section 43.15 also requires the sponsor to disclose a description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans with 0 percent risk retention (§ 43.15(a)(4)). In addition, the sponsor is required to disclose descriptions of the qualifying commercial loans, qualifying CRE loans, and qualifying automobile loans (''qualifying assets''), and descriptions of the assets that are not qualifying assets, and the material differences between the group of qualifying assets and the group of assets that are not qualifying assets with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral (§ 43.15(b)(3)). Additionally, a sponsor must retain the disclosures required in §§ 43.15(a) and (b) in its records and must provide the disclosures upon request to the SEC and the sponsor's appropriate federal banking agency, if any, until three years after all ABS interests are no longer outstanding (§ 43.15(d)).

Sections 43.16, 43.17 and 43.18 each require that: the depositor of the asset-backed security certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that its internal supervisory controls are effective (§§ 43.16(a)(8)(i), 43.17(a)(10)(i), and 43.18(a)(8)(i)); the sponsor is required to provide a copy of the certification to potential investors prior to the sale of asset-backed securities in the issuing entity (§§ 43.16(a)(8)(iii), 43.17(a)(10)(iii), and 43.18(a)(8)(iii)); and the sponsor must promptly notify the holders of the asset-backed securities of any loan included in the transaction that is required to be cured or repurchased by the sponsor, including the principal amount of such loan and the cause for such cure or repurchase (§§ 43.16(b)(3), 43.17(b)(3), and 43.18(b)(3)). Additionally, a sponsor must retain the disclosures required in §§ 43.16(a)(8), 43.17(a)(10) and 43.18(a)(8) in its records and must provide the disclosures upon request to the SEC and the sponsor's appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding (§ 43.15(d)).

Estimated Number of Respondents: 35 sponsors; 182 annual offerings per year.

Total Estimated Annual Burden: 3,139 hours.

The OCC issued a notice for 60 days of comment regarding this collection on January 29, 2018, 83 FR 4121. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 19, 2018.

Karen Solomon,

Acting Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 2018–08577 Filed 4–24–18; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; Request for comments.

SUMMARY: The Board of Trustees of the Sheet Metal Workers Local Pension Plan, a multiemployer pension plan, has submitted an application to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Sheet Metal Workers Local Pension Plan has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Sheet Metal Workers Local Pension Plan.

DATES: Comments must be received by June 11, 2018.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Sheet Metal Workers Local Pension Plan, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On March 30, 2018, the Board of Trustees of the Sheet Metal Workers Local Pension Plan submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Sheet Metal Workers Local Pension Plan application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Sheet Metal Workers Local Pension Plan. Consideration will be given to any comments that are timely received by Treasury.

Dated: April 19, 2018.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2018–08699 Filed 4–24–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; Request for comments.

SUMMARY: The Board of Trustees of the Plasterers Local 82 Pension Fund, a multiemployer pension plan, has submitted an application to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Plasterers Local 82 Pension Fund has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Plasterers Local 82 Pension Fund.

DATES: Comments must be received by June 11, 2018.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Plasterers Local 82 Pension Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On March 28, 2018, the Board of Trustees of the Plasterers Local 82 Pension Fund submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Plasterers Local 82 Pension Fund application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Plasterers Local 82 Pension Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: April 19, 2018.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2018–08652 Filed 4–24–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; Request for comments.

SUMMARY: The Board of Trustees of the Sheet Metal Workers Local Pension Plan, a multiemployer pension plan, has submitted an application to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Sheet Metal Workers Local Pension Plan has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Sheet Metal Workers Local Pension Plan.

DATES: Comments must be received by June 11, 2018.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site.

Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Sheet Metal Workers Local Pension Plan, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On March 30, 2018, the Board of Trustees of the Sheet Metal Workers Local Pension Plan submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Sheet Metal Workers Local Pension Plan application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Sheet Metal Workers Local Pension Plan. Consideration will be given to any comments that are timely received by Treasury.

Dated: April 19, 2018.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2018–08698 Filed 4–24–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Agency Information Collection Activity: Application for Fee or Roster Personnel Designation

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 25, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0113'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia D. Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 CFR 36.4301; Public Law 104–13; 44 U.S.C. 3501–21.

Title: Application for Fee or Roster Personnel Designation.

OMB Control Number: 2900–0113.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses fee basis appraisers to appraise residential real estate and recommend value for loan purposes. A fee appraiser is a qualified person requested by the Secretary to render an estimate of the reasonable value of a property, or of a specified type of property, within a stated area for the purpose of justifying the extension of credit to an eligible veteran (38 CFR 36.4301). The fee appraiser's estimate of value is reviewed by a VA staff appraiser or lender's staff appraisal reviewer who uses the data to establish the VA reasonable value (38 U.S.C. 3710(b)(4), (5), (6) and 3731(f)(1)), which becomes the maximum loan guaranty amount an eligible veteran can obtain.

Affected Public: Private Sector.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,000 per year.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–08606 Filed 4–24–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0821]

Agency Information Collection Activity: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Documents and Information Required for Specially Adapted Housing Assistive Technology Grant) and Scoring Criteria for SAH Assistive Technology Grants

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 25, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov* . Please refer to ''OMB Control No. 2900–0821'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia D. Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION:

Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506 of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 11–275; 38 U.S.C. 2108.

Title: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Documents and Information Required for Specially Adapted Housing Assistive Technology Grant), VA Form 26–0967 and Scoring Criteria for SAH Assistive Technology Grants, VA Form 26–0967a.

OMB Control Number: 2900–0821.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C., chapter 21, authorizes a VA program of grants for specially adapted housing for disabled veterans or servicemembers. Section 2101(a) of this chapter specifically outlines those determinations that must be made by VA before such grant is approved for a particular veteran or servicemember. VA Form 26–0967 and VA Form 26–0967a are used to collect information that is necessary for VA to meet the requirements of 38 U.S.C. 2101(a). (Also, see 38 CFR 36.4402(a), 36–4404(a), and 36.4405.)

Affected Public: Individuals and households.

Estimated Annual Burden: 40 hours.

Estimated Average Burden per Respondent: 120 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs

[FR Doc. 2018–08607 Filed 4–24–18; 8:45 am]

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Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM17–2–000; Order No. 844]

Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is revising its regulations to improve transparency practices for regional transmission organizations (RTO) and independent system operators (ISO). The Commission requires that each RTO/ISO establish in its tariff: Requirements to report, on a monthly basis, total uplift payments for each transmission zone, broken out by day and uplift category; requirements to report, on a monthly basis, total uplift payments for each resource; requirements to report, on a monthly basis, for each operator-initiated commitment, the size of the commitment, transmission zone, commitment reason, and commitment start time; and the transmission constraint penalty factors used in its market software, as well as the circumstances under which those factors can set locational marginal prices, and any process by which they can be changed. The Commission is withdrawing its proposal to require that each RTO/ISO that currently allocates the costs of real-time uplift to deviations allocate such real-time uplift costs only to those market participants whose transactions are reasonably expected to have caused the real-time uplift costs.

DATES: This rule is effective July 9, 2018.

FOR FURTHER INFORMATION CONTACT:

Adam Cornelius (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8314, *adam.cornelius@ferc.gov.*

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Colin Beckman (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8049, *colin.beckman@ferc.gov*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Kevin J. McIntyre, Chairman; Cheryl A. LaFleur, Neil Chatterjee, Robert F. Powelson, and Richard Glick.

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I. Introduction

1. In this Final Rule, the Federal Energy Regulatory Commission (Commission) finds that current regional transmission organization (RTO) and independent system operator (ISO) practices with respect to reporting uplift payments and operator-initiated commitments,[1] and RTO/ISO tariff provisions regarding transmission constraint penalty factors [2] are insufficiently transparent, resulting in rates that are not just and reasonable for the reasons discussed below. To remedy these unjust and unreasonable rates, we require, pursuant to section 206 of the Federal Power Act,[3] that each RTO/ISO establish in its tariff: (1) Requirements to report, on a monthly basis, total uplift payments for each transmission zone, broken out by day and uplift category (Zonal Uplift Report); (2) requirements to report, on a monthly basis, total uplift payments for each resource (Resource-Specific Uplift Report); (3) requirements to report, on a monthly basis, for each operator-initiated commitment, the size of the commitment, transmission zone, commitment reason, and commitment start time (Operator-Initiated Commitment Report); and (4) the transmission constraint penalty factors used in its market software, as well as the circumstances under which those factors can set locational marginal prices (LMP), and any process by which they can be changed (Transmission Constraint Penalty Factor Requirements).

2. We reach this conclusion for several reasons. RTO/ISO markets can be affected by a number of operational challenges such as unplanned transmission and generation outages and the need to maintain adequate voltage throughout the system. Limitations in the ability of the market software to incorporate all reliability considerations can at times result in prices that fail to reflect some of these challenges. In such situations, certain resources needed to reliably serve load may not economically clear the market and RTOs/ISOs must take out-of-market actions (*i.e.,* operator-initiated commitments) to ensure system needs are met. These actions give rise to uplift costs.

3. Because out-of-market actions and the resulting uplift costs are not reflected in market prices, these costs and the reasons for incurring such costs are inherently less transparent. Out-of-market actions can at times mask system conditions, which limits the ability of competitive electric markets to send appropriate price signals to compensate and financially encourage investment in resource attributes that respond to system needs. Lack of transparency concerning both uplift costs and operator-initiated actions can also limit valuable input from stakeholders, for example, during RTO/ISO transmission planning processes, or in committees that review RTO/ISO resource adequacy. Ensuring system needs are transparent to market participants is a critical step in finding cost-effective solutions to the operational challenges RTOs/ISOs face to support reliable operations and resilience. Reporting information about uplift and operator initiated commitments helps ensure these system needs are transparent to the marketplace.

4. Although all RTOs/ISOs provide some information regarding the locations and causes of uplift and operator-initiated commitments, the information is often highly aggregated or lacks detail, and is not consistently reported across markets. Current reporting practices regarding uplift and the reasons for making operator-initiated commitments do not provide adequate transparency for stakeholders to understand the needs of the system and recognize the resource attributes that are required to meet these needs. This lack of transparency hinders the ability of market participants to plan for and efficiently respond to system needs in a cost-effective manner, resulting in rates that are unjust and unreasonable. Improving the availability of information about the location and causes of uplift and operator-initiated commitments would enhance market participants' ability to evaluate the need for, and the value of investment in, transmission and generation. Increased transparency could also facilitate more informed stakeholder discussions that support capacity or transmission planning to address future reliability and resilience issues. Additionally, RTO/ISO practices with respect to transmission constraint penalty factors can significantly affect clearing prices. Improving transparency into such practices would enhance market participants' understanding of how energy prices are formed and thus would enhance their ability to hedge transactions and respond to market signals. Finally, increased transparency into uplift payments, operator-initiated commitments, and transmission constraint penalty factors will allow market participants to assess and advocate for improvements to RTO/ISO practices in these areas. Therefore, we set forth transparency requirements for each RTO/ISO in this Final Rule.

5. We are adopting the transparency proposal in the Notice of Proposed Rulemaking (NOPR) [4] with the following modifications: (1) Change the permissible level of zonal aggregation for the Zonal Uplift Report; (2) change the timing of the release of the Resource-Specific Uplift Report from within twenty calendar days of the end of each month to within ninety calendar days from the end of each month; (3) change the timing of the release of the Operator-Initiated Commitment Report from four hours after the time of the commitment to within thirty calendar days of the end of each month; and (4) change the details to be reported about each operator-initiated commitment. These changes will help address concerns expressed by commenters related to the potential disclosure of commercially-sensitive information, the burden on RTOs/ISOs of meeting the requirements of this Final Rule, and the transparency value of consistent reporting.

6. The goals of the price formation proceeding are to: (1) Maximize market surplus for consumers and suppliers; (2) provide correct incentives for market participants to follow commitment and dispatch instructions, make efficient investments in facilities and equipment, and maintain reliability; (3) provide transparency so that market participants understand how prices reflect the actual marginal cost of serving load and the operational constraints of reliably operating the system; and (4) ensure that all suppliers have an opportunity to recover their costs.[5]

7. The reforms in this Final Rule primarily address the third price formation goal listed above. Uplift payments reflect the portion of the cost of reliably serving load that is not

[1] As described below, for the purpose of this rule, the Commission defines an operator-initiated commitment as a commitment after the day-ahead market for a reason other than minimizing the total production costs of serving load.

[2] Transmission constraint penalty factors are the values at which an RTO's/ISO's market software will relax the limit on a transmission constraint rather than continue to re-dispatch resources to relieve congestion associated with that constraint.

[3] 16 U.S.C. 824e.

[4] *Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators,* 82 FR 9539 (Feb. 7, 2017), FERC Stats. & Regs. ¶ 32,721, at P 82 (2017) (NOPR).

[5] *See, e.g., Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order Directing Reports, 153 FERC ¶ 61,221, at P 2 (2015) (Order Directing Reports); *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators,* Notice Inviting Post-Technical Workshop Comments, Docket No. AD14–14–000, at 1 (Jan. 16, 2015).

included in market prices. Operator-initiated commitments are made to preserve reliability and can affect both market prices and uplift. RTO/ISO practices associated with transmission constraint penalty factors, which establish the price level and cost of re-dispatch the RTO/ISO is willing to incur to relieve congestion on transmission constraints, can affect commitments and market prices. Improved transparency into these areas will enable market participants to better understand drivers of market prices and the extent to which prices reflect the true marginal cost of reliably serving load. As noted above, the uplift and operator-initiated commitment reports will also help market participants align their investments in facilities and equipment with the needs of the system, thus also addressing the second price formation goal. Finally, such investments, as well as market participants' enhanced ability to understand and suggest changes to RTO/ISO uplift and commitment practices, may ultimately shift some of the cost of serving load out of uplift and into market prices. Prices that more accurately reflect the cost of serving load have the potential to result in improved market efficiency and increased market surplus for consumers and suppliers, thus also addressing the first price formation goal. These benefits will help to ensure just and reasonable rates.

8. As discussed below, we require each RTO/ISO to submit a filing with the tariff changes needed to implement this Final Rule within 60 days of the Final Rule's effective date, and we require that tariff changes filed in response to this Final Rule become effective no more than 120 days after compliance filings are due.

9. Finally, in the NOPR the Commission also proposed to require that each RTO/ISO that currently allocates the costs of real-time uplift to deviations allocate such real-time uplift costs only to those market participants whose transactions are reasonably expected to have caused the real-time uplift costs. As discussed below, we withdraw the uplift cost allocation proposal and do not make any requirements related to uplift cost allocation in this Final Rule.

II. Background

10. In November 2015, the Commission issued an order that directed each RTO/ISO to report on five price formation topics: Fast-start pricing; managing multiple contingencies; look-ahead modeling; uplift allocation; and transparency.[6] The order directed each RTO/ISO to file a report providing an update on its current practices and any efforts to address issues in the five topic areas, and responding to specific questions contained in the order. In the reports filed and subsequent comments, RTOs/ISOs and commenters addressed the topic of transparency, which is the subject of this Final Rule.

11. In the instant proceeding, on January 19, 2017, the Commission issued a NOPR proposing reforms to improve uplift cost allocation and to enhance transparency. As noted above, we withdraw the proposed uplift cost allocation reforms. With respect to transparency, the NOPR proposed to require that each RTO/ISO: (1) Report total uplift payments for each transmission zone on a monthly basis, broken out by day and uplift category; (2) report total uplift payments for each resource on a monthly basis; (3) report the megawatts (MW) of operator-initiated commitments in or near real-time and after the close of the day-ahead market, broken out by zone and commitment reason; and (4) list in its tariff the transmission constraint penalty factors, the circumstances under which they can set LMPs, and the procedure by which they can be changed temporarily.[7] The Commission also requested comments on specific aspects of each requirement.[8]

A. Current RTO/ISO Practices

12. In the NOPR, the Commission reviewed the current transparency practices of each of the RTOs/ISOs,[9] based largely on the reports made by the RTOs/ISOs in response to the Commission's Order Directing Reports.[10] We do so again briefly in this Final Rule.

1. Reporting Uplift

13. All RTOs/ISOs report information about uplift payments. However, the extent of the information reported varies widely. For example, ISO–NE and NYISO provide monthly uplift reports that are generally aggregated across zones and over the month as well as daily uplift reports aggregated across their entire systems.[11] MISO provides a number of monthly reports to market participants on categories of uplift costs; the reports aggregate the uplift data by category and month, and provide historical monthly data for comparison.[12] MISO also posts a Revenue Sufficiency Guarantee[13] Report eight days after the operating day, which includes uplift payments by hour, category, and relevant transmission constraint.[14] CAISO aggregates uplift data to its 10 existing local capacity requirement areas and reports daily total uplift costs for each month by the market in which the uplift is incurred (*e.g.,* day-ahead or real-time), and by the type of costs incurred (*e.g.,* start-up costs, minimum load costs or energy bid costs).[15] PJM has recently adopted new rules to allow the reporting of daily uplift information by transmission zone within seven business days after the end of each month.[16] SPP reports uplift information by category with daily granularity.[17]

14. RTO/ISO reporting practices are driven, in part, by the time needed to complete the settlement process. For example, ISO–NE and PJM report some uplift information within three to five business days based on their initial settlement periods, while CAISO provides uplift cost information based on its 12-business-day recalculation statement.[18]

Because of this lag, RTOs/ISOs typically report uplift on a monthly basis, aggregated to a zonal or settlement area level.

15. Most RTOs/ISOs cite confidentiality issues as an additional reason for their current reporting practices, particularly in zones with few market participants.[19] Uplift

[6] Order Directing Reports, 153 FERC ¶ 61,221.

[7] NOPR, FERC Stats. & Regs. ¶ 32,721 at P 82.

[8] A list of commenters and the abbreviated names used for them in this Final Rule appears in the Appendix.

[9] NOPR, FERC Stats. & Regs. ¶ 32,721 at PP 59–66.

[10] Order Directing Reports, 153 FERC ¶ 61,221.

[11] ISO–NE Comments at 42; ISO–NE, Report on Price Formation Issues, Docket No. AD14–14, at 46–47 (ISO–NE Report); NYISO Comments at 5–6; NYISO, Report on Price Formation Issues, Docket No. AD14–14, at 56–57, 59 (NYISO Report).

[12] MISO, Report on Price Formation Issues, Docket No. AD14–14, at 59–60 (MISO Report).

[13] Revenue Sufficiency Guarantee is a type of uplift in MISO that ensures the recovery of the production and operating reserve costs of a resource that has been committed and scheduled by MISO in its day-ahead or real-time energy and operating reserve markets. *See* MISO, FERC Electric Tariff, 1.D, Definitions—D (45.0.0); 1.R, Definitions—R (48.0.0).

[14] MISO Comments at 11–12.

[15] *See* CAISO, Monthly Market Performance Report, *http://www.caiso.com/Pages/documentsbygroup.aspx?GroupID=A9180EE4-8972-4F3B-9CB8-21D0809B645E.* See also CAISO, Report on Price Formation Issues, Docket No. AD14–14, at 56 (CAISO Report).

[16] PJM, Business Practice Manual 33; PJM Comments at 11–12.

[17] SPP, Report on Price Formation Issues, Docket No. AD14–14, at 40 (SPP Report).

[18] CAISO Report at 58; ISO–NE Report at 64–65; PJM, Report on Price Formation Issues, Docket No. AD14–14, at 51 (PJM Report).

[19] ISO–NE Report at 61, 67; NYISO Report at 60–61; PJM Comments at 11; PJM Report at 48; SPP Report at 44.

information is typically aggregated to avoid publishing information on individual resources. All RTOs/ISOs assert that they are prohibited from publicly revealing resource-specific data, as specified in their confidentiality rules.[20] Some RTOs/ISOs note that they cannot provide information on a more granular basis without changes to their confidentiality rules or information policies.[21]

16. Some uplift information is publicly available. For example, all public utilities and certain non-public utilities are required to report uplift payments in the Commission's Electric Quarterly Report (EQR) within 30 days following the end of a quarter. Most EQR filers report uplift payments with at least daily granularity. Depending on the granularity provided by the filer, and whether the filer reports its EQR as a single resource, EQR uplift information can also sometimes identify a specific unit and its location. EQR contains a single ''uplift'' category which does not differentiate between different types of uplift (*e.g.,* day-ahead, voltage and local reliability). EQR information is available to the public via the Commission's website.

2. Reporting Operator-Initiated Commitments

17. RTOs/ISOs also vary in the amount, granularity, and timing of information that is reported on operator-initiated commitments. For example, CAISO, MISO, and NYISO provide information regarding operator-initiated commitments either shortly after the operating day or in near real-time. MISO reports the hourly aggregated economic maximum MWs of committed resources by commitment reason and relevant constraint in near real-time,[22] while CAISO reports the daily aggregated megawatt-hours of exceptional dispatches[23] (which include operator-initiated commitments) by reason several days after the operating day.[24] Throughout the operating day, NYISO posts operational announcements that provide information about individual operator-initiated commitments, including the units involved, level of unit commitment, and the reason for the commitment, with a reference to the relevant reliability rule, if applicable.[25]

18. In addition, all RTOs/ISOs provide summary reports of operator-initiated commitments over longer time periods. CAISO's monthly performance report provides metrics on exceptional dispatch and other operator actions organized by market (*i.e.,* day-ahead or real-time), trade date, reason, or local area.[26] CAISO also files a monthly report on the frequency and volume of exceptional dispatch, pursuant to directives in previous Commission orders.[27] ISO–NE publishes weekly, monthly, and quarterly reports that describe notable operational events, but it does not provide any information regarding the location or capacity of committed units.[28] ISO–NE also reports the number of units committed after the close of the day-ahead market (but not including real-time commitments) each day.[29] SPP reports monthly the MWs of operator-initiated commitments.[30]

19. PJM states that, although its confidentiality provisions prevent it from reporting individual operator-initiated commitments in real-time, it does provide regionally aggregated information on uneconomic commitments in the day-ahead market at the end of the business day. In addition, PJM posts total capacity committed during the Reliability Assessment and Commitment period to meet forecasted load and reserves, as well as resources committed for transmission constraints, voltage/reactive constraints, or conservative operations.[31] ISO–NE also states that its confidentiality provisions prohibit reporting of operator-initiated commitments in real-time.

3. Transmission Constraint Penalty Factors

20. Transmission constraint penalty factors are the values at which an RTO's/ISO's market software will relax the flow-based limit on a transmission element to relieve a constraint caused by that limit rather than re-dispatch resources to relieve the constraint. The cost of re-dispatching resources can be described as the re-dispatch price. Transmission constraint penalty factors represent the maximum re-dispatch price that the system will pay before allowing flows to exceed a given transmission element's limit.[32] The penalty factors are typically set at levels that are high enough to avoid relaxing constraints too frequently, but low enough to avoid extremely expensive re-dispatch solutions that are more expensive than the expected cost of exceeding a given transmission element's limit. Although these penalty factors can have significant impacts on prices, some RTOs/ISOs do not file the penalty factors with the Commission or make public any temporary changes to them. Specifically, PJM and ISO–NE do not include transmission constraint penalty factors in their respective tariffs, but the other RTOs/ISOs do.[33] Further, MISO is the only RTO/ISO that details in its tariff how transmission constraint penalty factors are changed temporarily.[34]

III. Need for Reform

21. In the NOPR, the Commission preliminarily found that some existing RTO/ISO practices of reporting uplift and operator-initiated commitments are insufficiently transparent and may result in unjust and unreasonable rates. Specifically, the Commission stated that, while all RTOs/ISOs provide some information regarding the locations and causes of uplift and operator-initiated commitments, the information is often highly aggregated or lacks detail. The Commission posed, as an example, reports that aggregate uplift payments over the month, which can obscure daily trends that allow market participants to evaluate the effectiveness of current operating practices of RTOs/ISOs. The Commission stated that this lack of transparency hinders the ability of market participants to plan and efficiently respond to system needs. The Commission reasoned that improving the availability of information about the location and causes of uplift and operator-initiated commitments could allow market participants to evaluate the need for and the value of investment in transmission and generation, as well as assess operator-initiated commitment practices and raise any issues of concern through the stakeholder process. The Commission posed, as an example, the scenario of releasing information about

[20] CAISO Report at 59; NYISO Report at 58; PJM Report at 50–51; SPP Report at 42; ISO–NE Report at 63–64; MISO Report at 58–59.

[21] PJM Report at 48; ISO–NE Report at 61.

[22] MISO Comments at 16–17.

[23] CAISO states that its system operator issues exceptional dispatches to resources to address system issues that cannot be addressed by the constraints modeled within the market. CAISO Report at 41.

[24] *See* CAISO, Daily Exceptional Dispatch Report, *http://www.caiso.com/market/Pages/DailyExceptionalDispatch/Default.aspx.*

[25] NYISO Comments at 8 & n.29; NYISO Report at 56–57 and n.32.

[26] CAISO Report at 56.

[27] *Id.* at 56. *See also Cal. Indep. Sys. Operator Corp.,* 131 FERC ¶ 61,100 (2010) (clarifying the reporting timeline for reporting exceptional dispatches).

[28] ISO–NE Report at 60.

[29] *Id.* at 61–62.

[30] SPP Report at 40.

[31] PJM Report at 49–50.

[32] Transmission constraint penalty factors create a cap on the shadow price of a transmission constraint. *See* Potomac Economics Comments, Docket No. AD14–14–000, at 20–21 (Feb. 24, 2015).

[33] CAISO, MRTU Tariff 27.4.3.1–27.4.3.2; MISO, FERC Electric Tariff, Schedule 28A; NYISO Tariffs, NYISO Markets and Services Tariff 1.20; SPP, OATT, Sixth Revised Volume No. 1, Attachment AE, 8.3.2, Addendum 1.

[34] MISO, FERC Electric Tariff, Schedule 28A; MISO Comments at 19.

uplift incurred to address a local reliability issue. This information, the Commission reasoned, could potentially incent market participants to advocate for changes to the RTO's/ISO's operational procedures or to undertake investments that could resolve the local reliability issue more efficiently. The Commission further reasoned that, by helping to incent appropriate market responses to system needs, increased transparency could improve market efficiency, and could ultimately reduce the level of uplift, thereby resulting in rates that are just and reasonable.[35]

22. The Commission also preliminarily found that a lack of transparency with respect to transmission constraint penalty factors may result in unjust and unreasonable rates. Specifically, the Commission stated this lack of transparency may make it difficult for market participants to hedge transactions appropriately or to effectively assess RTO/ISO changes to transmission constraint penalty factors and raise concerns through the stakeholder process.[36]

A. Comments

23. Several commenters agree with the Commission's preliminary finding in the NOPR that transparency reform is needed. Appian Way states that greater transparency will allow issues to be resolved more quickly and efficiently in the contexts of enforcement and stakeholder advocacy.[37] ELCON states that uplift payments and the reasons behind them are not currently transparent, and that transparency is essential no matter the size of the uplift or the cause.[38] ELCON cites analysis from an August 2014 Commission Staff paper that outlined the potential benefits of additional transparency.[39] Competitive Suppliers state that they strongly support the proposed transparency provisions, and assert that increased transparency could lead to reductions in uplift.[40] R Street Institute states that price formation visibility in energy and ancillary services markets is very important for efficient market functionality and comments that each of the Commission's proposed requirements is reasonable.[41] Exelon notes that transparency around uplift and the actions that cause uplift is an important step to minimizing system uplift costs, and that by allowing visibility into the causes, location, and frequency of uplift payments, market participants will have the information necessary to advocate effectively for improvements to the RTO/ISO operational procedures and market rules and, more importantly, to discover and invest in cost-saving opportunities.[42] Financial Marketers Coalition state that transparency is critical to a well-functioning organized market because it is the key to proper price signals.[43]

24. Several commenters express general support for the proposed transparency reforms, but do not comment in-depth on the need for reform.[44] Several other commenters acknowledge a need for reform, but are reserved in expressing support. APPA and NRECA state that they have long supported additional transparency in the RTO/ISO markets and do not oppose the proposed requirements, but they caution the Commission not to overstate any potential outcomes, such as incenting market participants to advocate for changes to operational procedures or incenting investments. They add, however, that there is still value in making the information available.[45] MISO Transmission Owners state that enabling market participants to gain additional information regarding the causes, frequency, and costs of out-of-market actions and associated uplift costs will enhance market efficiency.[46] But they strongly oppose requiring reporting of resource-specific information related to uplift payments, stating that such reporting would have an anti-competitive effect on the market, and would work counter to the Commission's transparency goals articulated in the NOPR.[47] Potomac Economics states that, in general, it supports transparency. However, Potomac Economics asserts that immediate release of uplift information is not important for transparency because uplift is a settlement process.[48] Several commenters raise concerns about other specific elements of the proposal but do not generally oppose the proposed transparency requirements.[49]

25. CAISO states that it supports greater market transparency but argues that its existing reporting practices on uplift payments and exceptional dispatch provide sufficient transparency, and that additional reporting would be overly burdensome and problematic for CAISO.[50]

26. The Commission also proposed in the NOPR to require that each RTO/ISO that currently allocates the costs of real-time uplift to deviations allocate such real-time uplift costs only to those market participants whose transactions are reasonably expected to have caused the real-time uplift costs. Although some commenters support the proposed uplift allocation reforms,[51] others broadly oppose the proposed reforms.[52] Still others, while not expressing outright opposition, raise significant concerns about whether a generic approach to the issue is merited, or find flaws in major elements of the uplift allocation proposal.[53]

B. Determination

27. Based on our analysis of the record in this proceeding, we adopt the preliminary findings related to transparency in the NOPR and conclude that the existing RTO/ISO practices of reporting uplift, operator-initiated commitments, and transmission constraint penalty factors are insufficiently transparent, resulting in rates that are unjust and unreasonable. We find that the current reporting on uplift is insufficient because no RTO/ISO currently reports uplift on a resource-specific basis. Some RTOs/ISOs do not report uplift by zone, and some do not report in a machine-readable format. Additionally, reporting on operator-initiated commitments is insufficient because some RTOs/ISOs do not report the reasons for these commitments, the zones in which the

[35] NOPR, FERC Stats. & Regs. ¶ 32,721 at PP 77–79.

[36] *Id.* P 80.

[37] Appian Way Comments at 1, 8.

[38] ELCON Comments at 4.

[39] *Id.* at 10 (citing FERC, *Staff Analysis of Uplift in RTO and ISO Markets,* Docket No. AD14–14, at 28 (2014), *https://www.ferc.gov/legal/staff-reports/2014/08-13-14-uplift.pdf* (Staff Analysis of Uplift)).

[40] Competitive Suppliers Comments at 8.

[41] R Street Institute Comments at 5–6.

[42] Exelon Comments at 9.

[43] Financial Marketers Coalition Comments at 36–37.

[44] Golden Spread Comments at 11–12; MISO Comments at 2; NYISO Comments at 5, 12; PJM Comments at 11; PJM Market Monitor Comments at 9; Potomac Economics Comments at 11, 13; SPP Market Monitor Comments at 3.

[45] APPA and NRECA Comments at 12–13.

[46] MISO Transmission Owners Comments at 5.

[47] *Id.* at 6–11.

[48] Potomac Economics Comments at 11.

[49] EEI Comments at 6–10; ISO–NE Comments at 42; PJM Market Monitor Comments at 9; SPP Comments at 4–5.

[50] CAISO Comments at 2–3.

[51] *See, e.g.,* Appian Way Comments at 3–7; Direct Energy Comments at 1–10; Diversified Trading/eXion Energy Comments at 4–5; EEI Comments at 3–6; ELCON Comments at 5–9; Financial Marketers Coalition Comments at 17–36; Golden Spread Comments at 6–10; MISO Transmission Owners Comments at 5; Potomac Economics Comments at 3–10; XO Energy Comments at 3–53; R Street Institute Comments at 2–4.

[52] *See, e.g.,* CAISO Comments at 3–10; Calpine Comments at 2–7; ISO–NE Comments at 4–41; PJM Comments at 2–10; PJM Market Monitor Comments at 1–9; SPP Comments at 2–3; SPP Market Monitor Comments at 2–3.

[53] *See, e.g.,* CAISO Market Monitor Comments at 1–10; Exelon Comments at 4–7; IRC Comments at 2–6; PG&E Comments at 3–6; TAPS Comments at 2–8.

commitments are made, or information about the size of the system needs for which resources are committed. Finally, some RTOs/ISOs do not include transmission constraint penalty factor values in their tariffs, and most do not include practices related to the use of transmission constraint penalty factors in their tariffs. This Final Rule will remedy these deficiencies and is therefore necessary to achieve a level of transparency that will result in just and reasonable rates.

28. As described above, the transparency proposal received a broad level of support from commenters. CAISO is the singular commenter to oppose the proposed transparency reforms outright. CAISO states that its reporting practices are sufficient and that the burden of additional reporting would outweigh the benefits of the proposed reforms. As explained below, we disagree that existing transparency practices are sufficient. We do, however, modify the proposed transparency requirements to reduce the potential burden of the reforms and to address commenters' other concerns including the potential disclosure of commercially-sensitive information and the transparency value of consistent reporting. These modifications are discussed below in the subsections dealing with each requirement.

29. Based on our analysis of the record in this proceeding, we decline to adopt the preliminary finding related to uplift cost allocation in the NOPR. We continue to believe that uplift should ideally be allocated to those market participants whose transactions caused the uplift and that allocations of uplift costs should avoid penalizing behavior that can improve price formation. That said, some commenters raised substantial concerns about the uplift cost allocation reforms proposed in the NOPR. They expressed concern about the application of the NOPR proposal to certain RTOs/ISOs in light of the reasons for uplift in these markets, and whether certain RTOs/ISOs would be able to implement the generic uplift cost allocation reforms proposed in the NOPR. We find those concerns sufficiently persuasive to decline to take generic action at this time. Accordingly, we withdraw the NOPR proposal to require that each RTO/ISO that currently allocates the costs of real-time uplift to deviations allocate such real-time uplift costs only to those market participants whose transactions are reasonably expected to have caused the real-time uplift costs.

IV. Transparency Reforms

30. Having concluded that the existing transparency practices result in rates that are not just and reasonable, section 206 of the Federal Power Act requires that the Commission determine the practices that will result in rates that are just and reasonable.[54] We direct each RTO/ISO to establish in its tariff the following three requirements related to uplift reporting and one requirement related to transmission constraint penalty factors.

31. Each RTO/ISO must post a monthly Zonal Uplift Report of all uplift, paid in dollars, and categorized by transmission zone, day, and uplift category. We define transmission zone as a geographic area that is used for the local allocation of charges, such as a load zone that is used to settle charges for energy. Transmission zones with fewer than four resources may be aggregated with one or more neighboring transmission zones, until each aggregated zone has at least four resources, and reported collectively. This report must be posted in machine-readable format on a publicly-accessible portion of the RTO's/ISO's website within 20 calendar days of the end of each month.

32. Each RTO/ISO must post a monthly Resource-Specific Uplift Report containing the resource name and total amount of uplift paid in dollars aggregated across the month to each resource that received uplift payments. This report must be posted in machine-readable format on a publicly-accessible portion of the RTO's/ISO's website within 90 calendar days of the end of each month.

33. Each RTO/ISO must post a monthly Operator-Initiated Commitment Report listing the commitment size, transmission zone, commitment reason, and commitment start time of each operator-initiated commitment. We define an operator-initiated commitment as a commitment made after the day-ahead market for a reason other than minimizing the total production costs of serving load. Commitment reasons shall include, but are not limited to, system-wide capacity, constraint management, and voltage support. This report must be posted in machine-readable format on a publicly accessible portion of the RTO's/ISO's website within 30 calendar days of the end of each month.

34. Each RTO/ISO must follow the Transmission Constraint Penalty Factor requirements to include, in its tariff, its transmission constraint penalty factor values; the circumstances, if any, under which the transmission constraint penalty factors can set LMPs; and the procedure, if any, for temporarily changing the transmission constraint penalty factor values. Any procedure for temporarily changing transmission constraint penalty factor values must provide for notice of the change to market participants as soon as practicable.

35. The Zonal Uplift Report is discussed in section IV.A. The Resource-Specific Uplift Report is discussed in section IV.B. The Operator-Initiated Commitment Report is discussed in section IV.C. The Transmission Constraint Penalty Factor Requirements are discussed in section IV.D.

A. Zonal Uplift Report

1. NOPR Proposal

36. In the NOPR, the Commission proposed to require each RTO/ISO to post a report of the uplift paid in dollars and categorized by transmission zone, day, and uplift category. The Commission proposed to define transmission zone as the geographic area that is used for the local allocation of charges. The Commission proposed to allow transmission zones with fewer than four resources to be aggregated with a neighboring zone and reported collectively. The Commission further proposed to allow RTOs/ISOs to omit a transmission zone from reporting in a given month if it is the only zone and contains fewer than four resources or if, when combined with a neighboring transmission zone, the combined zones still have fewer than four resources. The Commission proposed to require that each RTO/ISO post the report on a publicly accessible portion of its website within 20 calendar days of the end of each month.[55]

37. The Commission reasoned that with more granular information on locations, amounts, and types of uplift, market participants would be able to better evaluate possible solutions to reduce the incurrence of uplift.[56] In proposing to allow RTOs/ISOs to aggregate and collectively report transmission zones with fewer than four resources and to exempt from reporting aggregated zones with fewer than four resources, the Commission sought to balance the benefits of greater transparency with concerns about the potential disclosure of commercially-

[54] 16 U.S.C. 824e.

[55] NOPR, FERC Stats. & Regs, ¶ 32,721 at Regulatory Text.

[56] *Id.* P 84.

sensitive information.[57] In proposing a 20-day maximum reporting lag, the Commission sought to allow RTOs/ISOs sufficient time to prepare uplift data for publication after completion of their settlement windows, which vary among RTOs/ISOs.[58]

38. The Commission requested comments regarding: (1) The proposed definition of transmission zone, including the appropriate level of geographic granularity; [59] (2) the timeframe for releasing the report after the end of each month; [60] and (3) the proposed requirement for a daily breakdown of uplift categories by charge code, including any difficulties related to such reporting and whether different categorizations would be more useful.[61]

2. Comments

39. Numerous commenters support the proposed requirement for RTOs/ISOs to report daily uplift payments by transmission zone and uplift category.[62] ELCON asserts that uplift payments inherently lack transparency because they are not included in market prices, and that increased information could promote the identification of system needs and facilitate investment.[63] Designated Marketers state that market participants lack information necessary to invest in generation, transmission, or demand response that could prevent uplift.[64] Diversified Trading/eXion Energy, Exelon, and Golden Spread all argue that additional information on the causes of uplift will also allow market participants to evaluate RTO/ISO uplift practices and raise concerns through stakeholder processes.[65] While sympathetic to confidentiality concerns, Competitive Suppliers assert that each RTO/ISO can provide more information on the causes of uplift, and point to NYISO's reporting practices as an example demonstrating that increased transparency can be achieved without compromising confidentiality.[66] Competitive Suppliers and Financial Marketers Coalition assert that the proposed uplift report will ensure consistent disclosure of uplift information among RTOs/ISOs.[67]

40. Other commenters either do not support the proposed zonal uplift report requirement [68] or state that they support the goals of improved transparency into RTO/ISO uplift costs but raise concerns about specific elements of the proposed report,[69] as discussed below.

a. Zonal Definition

41. Responding to the Commission's request for comment on the proposed definition of ''transmission zone'' as a geographic area that is used for the local allocation of charges,[70] several RTOs/ISOs provide descriptions of the geographic granularity of their current reporting. ISO–NE states that it reports uplift based on how costs are allocated: Uplift allocated at the system level is reported on a system-wide basis; uplift allocated regionally is reported regionally. ISO–NE states that it also reports uplift by Reliability Region, which are equal to load zones used in energy settlement. ISO–NE believes it complies with the NOPR proposal, but requests that the Commission clarify that RTOs/ISOs may propose to report uplift costs for regions that differ from ''transmission zone,'' if appropriate.[71] PJM states that it currently reports uplift by transmission zone and supports the proposed definition as long as it can use its current zones.[72] MISO states that it reports uplift differently depending on the uplift category. For uplift incurred to manage transmission constraints, MISO reports by constraint. MISO reports voltage and local reliability uplift by transmission interface and MISO region (*i.e.,* North, South, and Central). MISO argues that a lesser degree of geographic granularity is appropriate to mask ''transmission zones'' with few market participants. MISO states that it supports the proposed definition.[73] NYISO notes that it allocates uplift by Transmission District subzones.[74]

42. Other commenters generally differ on the level of geographic granularity that should be reported. MISO Transmission Owners state that the proposed definition of ''transmission zone'' is unclear and could be susceptible to multiple interpretations. MISO Transmission Owners assert that the Commission should direct each RTO/ISO to develop a definition of transmission zone through its stakeholder process that considers regional needs and ensures that all zones are large enough to ensure that resource-specific uplift payments cannot be calculated based on daily uplift payment reports.[75] Several commenters argue for more granular reporting.[76] R Street Institute states that uplift reporting at the sub-zonal level would be useful because causes can vary within a zone, particularly with respect to transmission congestion, but notes that more granular reporting may lead to confidentiality concerns and opportunities for collusion.[77] XO Energy argues that the uplift data should be as granular as possible and that aggregation into large regions is not as useful.[78] Competitive Suppliers assert that the Commission's proposed reporting by transmission zone should allay any confidentiality concerns.[79]

43. Commenters also differ on the proposal to allow RTOs/ISOs to aggregate and collectively report uplift in transmission zones with fewer than four resources.[80] NYISO supports the Commission's proposal to allow RTOs/ISOs to aggregate zones because the reporting of daily uplift payments by zone could, under some circumstances, allow competitors to deduce a resource's operating costs and gain a competitive advantage. However, NYISO seeks clarification on whether the rule references the total number of resources in the zone or the total number of resources in the zone that receive uplift payments in a given day.[81] MISO Transmission Owners and NYISO argue that the aggregation should be based on the number of resources receiving uplift in order to protect confidentiality and avoid anti-competitive behavior concerns.[82] MISO

[57] *Id.* PP 87–89.

[58] *Id.* P 88.

[59] *Id.* P 85.

[60] *Id.* P 86.

[61] *Id.* P 86.

[62] Appian Way Comments at 8; AWEA Comments at 10; Brookfield Comments at 2; Calpine Comments at 8; Competitive Suppliers Comments at 9; Designated Marketers Comments at 5; Direct Energy Comments at 10; Diversified Trading/eXion Energy Comments at 5; ELCON Comments at 9–10; Exelon Comments at 9; Financial Marketers Coalition Comments at 38; Golden Spread Comments at 11–12; PJM Comments at 11; PJM Market Monitor Comments at 9; R Street Institute Comments at 5; SPP Market Monitor Comments at 3; TAPS Comments at 8; XO Energy Replacement Comments at 1, 34.

[63] ELCON Comments at 9.

[64] Designated Marketers Comments at 5.

[65] Diversified Trading/eXion Energy Comments at 5; Exelon Comments at 9; Golden Spread Comments at 12.

[66] Competitive Suppliers Comments at 9.

[67] *Id.* at 9; Financial Marketers Coalition Comments at 38.

[68] CAISO Comments at 12–13.

[69] EEI Comments at 6; MISO Transmission Owners Comments at 5–6; NYISO Comments at 5.

[70] NOPR, FERC Stats. & Regs. ¶ 32,721 at P 85.

[71] ISO–NE Comments at 42–43.

[72] PJM Comments at 11.

[73] MISO Comments at 11–12.

[74] NYISO Comments at 6. NYISO explains that ''subzones'' are identified by investor-owned transmission owner service territories within each load zone, which can span more than one load zone.

[75] MISO Transmission Owners Comments at 11–12.

[76] Financial Marketers Coalition Comments at 39; R Street Institute Comments at 5; XO Energy Replacement Comments at 34.

[77] R Street Institute Comments at 5.

[78] XO Energy Replacement Comments at 34.

[79] Competitive Suppliers Comments at 9.

[80] NOPR, FERC Stats. & Regs. ¶ 32,721 at P 89.

[81] NYISO Comments at 6–7.

[82] MISO Transmission Owners Comments at 12; NYISO Comments at 7.

Transmission Owners also note that the Commission did not explain why four is the appropriate number of resources on which to base the aggregation.[83] PJM and the PJM Market Monitor oppose the proposal to aggregate zones with fewer than four resources because the number of resources in a zone that receive uplift could change from month to month, resulting in inconsistent reporting, increased complexity, and decreased transparency.[84] PJM asserts that its current practice of reporting by zone, even if only one resource in a zone receives uplift, provides sufficient transparency while protecting market sensitive information.[85] EEI seeks clarification as to whether, for aggregation purposes, a resource is defined as an individual unit within a plant or the entire plant, noting that the former definition may not provide sufficient confidentiality under certain circumstances.[86]

b. Categories

44. As noted above, numerous commenters provide general support for the proposed zonal uplift report, including the proposed requirement to report by uplift category. Three RTOs/ISOs state that they already report uplift by category. NYISO states that it reports uplift cost on a monthly basis by uplift cost category in its Operations Performance Metrics Monthly Reports.[87] MISO states that its Revenue Sufficiency Guarantee Report already breaks out uplift payment by category, which includes certain charge types as long as any market participant specific data is not apparent. MISO requests that the Commission consider the risks of unmasking aggregate data when contemplating a final rule requiring a daily breakdown of uplift categories by charge code.[88] ISO–NE states that its existing reports break out costs for its established uplift categories and therefore believes that it would comply with this provision.[89] PJM seeks clarification on the definition of charge code. PJM states that it currently indicates market participants' uplift charges by billing line item, and that if this is what the Commission means by ''charge code,'' it does not object to continuing this practice.[90] Brookfield states that uplift categories based on the cause for committing units out-of-merit would help identify market reforms to reduce the need for uplift payments.[91] XO Energy asserts that aggregating data into large categories reduces its usefulness.[92]

c. Timing and Burden

45. Several RTOs/ISOs discuss their existing uplift reporting practices and timing, as well as the level of additional burden that would be required to meet the proposed requirements. ISO–NE states that its existing reports appear to satisfy most of the proposed requirements and that implementation of any new requirements should be relatively simple. ISO–NE believes that 20 days is sufficient time for monthly uplift reporting.[93] NYISO states that while it already reports uplift costs by category on a monthly basis, it would need to revise its processes for developing and posting its report, including posting in a machine-readable format.[94] MISO states that its daily uplift report that is posted eight days after the operating day and broken out by hour, category, and transmission constraint provides sufficient information on areas that need transmission upgrades and supply resources.[95] PJM states that its current uplift reports provide more details, such as totals by type of uplift credit, than those proposed by the Commission and are posted within seven business days of the end of each month. PJM consequently requests, and Calpine concurs, that it may continue to post the additional details and that the proposed timeline be a minimum standard.[96] CAISO states that it already provides significant transparency on uplift payments on a monthly basis. CAISO argues that the proposed requirements would be costly to implement and could interfere with other initiatives. CAISO further asserts that the proposed requirement to post uplift payment data within 20 days of the end of the month is unreasonable, given CAISO's existing reporting requirements and the verification necessary to ensure accurate reporting. CAISO requests that, if the Commission were to impose these reporting requirements, it be allowed to include the requested information in the monthly reports it already produces and posts at the end of the month following the month of reported data.[97]

46. XO Energy responds to several of CAISO's arguments. It notes that CAISO's current uplift reports contain only charts, with no mechanism to extract the raw data.[98] XO Energy generally asserts that uplift should be reported at the same time it is settled and specifically points out that CAISO settles uplift three days after the operating day, and therefore should be able to post the uplift data within 20 days of the end of the month.[99] XO Energy suggests that if the proposed detailed reports are too time-consuming to produce quickly, RTOs/ISOs should post a simple spreadsheet on their website while their systems are being updated.[100]

d. Other Issues

47. Direct Energy requests that the Commission clarify that the transparency provisions apply to all uplift costs, not just those resulting in allocations to deviations from day-ahead schedules.[101]

48. EEI and MISO Transmission Owners assert that the proposed report would primarily benefit market participants, so in order to protect market participants' confidentiality, the information should be posted on a password-protected portion of an RTO's/ISO's website, rather than made publicly available.[102] Designated Marketers, on the other hand, support the proposed requirement that RTOs/ISOs post the uplift information in a machine-readable format on an accessible portion of the RTO/ISO website. Designated Marketers argue that information that is not machine-readable can reduce transparency by inhibiting data processing and may disadvantage those that do not have access to electronic versions of the data through other channels.[103]

49. Exelon suggests that, in addition to the proposed reporting requirements, the Commission also require RTOs/ISOs to submit a one-time report covering the years 2012 through 2016 that identifies uplift categories and provide the aggregate uplift cost associated with each category.[104]

3. Determination

50. We adopt the proposal that each RTO/ISO report, in the Zonal Uplift Report, the total daily uplift payments

[83] MISO Transmission Owners Comments at 12.

[84] PJM Comments at 12; PJM Market Monitor Comments at 9–10.

[85] PJM Comments at 12.

[86] EEI Comments at 8.

[87] NYISO Comments at 6.

[88] MISO Comments at 11.

[89] ISO–NE Comments at 42.

[90] PJM Comments at 12.

[91] Brookfield Comments at 2.

[92] XO Energy Replacement Comments at 34.

[93] ISO–NE Comments at 43.

[94] NYISO Comments at 5–6.

[95] MISO Comments at 11.

[96] Calpine Comments at 8; PJM Comments at 13.

[97] CAISO Comments at 12–13.

[98] XO Energy Reply Comments at A–2.

[99] XO Energy Replacement Comments at 34; XO Energy Reply Comments at A–3.

[100] XO Energy Replacement Comments at 34.

[101] Direct Energy Comments at 10.

[102] EEI Comments at 7; MISO Transmission Owners Comments at 13.

[103] Designated Marketers Comments at 8.

[104] Exelon Comments at 9–10.

in dollars in each category paid to the resources in each transmission zone, subject to modifications and clarifications discussed below. We find that current RTO/ISO practices do not provide sufficient transparency regarding uplift payments. Because uplift payments are not included in publicly available market prices, they inherently lack transparency and must be reported separately to show the cost of serving load and maintaining a reliable electric system. As stated in the NOPR, access to information on uplift payments may allow market participants to evaluate possible solutions to reduce the incurrence of uplift.[105] We find that the basis for this requirement, as outlined in the NOPR, remains compelling. The Zonal Uplift Report will provide granular information about the location, timing, and causes of uplift. Such information will facilitate more informed stakeholder discussions that support planning processes, improve the ability of market participants to raise concerns with RTO/ISO uplift payments, and support cost-effective solutions to system needs by allowing market participants to make more informed investment decisions. Over the long term, improved RTO/ISO practices and additional investment may lead to reduced uplift payments and increased market efficiency. PJM's recent report summarizing market outcomes during the December 28, 2017–January 7, 2018 cold snap provides an example of timely reporting of uplift cost information. PJM's report identifies uplift cost by category, by day, and by resource type, identifying the days when specific uplift categories were greatest.[106] PJM uses these data to suggest potential areas for improvement. We note that the report was issued February 26, 2018, less than two months after the end of the cold weather events. The uplift data provided in the report, which is consistent with the data required in this Final Rule, illustrates the type of information that market participants and interested stakeholders could use to understand how RTO/ISO markets operate during stressful system conditions and provide a basis for a stakeholder discussion about potential market reforms. The requirements of this Final Rule will ensure that market participants have access to uplift information in a consistent format on an ongoing basis.

51. We address commenters' concerns regarding the Zonal Uplift Report below.

52. We adopt the definition proposed in the NOPR of ''transmission zone'' as a geographic area that is used for the local allocation of charges, such as a load zone that is used to settle charges for energy. We find that this level of geographic reporting will improve transparency by providing more specific information about the location of system needs. For instance, understanding that a particular category of uplift is concentrated in a limited area could provide information about the nature of the reliability need or could inform discussions about uplift cost allocation.

53. Some commenters argue that RTOs/ISOs should be permitted to define transmission zones more broadly because daily uplift payments in combination with other public information could be used to derive a resource's energy offer or cost information, which some characterize as confidential because it is commercially sensitive. Commenters assert that the revelation of cost or offer data could lead to collusion or gaming. We recognize that it may be possible, under specific circumstances, to deduce an individual resource's daily uplift payments by using the information provided in the Zonal Uplift Report and Resource-Specific Uplift Report. For instance, if the Resource-Specific Uplift Report makes clear that only one resource within a zone has received uplift during a given month, and if that resource has only one generating unit, then the Zonal Uplift Report would reveal the resource's daily uplift payments. This information could be used with knowledge of the resource's output and publicly-available data on LMPs to estimate the resource's energy offer or cost.[107] We understand commenters' concern to be that if a resource's offer or costs are revealed, another resource owner could increase its own offer above its costs in a manner that would be inconsistent with a competitive market.

54. Out of an abundance of caution and as discussed below, we delay the timing of Resource-Specific Uplift report to allow a 90-day time lag in releasing the Resource-Specific Uplift Report[108] to reduce the likelihood that the information could be used to harm competition or individual market participants. We also point out that additional transparency may deter collusion and gaming and provide a means for anti-competitive behavior to be identified and addressed more quickly. As commenters suggest, market participants may use the information provided by the reports to call attention to potential market issues.

55. In the NOPR, we recognized that RTOs/ISOs may have very small transmission zones, and sought to balance the benefits of greater transparency with concerns about revealing daily resource-specific uplift information by (1) allowing RTOs/ISOs to aggregate any transmission zone containing fewer than four resources with a neighboring zone and report them collectively, and (2) exempting from reporting any combined transmission zone with fewer than four resources.

56. In response to comments, we clarify that any aggregation should be based on the number of resources located in the zone rather than the number of resources in the zone that receive uplift payments in a given reporting period. As noted by PJM and the PJM Market Monitor, aggregating based on the number of resources that receive uplift payments could lead to different zonal aggregations from month to month and inconsistent zonal reporting, which would add complexity and reduce transparency.[109] Aggregation based on the number of resources located in a zone will ensure a consistent zonal definition from month-to-month, which we would only expect to change with the addition or retirement of resources. We find that aggregating transmission zones to achieve a minimum of four resources addresses concerns that individual resource uplift payments could be deduced from the report. We reason that if a zone has at least four resources, there will be enough possibilities of which resource or resources received uplift that it will be unlikely that the Zonal Uplift Report alone will reveal individual resources' uplift payments.

57. We also clarify that, for the purpose of zonal aggregation, the term ''resource'' refers to an entire generating facility and not each individual unit within a plant. We agree with EEI that if a transmission zone contained, for example, a single power plant with four units, aggregation with a neighboring

[105] NOPR, FERC Stats. & Regs. ¶ 32,721 at PP 78, 84.

[106] PJM, *PJM Cold Snap Performance, Dec. 28, 2017 to Jan. 7, 2018,* 27–30 (Feb. 26, 2018), *http://www.pjm.com/-/media/library/reports-notices/weather-related/20180226-january-2018-cold-weather-event-report.ashx* (PJM Cold Snap Performance Report).

[107] We note that such estimates may be imprecise, as they would likely rely on additional assumptions such as the relative values of the start-up, no-load or minimum load, and incremental energy components of the resource's offer.

[108] In the NOPR, we proposed to require a 20-day lag for both uplift reports. As discussed below, we modify the lag to 90 days for the Resource-Specific Uplift Report.

[109] PJM Comments at 12; PJM Market Monitor Comments at 10.

zone would be necessary to avoid the possibility that the zonal uplift report alone could reveal the plant's daily uplift payments.

58. We also modify the permissible level of aggregation. The proposal in the NOPR to allow a transmission zone with fewer than four resources to be aggregated with a single neighboring zone and to exempt from the reporting requirement any aggregated zone that still contains fewer than four resources could result in a zone that is permanently exempted from reporting, in light of the clarification above. Instead, we will allow RTOs/ISOs to aggregate transmission zones containing fewer than four resources with *one or more* neighboring zones in such a manner that all aggregated zones have at least four resources. Allowing such aggregation obviates the need for any aggregated zone to be exempted from the reporting requirement. This modification preserves the intended protections of the aggregation proposed in the NOPR while closing a potential reporting gap.

59. On balance, our definition of transmission zone and the associated aggregation protections provide the transparency benefits of geographically granular uplift information while minimizing the risk of harm to the market from the potential disclosure of commercially-sensitive information. However, we acknowledge that RTOs/ISOs may have multiple existing types of zones that could meet our definition. On compliance, we require each RTO/ISO to include in its tariff the type of zone that it proposes to use in its Zonal Uplift Report and explain how the chosen type of zone meets the definition of transmission zone adopted in this Final Rule, as well as explain any proposal to aggregate transmission zones that fits the characteristics described above. While our definition of transmission zone provides RTOs/ISOs a level of flexibility, we note that transmission zones are defined as areas that are used for the *local* allocation of charges; therefore, we expect each RTO/ISO to propose transmission zones that provide an appropriate level of geographic granularity.

60. We adopt the NOPR proposal to require the reporting of zonal uplift by category. As noted above, numerous commenters express support for this proposal, and several RTOs/ISOs already report such information. Reporting the causes of uplift in each transmission zone on each day will help market participants understand the relationship between system conditions, location, and reasons that uplift is incurred. Market participants will therefore be better equipped to raise concerns about RTO/ISO uplift payments and direct appropriate infrastructure investment to reduce the need for a given type of uplift payment. No commenters opposed including categories in the Zonal Uplift Report. As mentioned in the NOPR, we expect the categories to be based on the RTO/ISO uplift charge codes.[110] For RTOs/ISOs that do not use the term ''charge codes,'' we clarify that ''charge codes'' refers to individual charges for settlement purposes. We expect that basing uplift categories on existing charge codes will ease the potential reporting burden on RTOs/ISOs.

61. With respect to timeliness of reporting, we adopt the NOPR proposal to require that each RTO/ISO post this Zonal Uplift Report within 20 calendar days of the end of the month. However, in response to CAISO's concern on this issue, on compliance we will consider proposals with longer timelines if an RTO/ISO demonstrates that the 20-day deadline does not provide an RTO/ISO with sufficient time to compile the report given its existing uplift settlement and reporting timelines.

62. Regarding other issues raised by commenters with respect to this report, in response to Direct Energy we confirm that RTOs/ISOs must report all uplift payments to resources and not just those resulting from deviations from day-ahead schedules in both the Zonal Uplift Report and the Resource-Specific Uplift Report. We also confirm that RTOs/ISOs may choose to report more information and/or to report more promptly. We adopt the NOPR proposal to require each RTO/ISO to publish the two uplift reports, the Zonal Uplift Report and the Resource-Specific Uplift Report, in a machine-readable format on a publicly accessible, rather than password-protected, portion of its website. As discussed above, we are not persuaded that the potential revelation of a resource's uplift payments, subject to the discussed protections, would result in harm to competition or to market participants. Moreover, while we have discussed the benefits in the context of existing market participants, we find that other stakeholders such as third-party researchers, potential future market participants, and ratepayers may also benefit from public availability of this data. Finally, while we recognize the potential transparency benefits of the historical uplift report requested by Exelon, we find that it goes beyond the scope of this rulemaking and decline to require it here.

[110] NOPR, FERC Stats. & Regs. ¶ 32,721 at P 86.

B. Resource-Specific Uplift Report

1. NOPR Proposal

63. In the NOPR, the Commission proposed to require each RTO/ISO to post a monthly report containing the resource name and total amount of uplift paid in dollars aggregated across the month to each resource that received uplift payments. The Commission proposed to require that the report be posted on a publicly-accessible portion of each RTO's/ISO's website within 20 calendar days of the end of each month.[111]

64. The Commission reasoned that with more granular information on the location and amounts of uplift, market participants may be able to better evaluate possible solutions to reduce the incurrence of uplift.[112] The Commission sought to mask daily uplift payments by requiring that resource-specific uplift payment data be aggregated across the month.[113]

65. The Commission requested comments on: (1) Whether these resource-specific reports should also be broken out by uplift category, be reported using a different time duration, or contain other additional details;[114] and (2) whether 20 calendar days after the end of the month was a reasonable timeframe for releasing the information.[115]

2. Comments

66. Many commenters generally support[116] or state that they are not opposed[117] to the NOPR proposal for a resource-specific monthly report. Appian Way notes that some RTOs/ISOs have indicated that most uplift costs are attributed to a few units, and that the Commission's Office of Enforcement has brought cases alleging inflated uplift costs for certain units. Appian Way believes that improved transparency into which units receive uplift would allow market participants to advocate for solutions and call attention to these

[111] *Id.* at Regulatory Text.

[112] *Id.* P 84.

[113] *Id.* P 89.

[114] *Id.* P 83.

[115] *Id.* P 86.

[116] Appian Way Comments at 8; AWEA Comments at 10; Brookfield Comments at 2; Calpine Comments at 8; Designated Marketers Comments at 5–6; Direct Energy Comments at 10; Diversified Trading/eXion Energy Comments at 5; Exelon Comments at 9; Financial Marketers Coalition Comments at 39; Golden Spread Comments at 11–12; NYISO Comments at 5; PJM Market Monitor Comments at 10; R Street Institute Comments at 5; TAPS Comments at 8; XO Energy Replacement Comments at 34.

[117] ISO–NE Comments at 43; PJM Comments at 11.

issues more quickly and efficiently.[118] Golden Spread similarly argues that the more information that is available to all market participants, and not just market operators, the faster market imperfections can be removed.[119] Brookfield and Exelon state that more granular and comprehensive data would help market participants identify and address root causes of uplift.[120] Financial Marketers Coalition agree that if details on uplift payments are not presented, it is unlikely uplift drivers will be identified and displaced through competition.[121] Similarly, XO Energy agrees that the usefulness of data will be reduced if it is aggregated.[122]

67. On the other hand, MISO and MISO Transmission Owners assert that the benefits of the resource-specific report are unclear. MISO Transmission Owners state the Commission does not explain why resource-level information is necessary and why the other transparency reforms are insufficient to meet the Commission's goals. Moreover, they contend market participants do not need to know resource-level information to understand RTO/ISO actions and react properly to them.[123] MISO Transmission Owners point out that market monitors can use confidential data to propose fixes for market design flaws.[124] MISO similarly asserts that it is unnecessary to disclose resource-specific uplift information beyond its current processes. MISO and MISO Transmission Owners assert that the value of publicly disclosed information may be outweighed by its risk of harm to the markets.[125] MISO Transmission Owners argue that continuing to require public utilities to report uplift payments in EQR while also implementing this proposal would provide no additional benefit and would be duplicative.[126]

a. Confidentiality

68. Some commenters highlight concerns around confidentiality and the release of data in a resource-specific monthly report. MISO Transmission Owners and Potomac Economics raise the concern that a resource-specific report could allow the discovery of a resource's sensitive cost information or lead to some form of collusion among suppliers.[127] MISO Transmission Owners argue there may be instances when market participants and competitors could derive sensitive resource cost information by combining resource-specific uplift with settlement LMPs and backing out costs.[128] MISO Transmission Owners and EEI argue that monthly aggregation may not sufficiently mask daily uplift payments if a unit is infrequently paid uplift or committed out-of-market within a month.[129] MISO echoes this concern, arguing that the Commission should consider the effect of resource energy offers, which may be used for anti-competitive purposes such as gaming.[130] Potomac Economics argues that releasing uplift payment information with only a minimal lag could allow for tacit or explicit collusion among suppliers.[131] MISO and SPP state that resources' uplift information is considered confidential in their regions.[132] PJM does not oppose the NOPR proposal, but notes stakeholder concerns that resource-specific uplift reporting could reveal market-sensitive information such as bidding strategies.[133] The SPP Market Monitor contends that identifiable information for resources should not be released.[134]

69. Several commenters provide suggestions for protecting resources' confidential information. EEI and MISO Transmission Owners argue that because the Commission has only identified benefits for market participants, the resource-specific uplift information should be available only to market participants.[135] Moreover, they argue the data should be posted to a password-protected portion of the RTO's/ISO's website.[136] MISO Transmission Owners further state that the data should only be accessible to those market participants that have shown a need to access the information and have signed a confidentiality agreement.[137] Competitive Suppliers state that uplift information should be reported on a MW basis rather than a unit-specific basis.[138] EEI suggests that the Commission allow RTOs/ISOs to determine the level of transparency needed to protect commercially sensitive information.[139]

70. MISO Transmission Owners, EEI, and Potomac Economics all comment that if a resource-specific report is adopted, a final rule should increase the lag time for releasing the report or should aggregate the data over a longer time period. Potomac Economics asserts that an immediate release of uplift information does not improve transparency because uplift is a settlement process and market participants cannot take economic actions to reduce uplift costs. Potomac Economics also believes the proposed 20-day lag is too short to ensure competition will not be adversely affected and recommends at least a three-month lag, which it asserts will not diminish the transparency value of the report.[140] MISO Transmission Owners agree that three months is the appropriate lag for reporting any resource-specific report on uplift payments, noting that this reporting timing has been in effect for some time for EQR.[141] EEI suggests that uplift information be aggregated over the quarter and reported quarterly, in order to lessen the ability of market participants to deduce resources' offers while providing an appropriate level of transparency.[142]

71. Multiple commenters argue that the proposed monthly aggregation for reporting is sufficient to reduce data and resource confidentiality concerns. R Street Institute finds that monthly aggregation is reasonable and provides sufficient masking of daily offer behavior.[143] TAPS agrees that the proposal strikes the appropriate balance of increasing transparency against confidentiality and competition concerns.[144] In response to confidentiality concerns, XO Energy notes that resource-specific uplift information is already publicly reported in EQR.[145] Financial Marketers Coalition states that RTOs/ISOs should be able to mask, rather than withhold from the market, particularly sensitive information such as bid data, but asserts that uplift payments are not a competitive aspect of the market and

[118] Appian Way Comments at 8.

[119] Golden Spread Comments at 12.

[120] Brookfield Comments at 2; Exelon Comments at 9.

[121] Financial Marketers Coalition Comments at 38.

[122] XO Energy Replacement Comments at 34.

[123] MISO Transmission Owners Comments at 7–8.

[124] *Id.* at 9–10.

[125] MISO Comments at 12–13; MISO Transmission Owners Comments at 8–9.

[126] MISO Transmission Owners Comments at 11.

[127] *Id.* at 6–7; Potomac Economics Comments at 11.

[128] MISO Transmission Owners Comments at 6–7.

[129] EEI Comments at 8; MISO Transmission Owners Comments at 7.

[130] MISO Comments at 13; PJM Comments at 11.

[131] Potomac Economics Comments at 11.

[132] MISO Comments at 13; SPP Comments at 3 (citing Attachment AE, Section 11).

[133] PJM Comments at 11.

[134] SPP Market Monitor Comments at 3.

[135] EEI Comments at 7; MISO Transmission Owners at 13.

[136] EEI Comments at 7; MISO Transmission Owners Comments at 13.

[137] MISO Transmission Owners Comments at 13.

[138] Competitive Suppliers Comments at 9.

[139] EEI Comments at 8–9.

[140] Potomac Economics Comments at 11.

[141] MISO Transmission Owners Comments at 10–11.

[142] EEI Comments at 8.

[143] R Street Institute Comments at 5.

[144] TAPS Comments at 8.

[145] XO Energy Reply Comments at A–6, A–9.

should be made clear to market participants.[146] ELCON and EEI recommend allowing RTOs/ISOs flexibility to determine the appropriate balance between transparency and protecting sensitive information.[147]

b. Categories and Additional Information

72. Several commenters responded to the Commission's request for comment on whether the resource-specific reports should be broken out by uplift category or contain other additional details.[148] The PJM Market Monitor supports specifying the category of uplift but does not agree that disclosing additional information beyond categories is necessary.[149] Direct Energy encourages requiring RTOs/ISOs to report additional information for each instance when uplift costs are incurred: the name of the unit receiving uplift; uplift category; timeframe of the binding constraint driving the uplift payment; timeframe of uplift earned; operating parameter creating the need for uplift; and total payment to the unit.[150] ISO–NE asserts that, for security reasons, public reporting of voltage-related uplift payments on a resource-specific basis should not be required.[151]

c. Other Comments

73. As discussed in more detail with respect to the zonal uplift report, CAISO argues that it already posts significant information on uplift payments monthly and contends the proposed reports and 20-day deadline would impose significant costs on CAISO. CAISO requests that the Commission allow CAISO to include any required additional uplift information in the monthly reports it already produces.[152] Conversely, ISO–NE states that reporting uplift payments on a resource-specific level should be simple to implement.[153]

3. Determination

74. We adopt the NOPR proposal and require each RTO/ISO to report the resource name and the total amount of uplift paid in dollars to each resource that received uplift payments within the calendar month. We find that this Resource-Specific Uplift Report provides additional transparency benefits beyond those provided by the Zonal Uplift Report and existing uplift reporting requirements. Below, we discuss the benefits particular to this report and also address commenters' other concerns.

75. We find that the Resource-Specific Uplift Report will improve transparency into the causes of uplift. The Resource-Specific Uplift Report will complement the Zonal Uplift Report by providing more granular technology-type and geographic information, allowing market participants to identify potential system needs at specific locations that may not otherwise be revealed through price signals. The locational granularity of the required uplift report also mirrors the locational granularity of energy prices. We find that the two uplift reports in combination can improve market efficiency by providing information to market participants considering, for example, where to site new resources, transmission facilities, or demand response. In addition, as Appian Way notes, several RTOs/ISOs have previously indicated that uplift payments are concentrated and persistent among a few units, an observation corroborated by the Staff Analysis of Uplift.[154] As noted above, PJM's recent Cold Snap Performance Report illustrates the value of resource-specific uplift information. For instance, knowing that uplift was concentrated in combustion turbines rather than steam units [155] can provide insight regarding the nature of the system need that is being addressed through actions that lead to uplift. While MISO Transmission Owners argue that market monitors have access to resource-specific uplift data and are therefore already able to raise any issues, other commenters assert that disseminating resource-specific uplift information publicly would also allow market participants to call attention to such issues. We agree with the latter argument, as market participants, particularly those that may be allocated uplift costs, may be financially incentivized to advocate for solutions that reduce uplift costs. Market participants can also use this information to make investment decisions; this is something market monitors cannot do. Public release of this information may therefore result in faster or more efficient resolution to circumstances responsible for uplift which will help achieve just and reasonable rates.

76. MISO Transmission Owners argue that the Resource-Specific Uplift Report is duplicative with the requirement that public utilities report uplift payments in EQR. EQR serves as a reporting mechanism for public utilities to fulfill their responsibility under section 205(c) of the Federal Power Act to have their rates and charges on file in a convenient form and place.[156] While EQR facilitates price transparency, the Commission has not required uplift to be reported at the level of granularity necessary to meet the price formation objectives of this proceeding. Depending on the granularity of the information reported by the filer, and whether the filer reports its EQR as a single resource, resource level uplift information is sometimes reported in EQR. The Resource-Specific Uplift Report would include information about specific resources, which is not currently required by EQR. For instance, the Staff Analysis of Uplift shows that EQR data contain lower total uplift payments and fewer locations reported than do non-public RTO/ISO uplift data.[157] Therefore, we find that the Resource-Specific Uplift Report is not duplicative and provides additional transparency benefits that could not be fully achieved under existing EQR filing requirements.

77. Several commenters continue to express concern that the Resource-Specific Uplift Report could, in conjunction with other information, unintentionally reveal a resource's daily uplift payments, energy offer, or cost information, which some characterize as confidential because it is commercially sensitive. As noted above, it may be possible, under specific circumstances, for a market participant to estimate a resource's energy offer using the Resource-Specific Uplift Report in conjunction with the Zonal Uplift Report, and other information and assumptions. Commenters assert that the revelation of cost or offer data could lead to collusion or gaming.

78. Out of an abundance of caution, we address these concerns regarding revealing commercially-sensitive information by modifying the NOPR proposal to extend the deadline for the release of the Resource-Specific Uplift Report from 20 to 90 calendar days following the end of the reporting month, as several commenters recommend. An RTO/ISO can propose more timely reporting on compliance to the extent it believes that reporting more timely does not present the kinds of risks discussed above, for instance, because there are consistently enough

[146] Financial Marketers Coalition Comments at 38.

[147] ELCON Comments at 10; EEI Comments at 9.

[148] NOPR, FERC Stats. & Regs. ¶ 32,721 at P 83.

[149] PJM Market Monitor Comments at 10.

[150] Direct Energy Comments at 10–11.

[151] ISO–NE Comments at 43.

[152] CAISO Comments at 12.

[153] ISO–NE Comments at 43.

[154] Staff Analysis of Uplift at 7–10.

[155] PJM Cold Snap Performance Report at 30.

[156] 16 U.S.C. 824d(c).

[157] Some entities, including certain cooperatives and municipalities, were not required to file EQRs during the majority of the time analyzed within the report. *See* Staff Analysis of Uplift at 22.

resources awarded uplift in each zone that the uplift reports taken together cannot be used to infer a resource's costs.

79. We also find that any inferred information regarding a resource's offers or costs becomes less likely to be used to harm competition or individual market participants with the passage of time, because fuel prices and other market conditions change. After 90 calendar days following the end of the reporting month, the report will be released in a different season from the incurrence of uplift, increasing the likelihood that transient issues will be resolved, and thus decreasing the likelihood that any deduced resource-specific cost or offer data can be used to harm to competition or individual market participants. Furthermore, as Appian Way suggests, transparency into resource-specific uplift payments can highlight potential instances of gaming and collusion for other market participants, and allow them to advocate for solutions and call attention to such issues more quickly and efficiently. Finally, some information about resource-specific uplift payments is already available or can be derived from EQR.

80. We find that monthly aggregation of uplift payments to each resource, combined with a reporting delay of 90 calendar days, strikes an appropriate balance between the goal of providing public information that is detailed enough to identify system needs and issues with RTO/ISO uplift payment practices while also preserving a reasonable level of protection of potentially commercially-sensitive information. We expect that the later deadline should also alleviate CAISO's concern with respect to the burden of releasing this report on time.

81. As with the Zonal Uplift Report, the Commission does not agree with commenters that argue that access to the Resource-Specific Uplift Report should be limited to certain market participants on a password-protected portion of the RTO/ISO website. Providing data only to certain market participants does not achieve the goals of this Final Rule. As stated earlier, we find that reporting resource-specific uplift cost information more broadly may benefit a range of stakeholders, and we require each RTO/ISO to publish the Resource-Specific Uplift Report in a machine-readable format on a publicly accessible portion of its website.

82. In the NOPR, the Commission requested comment regarding whether the Resource-Specific Uplift Report should include uplift categories or other additional details. While, as some commenters suggest, there may be additional value in reporting uplift categories on a resource-specific basis, we do not require RTOs/ISOs to report resource-specific uplift by category. We find that the requirement for RTOs/ISOs to report uplift categories in the Zonal Uplift Report provides sufficient transparency about the locations where specific types of uplift are incurred to address system needs. However, RTOs/ISOs may choose to include uplift categories or other information in the Resource-Specific Uplift Report, and must indicate on compliance whether they plan to do so.

C. Operator-Initiated Commitments

1. NOPR Proposal

83. In the NOPR, the Commission proposed to require each RTO/ISO to post operator-initiated commitments in MWs, categorized by transmission zone and commitment reason, to a publicly accessible portion of its website within four hours of the commitment. The Commission proposed to define transmission zone as a geographic area that is used for the local allocation of charges.[158]

84. The Commission reasoned that transparency into operator-initiated commitments is necessary as such commitments can affect energy and ancillary service prices and can result in uplift. In addition, the Commission preliminarily found that greater transparency would allow stakeholders to better assess the RTO's/ISO's operator-initiated commitment practices and raise any issues of concern through the stakeholder process.[159]

85. In the NOPR, the Commission defined an operator-initiated commitment as a commitment that is not associated with a resource clearing the day-ahead or real-time market on the basis of economics and that is not self-scheduled. The Commission added that this definition would include both manual and automated commitments made after the execution of the day-ahead market and outside of the real-time market. The Commission noted that the definition includes commitments made through residual unit commitment and look-ahead commitment processes, and manual commitments made in real-time. The Commission proposed that both manual and automated operator-initiated commitments be posted in order to help market participants better understand the drivers of uplift in each zone and the impact of such commitments on rates.

86. The Commission requested comments on: (1) The types of unit commitments that should be reported as operator-initiated commitments;[160] (2) what it means for a commitment to clear the market on the basis of economics;[161] (3) the proposed definition of ''transmission zone,'' including the appropriate level of geographic granularity;[162] (4) the proposed reporting timeframe, including potential implementation challenges particularly with regard to real-time reporting and whether a different reporting timeframe would provide sufficient transparency;[163] (5) whether the Commission should define a common set of operator-initiated commitment reasons for use across all RTOs/ISOs and, if so, what reasons should be included, or whether it is more appropriate to allow each RTO/ISO to establish a set of appropriate operator-initiated commitment reasons on compliance; and (6) whether the proposal provides sufficient transparency, or whether more information is needed (*e.g.,* specific constraint name), as well as any potential concerns with requiring additional information.[164]

2. Comments

87. Several commenters support the proposed requirement that each RTO/ISO report operator-initiated commitments in or near real-time and after the close of the day-ahead market, with the report including the upper economic operating limit of the committed resource in MWs, the transmission zone in which the resource is located, and the reason for the commitment.[165] Diversified Trading/eXion Energy note that greater transparency with respect to operator-initiated commitments will provide incentives for RTOs/ISOs to reduce the need for those commitments and ensure that the cost of meeting system needs are reflected in market prices.[166] Financial Marketers Coalition asserts

[158] NOPR, FERC Stats. & Regs. ¶ 32,721 at Regulatory Text.

[159] *Id.* P 92.

[160] *Id.* P 93.

[161] *Id.* P 90.

[162] *Id.* P 91.

[163] *Id.* P 94.

[164] *Id.* P 95.

[165] AWEA Comments at 10; Brookfield Comments at 2; Competitive Suppliers Comments at 12; Designated Marketers Comments at 6; Diversified Trading/eXion Energy Comments at 5; Financial Marketers Coalition Comments at 36; Golden Spread Comments at 11–12; NYISO Comments at 8; PJM Market Monitor Comments at 10; R Street Institute Comments at 5–6; SPP Market Monitor Comments at 3–4.

[166] Diversified Trading/eXion Energy Comments at 5.

that transparency with respect to the location and reasons for out-of-market and out-of-merit operator actions allows financial market participants to understand that a problem is being resolved outside of normal market operations and that the day-ahead and real-time markets are unlikely to converge through market actions. Financial Marketers Coalition adds that this level of transparency allows any market participant transacting in an area where an out-of-market or out-of-merit operator action is being taken to know that it will be subjected to uplift allocation exposure.[167] Furthermore, Financial Marketers Coalition asserts that robust transparency practices allow the marketplace to develop solutions to problems.[168] R Street Institute states that transparency of operator-initiated commitments is important because such commitments often occur when the system is stressed, have a sizable effect on market outcomes, and may become more frequent given the penetration of meteorologically-sensitive resources. R Street Institute contends that reporting operator-initiated commitments by zone and commitment reason is reasonable. R Street Institute further contends that reporting on a sub-zonal basis would provide value in areas with transmission constraints.[169] Other commenters raise concerns or request clarification about elements of the proposed requirements as discussed further below.

a. Definition of Operator-Initiated Commitments

88. Three RTOs/ISOs, MISO, NYISO, and PJM, found elements of the proposed definition of operator-initiated commitments to be unclear and requested clarification as to whether or not certain types of commitments should be reported. MISO argues that the proposed definition of operator-initiated commitments as ''commitments not associated with clearing the day-ahead or real-time market on the basis of economics'' may contradict the statement in the NOPR that commitments made through residual unit commitment and look-ahead commitment processes should be reported. MISO requests clarification on whether to report residual unit commitments and look-ahead commitments because the NOPR specifically states that these commitments should be reported even though MISO considers costs when making these commitments. Similarly, NYISO requests confirmation that commitments made through its real-time commitment and dispatch processes are not intended to be included simply because they consider multiple time horizons and thus include look-ahead functionality. NYISO also states that its real-time dispatch software can economically evaluate commitments of certain offline resources that can respond to dispatch instructions within 10 minutes, but that subsequent action by the operator is needed to actually dispatch the resource. NYISO states that it does not believe the Commission intended these commitments to be considered operator-initiated commitments for the purposes of this NOPR.[170] MISO suggests that as an alternative, the Commission could define operator-initiated commitments as those made outside of the day-ahead market, whether manual or automated, without consideration of total production costs.[171]

89. PJM states that it does not have any automated commitments in either the real-time or day-ahead market; instead PJM has a variety of applications that provide commitment suggestions to PJM operators, who perform additional analyses prior to committing any unit. PJM interprets the proposal to require it to post all commitments made after the close of the day-ahead market. PJM states that it is able to accomplish this goal, but requests confirmation that this was the intent of the proposal.[172]

b. Confidentiality, Market Power, and CEII

90. Several RTOs/ISOs state that the proposed operator-initiated commitment reports could reveal resource-identifiable or competitive information, or lead to market power concerns.[173] MISO claims that the proposed report may not protect the data of individual market participants and may reveal identifiable competitive information.[174] MISO states that it does not post commitment data by resource or provide the name or transmission zone of the committed resources to avoid disclosure of confidential information that may harm market participants and create risks in MISO's competitive markets. Instead, MISO aggregates posted commitment data by commitment reason.[175] MISO does not support posting commitment information by resource, and argues that if the Commission does require reporting of locational information that it should allow RTOs/ISOs to aggregate transmission zones when posting commitment data, as there could be transmission zones that have a single asset owner. MISO adds that the use of existing transmission zone aggregations should be allowed in each RTO/ISO instead of creating new transmission zone aggregations.[176] ISO–NE and NYISO both state that they could report additional information to comply with this requirement.[177] NYISO notes, however, that it may be necessary to modify existing mitigation rules or potentially create new rules to address market power or anti-competitive behavior concerns that may arise from the requirements of any final rule.[178] Similarly, ISO–NE contends that, in any final rule, the Commission should allow each RTO/ISO to propose rules or procedures that may be necessary to address market power issues.[179] SPP contends that the operational characteristics of resources, including their economic maximums, are competitive information and should not be posted.[180]

91. Responding to SPP, XO Energy states that the proposed report would not require SPP to identify the unit that was committed.[181] XO Energy states that, for confidentiality reasons, specific names of resources should not be posted, but that the information posted should be as granularly specific as possible.[182] XO Energy points to MISO's operator-initiated commitment reports as an example of the granularity that should be provided in a report.[183] EEI suggests that RTOs/ISOs protect confidentiality by making the information available only to market participants.[184]

92. ISO–NE and PJM raise concerns that the proposed operator-initiated commitment reports could reveal Critical Energy/Electric Infrastructure Information (CEII).[185] ISO–NE states

[167] Financial Marketers Coalition Comments at 37.

[168] *Id.*

[169] R Street Institute Comments at 5–6.

[170] NYISO Comments at 8–11.

[171] MISO Comments at 14–15 (citing NOPR, FERC Stats. & Regs. ¶ 32,721 at P 90).

[172] PJM Comments at 13–14.

[173] ISO–NE Comments at 44; MISO Comments at 18; SPP Comments at 3–4.

[174] MISO Comments at 18.

[175] *Id.* at 17.

[176] *Id.* at 18.

[177] ISO–NE Comments at 44; NYISO Comments at 8–9.

[178] NYISO Comments at n. 28.

[179] ISO–NE Comments at 44.

[180] SPP Comments at 3–4.

[181] XO Energy Reply Comments at A–9.

[182] XO Energy Replacement Comments at 34–35.

[183] *Id.* at 35.

[184] EEI Comments at 9.

[185] 18 CFR 388.113 (2017). *See also Regulations Implementing FAST Act Section 61003—Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information,* Order No. 833, 81 FR 93732 (Dec. 21, 2016), FERC Stats. & Regs. ¶ 31,389 (2016).

that detailed reporting in real-time on operator-initiated actions could raise system security issues and argues that, in any final rule, the Commission should permit each RTO/ISO to propose rules or procedures to protect CEII.[186] PJM explains that the identification of specific resources committed to control specific transmission constraints is CEII and should not be published.[187] In response to PJM, XO Energy argues that many market participants have clearance from the Commission to access CEII data and these participants should be able to access any and all CEII data.[188]

c. Commitment Reasons

93. Several commenters responded to the request for comment on whether the Commission should define a common set of commitment reason categories and, if so, which categories should be included, or whether it is more appropriate to allow each RTO/ISO to establish a set of commitment reasons on compliance.[189] MISO contends that regional flexibility should be allowed for each RTO/ISO to establish an appropriate set of commitment reason categories. MISO further argues that prescribing a set of categories may lead to confusion and disruption of established processes that may provide the desired transparency, but in a manner that does not fit the prescribed categories.[190] TAPS similarly urges the Commission to leave it to individual RTOs/ISOs to determine how best to comply with reporting requirements.[191]

94. Conversely, PJM and EEI support the Commission defining a minimum set of categories to be used by RTOs/ISOs that identify the reasons for the commitment.[192] PJM requests that the Commission allow each RTO/ISO to develop its own additional categories because RTOs/ISOs have different market designs and operational practices. Similarly, EEI argues that RTOs/ISOs should have the flexibility to provide more granular, detailed, or relevant information, as needed.[193] MISO also suggests that the Commission could alternatively require that the categories that each RTO/ISO establishes should, at a minimum, reflect the uplift categories the NOPR proposes.[194] PJM states that it is unclear what level of detail the Commission is contemplating for these categories and argues that a final rule should clarify the level of detail envisioned.[195]

d. Reporting Timeline

95. Several RTOs/ISOs discussed their current reporting practices and whether it is feasible to meet the proposed requirement to report real-time operator-initiated commitments within four hours.[196] MISO states that it currently posts economic and constraint management commitments, excluding those made in the day-ahead market, to its public website on a real-time and historical basis. In addition, MISO notes that historical information is included in the Real-Time Revenue Sufficiency Guarantee Commitments report, which is updated daily with a one-day lag. MISO states that the posted commitment information includes an aggregation of the hourly economic maximum limit of committed resources by commitment reason, and the total number of resources committed by commitment reason (either capacity or constraint name).[197] MISO requests guidance as to whether the four-hour timeframe will be counted from the time the commitment notification is issued, the beginning of the commitment period, or the start of the current market interval.[198] ISO–NE and PJM state that they would likely be able to comply with the proposed reporting of operator-initiated commitments. PJM requests that any final rule provide flexibility in the reporting timeframe so that, in the event of unforeseen technical issues, PJM is not exposed to a compliance violation.[199] NYISO states that it already posts information regarding many operator-initiated commitments in real-time and generally supports the proposed reforms but, as noted above, would need to report on additional commitments and add both the location and upper operating limit of each resource included in its report.[200]

96. On the other hand, CAISO states that it produces operator-initiated commitment reports manually because they require collecting operator log information and presenting it in a reporting format. Therefore, CAISO states that it cannot provide the required operator-initiated commitment information within the four-hour deadline.[201] CAISO further contends that there is no reason the requested information should be required within four hours as it is not clear what actions market participants can take to address these issues under the proposed timeline. CAISO argues that market participants can better evaluate issues raised due to exceptional dispatches by analyzing monthly trends. CAISO states that it already provides much of this information on a monthly basis, and argues that the Commission should modify its proposal to allow RTOs/ISOs to post information as part of existing monthly reports that they already provide.[202]

97. In response to CAISO's concerns, XO Energy states that it disagrees with CAISO's assertion that expediting reporting of operator-initiated commitments is not feasible because these systems are already in place in other RTOs/ISOs. XO Energy asserts that the commitment of units must be recorded into a database because this information is used for settlement purposes and dispatch instructions are sent electronically to resources and incorporated into the next SCED calculation. XO Energy states that these commitments can and should be posted in real-time as they occur.[203] XO Energy asserts that knowledge that a unit was committed by operator action may indicate an inefficiency in the system that is not currently reflected in published prices, presenting an opportunity to solve that issue through normal market activity. XO Energy argues that if this information is delayed by even four hours, the opportunity to place bids to address that inefficiency may pass.[204] XO Energy contends that market participants that own the units being dispatched have access to operator-initiated commitment information; market participants without physical assets are disadvantaged because they do not currently have access to this data and are underrepresented in the stakeholder process.[205] Competitive Suppliers argue that real-time commitments need to be posted as soon as practical after they occur, not later than four hours after the commitment, to help market participants understand uplift.[206] R Street Institute contends that the proposed temporal requirements are

[186] ISO–NE Comments at 44.

[187] PJM Comments at 14.

[188] XO Energy Reply Comments at A–7.

[189] NOPR, FERC Stats. & Regs. ¶ 32,721 at P 95.

[190] MISO Comments at 15–16; TAPS Comments at 9.

[191] TAPS Comment at 9.

[192] EEI Comments at 9; PJM Comments at 14.

[193] EEI Comments at 9.

[194] MISO Comments at 15–16.

[195] PJM Comments at 14.

[196] NOPR, FERC Stats. & Regs. ¶ 32,721 at P 94.

[197] MISO Comments at 17 (MISO states that the data is described as pertaining to ''3 or less resources'' when the number of committed resources is less than or equal to three).

[198] *Id.* at 16.

[199] PJM Comments at 14.

[200] NYISO Comments at 8–9.

[201] CAISO Comments at 14.

[202] *Id.* at 14–15.

[203] XO Energy Reply Comments at A–3.

[204] *Id.* at A–3.

[205] *Id.* at A–1.

[206] Competitive Suppliers Comments at 12.

reasonable and already met by NYISO, MISO, and CAISO.[207]

e. Other Issues

98. Some commenters suggest that RTOs/ISOs should be required to post other types of commitments or additional information. XO Energy asserts that there is a substantial amount of operator discretion in the day-ahead market and that all resources that contribute to day-ahead or real-time uplift should be reported.[208] Competitive Suppliers state that the definition should also include other operator-initiated actions that impact uplift, such as load biasing. Furthermore, Competitive Suppliers argue that self-scheduled units should be reported when they are called on to alleviate an issue that would have resulted in some uplift payment had the unit not been self-scheduled.[209] Golden Spread requests that the Commission include the reporting of certain transactions in the day-ahead market that can impact LMPs and cause uplift, such as excess rampable capacity in SPP that has been moved into the day-ahead market.[210] EEI argues that in addition to generator information, RTOs/ISOs should publish criteria used to make decisions with regard to reserve levels, conservative operations, import levels, and other operational constraints. EEI contends that identifying the types of costs or transactions included in uplift payments, and which of those should be included in LMPs will help inform potential changes to market rules around out-of-market actions.[211]

3. Determination

99. We adopt the NOPR proposal and require each RTO/ISO to post all operator-initiated commitments on its website, subject to the modifications and clarifications discussed below. Operator-initiated commitments are made to address system needs, but because they are made outside of the market are inherently less transparent. As stated in the NOPR, transparency into operator-initiated commitments is important because such commitments can affect energy and ancillary service prices and can result in uplift. Greater transparency will allow stakeholders to better understand the drivers of uplift costs, assess an RTO's/ISO's operator-initiated commitment practices, and raise any issues of concern through the stakeholder process.[212] We find that the basis for this requirement as outlined in the NOPR remains compelling. The Operator-Initiated Commitment Report will provide granular information about the location, timing, causes and size of operator-initiated commitments. Such information will allow stakeholders to better understand the connections between system needs and operator actions and to make investments in facilities and equipment where most needed by the system, thus potentially improving market efficiency. We address commenters' concerns below.

100. Based on the comments, we adopt a modified definition of an operator-initiated commitment for the purpose of this Final Rule. We agree with MISO and NYISO that the proposed definition of operator-initiated commitments as "commitments not associated with clearing the day-ahead or real-time market on the basis of economics" may contradict the clarification in the NOPR that the proposed definition includes commitments made through look-ahead processes,[213] particularly if an RTO/ISO process commits units on the basis of economics *and* includes look-ahead functionality. Further, as we noted in the NOPR, whether a commitment cleared the market on the basis of economics may be a point of confusion. In order to be more precise, we therefore modify the definition of an operator-initiated commitment to be a commitment after the day-ahead market, whether manual or automated, for a reason other than minimizing the total production costs of serving load. RTO/ISO market software generally minimizes total production costs subject to certain reliability constraints. Such software may make commitments to meet needs for additional supply due to changing market conditions or variations from forecast after the day ahead market. These commitments reflect the next marginal supply to meet load and minimize total production costs and are thus exempt from this reporting requirement. In contrast, because some constraints cannot be included in market software, RTOs/ISOs may need to make some commitments to address reliability considerations that are not modeled in the market software. Because these considerations are not included in the software, they may not minimize total production costs and thus should be reported. Such commitments are not likely to be reflected in market prices and may result in uplift costs. Thus, unlike the NOPR proposal, the definition adopted here does not include commitments made through look-ahead commitment processes that minimize total production costs. Consistent with the NOPR proposal, this definition excludes self-schedules. We expect that by not explicitly requiring the inclusion of look-ahead commitments, this modified definition will likely reduce the number of commitments that RTOs/ISOs are required to report compared to the definition proposed in the NOPR, but the modified definition will focus RTO/ISO reporting on commitments of those resources whose offers are least likely to be reflected in day-ahead and real-time prices and are therefore most likely to result in uplift costs.

101. PJM requests clarification that we intend to require PJM to report all commitments made by operators occurring after the close of the day-ahead market because it has no "automated" commitments. We clarify that when an automated process makes a recommendation to an operator who makes the final decision, the commitment must be reported if the underlying process did not minimize total production costs. However, we are aware that RTOs/ISOs have a variety of processes through which units can be committed. On compliance, we therefore require each RTO/ISO to indicate, for each commitment process (whether automated or manual) that executes after the day-ahead market, whether it believes our modified definition implicates some or all commitments from the process and justify any commitments that it does not plan to report.

102. After considering commenters' responses to the questions the Commission asked about the reporting timeframe, potential implementation challenges of reporting in real-time, and whether a different reporting timeframe would provide sufficient transparency,[214] we find that requiring operator-initiated commitments to be posted no later than four hours after the commitment may place an unnecessary burden on some RTOs/ISOs. Therefore, we require that each RTO/ISO post this information on its website in machine-readable format as soon as practicable but no later than 30 days after the end of the month. However, we note that the timing of operator-initiated commitments is important to understanding system conditions surrounding those commitments, and was implicit in the proposed four-hour deadline. Because we no longer require

[207] R Street Institute Comments at 5–6.

[208] XO Energy Replacement Comments at 35.

[209] Competitive Suppliers Comments at 10–11.

[210] Golden Spread Comments at 12–13.

[211] EEI Comments at 9–10.

[212] NOPR, FERC Stats. & Regs. ¶ 32,721 at PP 92–93.

[213] *Id.* P 90.

[214] *Id.* P 94.

near-real-time reporting of operator-initiated commitments, we instead will require each RTO/ISO to include in its report the start time of each commitment in order to enable stakeholders to understand system conditions surrounding the commitment. While we are providing each RTO/ISO significant flexibility in when it must report operator-initiated commitments, we encourage each RTO/ISO to design its processes so that this information is provided to market participants as soon as possible.

103. We adopt the NOPR proposal to require RTOs/ISOs to report the size of each commitment. In the NOPR, we described this value as the upper economic operating limit of the committed resource in MW (*i.e.,* its economic maximum).[215] We continue to believe this requirement will provide transparency into the size of the system need associated with the operator-initiated commitment. However, RTOs/ISOs may propose, on compliance, an alternative metric and must demonstrate that it provides transparency into the size of the system need associated with the operator-initiated commitment that is consistent with or superior to that provided by the economic maximum of each committed resource. This should address SPP's assertion that this resource parameter should not be posted because it is considered competitive information.

104. As with the Zonal Uplift Report discussed above, we adopt the NOPR proposal and define ''transmission zone'' as a geographic area that is used for the local allocation of charges and find that this definition balances the benefits of greater transparency with the desire to preserve a reasonable level of protection of potentially commercially-sensitive information. As discussed above, RTOs/ISOs may have multiple existing types of zones that could meet our definition. We believe that there are transparency benefits to using the same set of zones for the Zonal Uplift Report and the Operator-Initiated Commitment Report. However, we acknowledge that an RTO/ISO may have a legitimate reason for using a more or less granular set of zones for one or the other of the two reports and the decision to provide less granularity on one report does not necessitate less granularity for both reports simply to maintain consistency between reports. On compliance, we require each RTO/ISO to include in its tariff the type of zone that it proposes to use in its Operator-Initiated Commitment Report, explain how the chosen type of zone meets the definition of transmission zone adopted in this Final Rule, and provide justification for any differences between the sets of zones used for the two reports.

105. We adopt the NOPR proposal and require that the Operator-Initiated Commitment Reports include the reason for each commitment. In the NOPR, the Commission requested comment as to whether the Commission should define a common set of categories of commitment reasons for use across all RTOs/ISOs and, if so, what reasons should be included, or whether to allow each RTO/ISO to establish a set of appropriate operator-initiated commitment reasons on compliance. As EEI suggests, requiring a common set of commitment reasons will help ensure that RTOs/ISOs provide similar information to market participants. This consideration is balanced against the desire for a minimum set of commitment reasons that are not so broad as to provide limited inference about the nature of the reliability consideration addressed through the commitment. While no specific commitment reasons were suggested by commenters, the potential commitment reasons listed in the NOPR[216] appear to be consistent with the broad reasons for which RTOs/ISOs make operator-initiated commitments. Therefore, we require that RTOs/ISOs, include, at a minimum, the following three commitment reasons: system-wide capacity, constraint management, and voltage support. However, we acknowledge that RTOs/ISOs may use different terminology or have other reasons for making operator-initiated commitments that do not minimize total production costs. Therefore, if RTOs/ISOs would like to include additional or more detailed commitment reasons in their Operator-Initiated Commitment Reports, they may do so.

106. We clarify that we are not requiring that RTOs/ISOs identify resource names or specific constraints in the Operator-Initiated Commitment Report. We also clarify, in response to concerns from PJM and ISO–NE that each RTO/ISO is permitted to propose, upon compliance, modifications to the report to avoid disclosing information that could be used to harm system security.

107. In response to NYISO's and ISO–NE's comments that it may be necessary to create new rules or procedures to address market power or anti-competitive behavior that may arise as a result of this report we note that any such rules or procedures would be outside the scope of this proceeding. RTOs/ISOs may propose any further changes they deem appropriate in a separate filing pursuant to section 205 of the Federal Power Act.[217]

108. We also confirm that RTOs/ISOs may choose to report more information about operator-initiated commitments or other operator actions. However, we find that requests by several commenters to require reporting of other types of commitments or other operator actions that may affect uplift are beyond the scope of this proceeding, as this requirement only addresses operator-initiated commitments.

D. Transmission Constraint Penalty Factors

1. NOPR Proposal

109. In the NOPR, the Commission proposed to require each RTO/ISO to include, in its tariff: Its transmission constraint penalty factor values; the circumstances, if any, under which the transmission constraint penalty factors can set LMPs; and the procedure, if any, for temporarily changing the transmission constraint penalty factor values. The Commission further proposed that any procedure for temporarily changing transmission constraint penalty factor values must provide for notice of the change to market participants.[218]

110. The Commission reasoned that transparency into transmission constraint penalty factors and associated practices is important because the penalty factors and practices can affect prices. Without an understanding of the level of transmission constraint penalty factors or under what circumstances they can set LMPs or be temporarily changed, market participants may not be able to hedge transactions appropriately or raise concerns into RTO/ISO practices through the stakeholder process.[219]

2. Comments

111. Many commenters support the proposed requirement that all RTOs/ISOs include provisions related to transmission constraint penalty factors in their tariffs.[220] Potomac Economics

[215] *Id.* P 91.

[216] *Id.* P 95 and n.109.

[217] 16 U.S.C. 824d.

[218] NOPR, FERC Stats. & Regs. ¶ 32,721 at Regulatory Text.

[219] *Id.* P 80.

[220] APPA/NRECA Comments at 12–13; AWEA Comments at 10; Competitive Suppliers Comments at 10; Designated Marketers Comments at 6; Direct Energy Comments at 10; EEI Comments at 10; Financial Marketers Coalition Comments at 45; Golden Spread Comments at 5; MISO Comments at 19; NYISO Comments at 1; PJM Comments at 15; PJM Market Monitor Comments at 10; Potomac Economics Comments at 12–13; R Street Institute Comments at 6; TAPS Comments at 10; XO Energy Replacement Comments at 37, 39.

explains that transmission constraint penalty factors represent the maximum re-dispatch cost that a RTO/ISO will incur to resolve congestion on a constraint, and are generally used to set the congestion components of LMPs when a constraint is violated. Because penalty factors can set prices and affect dispatch, Potomac Economics supports requiring RTOs/ISOs to file transmission constraint penalty factors, and any provisions to adjust them, in their tariffs to be reviewed and approved by the Commission.[221] Competitive Suppliers state that transmission constraint penalty factors affect prices and uplift, so transparency around their use is important for market participants to understand their impact.[222] MISO asserts that transparency around transmission constraint penalty factors can increase confidence that market outcomes are rational and encourage dialogue to improve market efficiency, while Financial Marketers Coalition asserts that a lack of transparency around these practices can lead to confusion and uncertainty in understanding and forecasting prices.[223] No commenters express opposition to the requirements proposed in the NOPR.

112. Several RTOs/ISOs state that they currently comply, plan to comply, or could comply with the proposed requirements. MISO and MISO Transmission Owners assert that MISO's tariff is consistent with the proposal.[224] MISO also notes that it posts shadow prices, transmission constraint penalty factors, and reasons for temporary overrides of transmission constraint penalty factors in reports on its website.[225] CAISO states that its tariff already contains the penalty factors and their impacts on market outcomes for each of its markets and market calculations.[226] NYISO intends to file tariff revisions with the Commission independent of the NOPR, which will align with the proposed requirements of the NOPR.[227] PJM supports including certain provisions related to transmission constraint penalty factors in its tariff.[228] The PJM Market Monitor explains that it has recommended that PJM include transmission constraint penalty factor values in its tariff, and explicitly state its policy on the use of these penalty factors in setting LMP, the appropriate triggers of these penalty factors, and when they should be used to set the shadow prices of transmission constraints.[229] ISO–NE allows that it could specify more information on transmission constraint penalty factors in its tariff.[230]

113. Several commenters explicitly support the proposal requiring RTOs/ISOs to explain in their tariffs when transmission constraint penalty factors can set LMPs, if ever.[231] Potomac Economics, XO Energy, and R Street Institute explain that when a constraint is violated, some RTOs/ISOs relax the constraint to reduce the shadow price to less than the penalty factor, which reduces congestion components of LMPs.[232] Potomac Economics explains that if, for example, an RTO/ISO has a penalty factor of $1,000 and the unit that is re-dispatched to manage the constraint has a marginal cost of $999, the congestion will be determined by the $999 shadow price. However, if the RTO/ISO relaxes the constraint, thereby diminishing reliability, the ''relaxed'' shadow price that determines the congestion cost may be well below the penalty factor.[233]

114. R Street Institute argues that relaxing transmission constraints to prevent penalty factors from setting prices distorts congestion price formation, which undermines efficient commitment and dispatch in the short term and distorts market investments and retirements in the long term.[234] XO Energy asserts that penalty prices are in place to improve price formation when all economic actions are exhausted, and that constraint relaxation masks the underlying violation.[235] XO Energy further argues that RTOs/ISOs that do not allow penalty factors to set price should explain and justify the conditions for relaxing a constraint.[236] Financial Marketers Coalition states that arbitrary standards on when transmission constraint penalty factors can set LMPs can afford considerable discretion to dispatchers and can lead to confusion among market participants.[237]

115. Potomac Economics suggests that the Commission not only require RTOs/ISOs to explain how penalty factors contribute to setting LMP, but require that penalty factors set shadow prices for violated constraints.[238] The PJM Market Monitor agrees that penalty factors should affect LMPs in the same manner that generator offer prices affect LMPs, so if the flow on a transmission constraint exceeds the line limit, the shadow price of the constraint should equal the transmission constraint penalty factor.[239]

116. Multiple commenters explicitly support the proposed requirement that RTOs/ISOs include in their tariffs any procedures for changing penalty factors and provide notice of any such changes to market participants.[240] Potomac Economics states that it has observed RTOs/ISOs increasing or decreasing the transmission constraint penalty factors in real-time operations for a variety of reasons.[241] Potomac Economics states that RTOs/ISOs generally increase a penalty factor when a violation raises more serious reliability concerns than normal and decrease a factor in real-time to reduce the real-time congestion pricing for a violated constraint. Potomac Economics states that whether increasing or decreasing the factors, these actions can profoundly affect LMPs, unit commitments, dispatch levels, and reliability, and therefore RTOs/ISOs should file any provisions to adjust them.[242]

117. XO Energy states that MISO currently posts any overridden transmission constraint demand curves through its real-time market and provides reasons for such overrides in its next-day market reports.[243] In contrast, XO Energy notes that PJM does not provide any indication or rationale for changing transmission constraint penalty factors, but generally performs a

[221] Potomac Economics Comments at 12–13.

[222] Competitive Suppliers Comments at 10.

[223] Financial Marketers Coalition Comments at 45; MISO Comments at 18.

[224] MISO Comments at 18–19 (citing Schedule 28A of its Tariff); MISO Transmission Owners Comments at 5 n.17.

[225] MISO Comments at 19.

[226] CAISO Comments at 11–12.

[227] NYISO Comments at 12. Since its comments, NYISO has subsequently filed transmission constraint pricing tariff revisions with the Commission. *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER17–1453–000 (June 14, 2017) (delegated letter order).

[228] PJM Comments at 15.

[229] PJM Market Monitor Comments at 10 (citing PJM, *2015 Annual State of the Market Report*, v. *2, Section 3: Energy Market* (March 2016), *http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2015/2015-som-pjm-volume2-sec3.pdf*).

[230] ISO–NE Comments at 44–45.

[231] Competitive Suppliers Comments at 10; EEI Comments at 10; Financial Marketers Coalition Comments at 45; Golden Spread Comments at 5; PJM Market Monitor Comments at 10; Potomac Economics Comments at 16; R Street Institute Comments at 6; XO Energy Replacement Comments at 37.

[232] Potomac Economics Comments at 14–15; R Street Institute Comments at 6; XO Energy Comments at 37–39.

[233] Potomac Economics Comments at 14–15.

[234] R Street Institute Comments at 6.

[235] XO Energy Comments at 38.

[236] *Id.* at 37.

[237] Financial Marketers Coalition Comments at 45.

[238] Potomac Economics Comments at 16.

[239] PJM Market Monitor Comments at 11.

[240] EEI Comments at 10; Golden Spread Comments at 5; PJM Market Monitor Comments at 10; R Street Institute Comments at 5; XO Energy Replacement Comments at 39.

[241] Potomac Economics Comments at 12–13.

[242] *Id.* at 13–14.

[243] XO Energy Replacement Comments at 39–40.

price correction the following day that is only evident through increased or decreased shadow prices.[244] ISO–NE and TAPS state that tariff provisions on transmission constraint penalty factors should be flexible enough to permit system operators to modify these factors in real-time to maintain reliability of the system and otherwise temporarily change these values to account for changes in system conditions.[245] CAISO states that while it currently cannot temporarily change penalty prices, it does not object to obtaining such flexibility in its tariff or to describing in its tariff the relevant conditions for utilizing such flexibility.[246]

118. Potomac Economics makes two recommendations to strengthen the requirement to file transmission constraint penalty factors. Potomac Economics states that the Commission should require or encourage RTOs/ISOs to file multi-point demand curves, as in MISO and NYISO, rather than single penalty values because demand curves demonstrate that the size of the violation matters from a reliability perspective. XO Energy also supports the implementation of the demand curve approach used in MISO.[247]

119. Potomac Economics also suggests that the Commission clarify that penalty values should correspond to the reliability concerns that arise when constraints are violated. Potomac Economics states that, while estimating the reliability value of a transmission constraint can be challenging, reasonable values can be set that reflect the relative reliability concern associated with violating different constraints.[248]

120. XO Energy states that RTO/ISO actions to affect the percentages of thermal limits used for controlling constraints also can mask violations of thermal limits and affect how high shadow prices can bind. XO Energy therefore suggests enhancing the transparency of operator actions surrounding Limit Controls.[249]

3. Determination

121. We adopt the NOPR proposal and require that each RTO/ISO include in its tariff on an on-going basis: (1) The transmission constraint penalty factor values used in its market software;[250] (2) the circumstances, if any, under which the transmission constraint penalty factors can set LMPs;[251] and (3) the procedures, if any, for temporarily changing transmission constraint penalty factor values. We also require that any procedures for temporarily changing transmission constraint penalty factor values must provide for notice of the change to market participants as soon as practicable.[252] We find that transmission constraint penalty factors have the potential to materially affect energy and ancillary services prices so they should be included in the tariff. Further, greater transparency into transmission constraint penalty factors will allow market participants to understand how an RTO's/ISO's actions and practices affect clearing prices. We agree with commenters that, without transparency into transmission constraint penalty factors, market participants cannot understand the impact of these factors on LMPs or effectively engage in dialogue or transactions to improve market efficiencies. Accordingly, we adopt the proposal in the NOPR. On compliance, each RTO/ISO is required to include its current transmission constraint penalty factors and associated current practices in its tariff. The three Transmission Constraint Penalty Factor Requirements also apply to any subsequent changes to an RTO's/ISO's penalty factor values and practices.

122. We clarify that we are not requiring RTOs/ISOs to have procedures to temporarily change their transmission constraint penalty factor values. Rather, if an RTO/ISO currently has the flexibility to temporarily override transmission constraint penalty factor values, for example, to account for reliability concerns, the circumstances under which the factors may be changed and any procedures for doing so must be included in the RTO's/ISO's tariff. We appreciate requests that the Commission require RTOs/ISOs to adopt specific practices in developing transmission constraint penalty factors and specifications for how transmission constraint penalty factors can set LMPs. However, we find that such requests go beyond the scope of this rule, which is focused on transparency into current RTO/ISO practices related to transmission constraint penalty factors. Accordingly, we will not address those requests here. Further, RTOs/ISOs may propose any changes they deem appropriate to their current practices related to transmission constraint penalty factors in a separate filing pursuant to section 205 of the Federal Power Act.[253]

E. Other Comments Requested

1. Reporting of Transmission Outages

123. In the NOPR, the Commission requested comment on whether additional reporting of transmission outages should be required, noting that transmission outages are an important facet of price formation because they can affect RTO/ISO commitment and dispatch decisions and resulting market clearing prices.[254]

a. Comments

124. Most RTOs/ISOs state that they already provide information on transmission outages. MISO states that it posts all transmission outages on OASIS on an hourly basis.[255] ISO–NE states that it currently posts both long- and short-term reports on transmission outages, updated on a daily and 15-minute basis, respectively.[256] NYISO states that it posts information regarding scheduled and actual outages of 100 kV and higher transmission facilities on its website in machine-readable format.[257] PJM states that it posts outages on its website.[258]

125. Several commenters support additional transparency into transmission outages.[259] The PJM Market Monitor asserts that more consistent and timely outage reporting is important to transparency.[260] Potomac Economics and AWEA argue that additional reporting of transmission outages would improve market

[244] *Id.* at 40.

[245] ISO–NE Comments at 44–45; TAPS Comments at 10.

[246] CAISO Comments at 11–12.

[247] XO Energy Replacement Comments at 43.

[248] Potomac Economics Comments at 14.

[249] XO Energy Replacement Comments at 36, 39 (citing PJM, *Transmission Constraint Control Logic in Market Clearing Engines* (March 2017), *http://www.pjm.com/~/media/committees-groups/committees/mic/20170308/20170308-informational-only-transmission-constraint-control-logic-in-mces.ashx*).

[250] As proposed in the NOPR, if the RTO/ISO includes different transmission constraint penalty factors for different purposes (*e.g.,* unit commitment and economic dispatch, day-ahead versus real-time), we require that all sets of transmission constraint penalty factors be included in the tariff. *See* NOPR, FERC Stats. & Regs. ¶ 32,721 at P 97.

[251] As proposed in the NOPR, RTOs/ISOs should provide explanations in their tariffs if they have different processes for allowing transmission constraint penalty factors to set LMPs in different circumstances, as well as any specific restrictions or conditions under which transmission constraint penalty factors are allowed to set LMPs. NOPR, FERC Stats. & Regs. ¶ 32,721 at P 98.

[252] NOPR, FERC Stats. & Regs. ¶ 32,721 at PP 96–99.

[253] 16 U.S.C. 824d.

[254] NOPR, FERC Stats. & Regs. ¶ 32,721 at P 98.

[255] MISO Comments at 19.

[256] ISO–NE Comments at 45.

[257] NYISO Comments at 12.

[258] PJM Comments at 15.

[259] AWEA Comments at 10; Direct Energy Comments at 10; Diversified Trading/eXion Energy Comments at 5–7; EDF Comments at 1–5; PJM Market Monitor Comments at 11; Potomac Economics Comments at 11–12; XO Energy Replacement Comments at 43–45.

[260] PJM Market Monitor Comments at 11.

efficiency and reduce uncertainty for participants.[261]

126. XO Energy contends that all RTOs/ISOs should be required to post all known transmission outages in real-time at the same frequency as real-time dispatch, using EMS model detail. XO Energy also contends that planned and emergency outages known and included in the day-ahead market solution should be included as an additional report posted with each RTO/ISO day-ahead market solution.[262]

127. Diversified Trading/eXion Energy and XO Energy contend that RTOs/ISOs should be required to post all outages that are modified or cancelled after the close of the day-ahead market, as well as the impact of cancelled outages on prices and uplift. Diversified Trading/eXion Energy further contend that this posting should also include the reason for the cancellation or modification, the transmission owner, and the frequency with which the transmission owner has cancelled or modified outages after the cut-off.[263]

128. EDF asserts that there is a need for RTOs/ISOs to incorporate economic assessments into their transmission outage scheduling practices and moves that the Commission establish a technical conference to address the impact of transmission outages on RTO/ISO commitment and dispatch decisions and resulting market clearing prices.[264] EDF contends that RTOs/ISOs typically only assess the reliability impact of outages and do not consider economic impacts. EDF contends that an economic assessment of transmission outages should be possible, at relatively low cost, most of the time, with no reliability impact, given sufficient advanced planning.[265]

129. On the other hand, MISO and PJM contend that additional reporting requirements are unnecessary,[266] while MISO Transmission Owners contend that any further reporting requirements may be duplicative.[267] Several commenters also bring up confidentiality concerns. PJM argues that posting additional information may risk releasing confidential market participant information because the status of a unit or station would be identified via this posting.[268] MISO Transmission Owners similarly state that outage information may contain CEII or other confidential information that should not be identified publicly.[269] MISO Transmission Owners contend that transmission outages are not fully explored in the NOPR and may be better left to a future rulemaking.[270] Finally, ISO–NE notes that outages that only impact specific generation or other supply resources are considered market sensitive and excluded from reports. However, ISO–NE states that stakeholders have discussed whether to expand current reporting practices to include the market sensitive outages in reports.[271]

b. Determination

130. We appreciate the input from multiple commenters on the reporting of transmission outages. In the NOPR, the Commission sought comment on this topic but did not make a specific proposal. Accordingly, based on the record in this proceeding, we will not require additional reporting for transmission outages at this time.

2. Availability of Market Models

131. In the NOPR, the Commission requested comment on whether certain classes of market participants are prohibited from obtaining the network models in certain RTOs/ISOs and the justification for any such restrictions. The Commission defined ''network model'' as ''the RTO's/ISO's model used in its energy management system for the real-time operation of the transmission system (*e.g.,* state-estimation, contingency analysis).'' [272]

a. Comments

132. Financial Marketers Coalition and XO Energy explain that there are several different types of market models and discuss the varying availability of different market models between market participant classes across RTOs/ISOs. XO Energy asserts that MISO and SPP provide a fair amount of detail and that PJM, NYISO, and CAISO provide the least amount of model detail.[273]

133. ISO–NE and MISO state they provide network models to all market participants.[274] However, NYISO and PJM state that market models are only available to a subset of market participants.[275] NYISO explains that its network model is only available to participants in the Transmission Congestion Market, upon request. NYISO states it is not available to others because it includes certain modifications to account for system assumptions utilized in that market.[276] PJM states that certain entities are prohibited from accessing network models. PJM explains that in some instances it may share some of these models with certain entities, such as Transmission Owners, but only to coordinate the reliability of the transmission system with PJM, not for the sake of market transparency.[277]

134. Some commenters argue against the wider dissemination of market models, noting confidentiality concerns.[278] The PJM Market Monitor argues that there is no efficiency gain and potential market power issues could arise from the wider dissemination of market models.[279] Other commenters argue that market models should be available to all market participants,[280] or that releasing market models subject to CEII protection or non-disclosure agreements is appropriate.[281] XO Energy, for example, asserts that access to market models would allow market participants to place transactions that increase market efficiency and reliability.[282]

b. Determination

135. We appreciate the input from multiple commenters on the availability of market models. In the NOPR, the Commission sought comment on this topic but did not make a specific proposal. Accordingly, based on the record in this proceeding, we will not require changes to the accessibility of market models at this time.

V. Compliance and Implementation Timelines

136. In the NOPR, the Commission proposed to require that each RTO/ISO submit a compliance filing within 90 days of the effective date of the Final

[261] AWEA Comments at 10; Potomac Economics Comments at 11–12.

[262] XO Energy Replacement Comments at 43–44.

[263] Diversified Trading/eXion Energy Comments at 5–7; XO Energy Replacement Comments at 44–45.

[264] EDF Comments at 1.

[265] *Id.* at 5.

[266] MISO Comments at 19; PJM Comments at 12.

[267] MISO Transmission Owners Comments at 15.

[268] PJM Comments at 15.

[269] MISO Transmission Owners Comments at 15; PJM Comments at 15.

[270] MISO Transmission Owners Comments at 14–15.

[271] ISO–NE Comments at 45.

[272] NOPR, FERC Stats. & Regs. ¶ 32,721 at P 101.

[273] Financial Marketers Coalition Comments at 40–44; XO Energy Replacement Comments at 45–47.

[274] ISO–NE Comments at 45–46; MISO Comments at 20.

[275] NYISO Comments at 12–13; PJM Comments at 11–12.

[276] NYISO Comments at 12–13.

[277] PJM Comments at 11–12.

[278] MISO Transmission Owners Comments at 14–15; PJM Comments at 11–12.

[279] PJM Market Monitor Comments at 11–12.

[280] AWEA Comments at 10–14; Designated Marketers Comments at 7; TAPS Comments at 10; XO Energy Replacement Comments at 45–47.

[281] Appian Way Comments at 8; Designated Marketers Comments at 7; ISO–NE Comments at 45–46; XO Energy Replacement Comments at 45–47.

[282] XO Energy Reply Comments at 8.

Rule. The Commission also requested comment on whether 90 days provided sufficient time for RTOs/ISOs to develop new tariff language in response to the Final Rule. The Commission also proposed that tariff changes implementing the Final Rule must become effective no more than six months after compliance filings are due.[283]

A. Comments

137. The Commission did not propose separate compliance and implementation deadlines for the uplift cost allocation and transparency reforms. Accordingly, most of the comments received on this subject understandably address compliance and implementation assuming that the Final Rule would address both proposed reforms. We do not discuss comments that solely addressed compliance and implementation of the proposed uplift cost allocation reform.

138. MISO requests that the Commission consider a compliance timeline of 120 days, citing a need to review existing protocols, refine current processes to reflect any changes stemming from the NOPR proposal, and discuss changes with stakeholders. MISO requests that the Commission consider an implementation timeline of 365 days, as MISO estimates that the coding and testing of new software will likely take a minimum of 60 to 90 days.[284]

139. ISO–NE states that the 90-day compliance deadline is too short as it leaves insufficient time to consult with stakeholders, consider alternative compliance approaches and develop and file tariff changes. ISO–NE also asserts that the six-month deadline appears arbitrary. ISO–NE concludes that the Commission should allow RTOs/ISOs to submit a compliance proposal and schedule that reflects each region's unique circumstances, which may vary significantly.[285] However, ISO–NE's support for its position focuses on the proposed uplift cost allocation reforms, which are not a part of this Final Rule. PJM supports the 90-day compliance deadline. PJM states specifically that it could implement the proposed transparency changes within nine months after issuance of a final rule.[286] NYISO is silent on the compliance deadline, but states that it would require at least nine months for implementation.[287] CAISO and SPP do not comment on compliance or implementation timelines.

140. Direct Energy states that the shorter the period for implementing the changes to transparency requirements the better, as the changes will only enhance RTO/ISO markets.[288] APPA and NRECA recommend that the Commission seek input from RTOs/ISOs regarding the feasibility and timing of their ability to comply with the transparency provisions.[289]

B. Determination

141. In the NOPR, the Commission did not propose separate compliance and implementation deadlines for the uplift cost allocation and transparency reforms. Most of the comments received on this subject address compliance and implementation assuming a Final Rule would address both initiatives, and in several cases, focused only on compliance and implementation related to the uplift cost allocation initiative. As this Final Rule only addresses the transparency initiative, we reason that some of the proposed compliance and implementation deadline concerns may be alleviated. We agree with Direct Energy that it is preferable that the transparency benefits of these reforms be realized as quickly as possible. Therefore, we require that each RTO/ISO submit a compliance filing within 60 days of the effective date of this Final Rule that establishes in its tariff the three reporting requirements and one requirement related to transmission constraint penalty factors as described herein. Further, we require tariff changes to become effective no more than 120 days after compliance filings are due.

VI. Information Collection Statement

142. The Paperwork Reduction Act (PRA)[290] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB's regulations,[291] in turn, require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collection(s) of information unless the collection(s) of information display a valid OMB control number.

143. In this Final Rule, we are amending the Commission's regulations to improve the operation of organized wholesale electric power markets operated by RTOs/ISOs. We require that each RTO/ISO: (1) Report, on a monthly basis, uplift payments for each transmission zone, broken out by day and uplift category (Zonal Uplift Report); (2) report, on a monthly basis, total uplift payments for each resource (Resource-Specific Uplift Report); (3) report, on a monthly basis, for each operator-initiated commitment, the size of the commitment, transmission zone, commitment reason, and commitment start time (Operator-Initiated Commitment Report); and (4) define in its tariff the transmission constraint penalty factors, as well as the circumstances under which those factors can set locational marginal prices (LMP), and any process by which they can be changed (Transmission Constraint Penalty Factor Requirements).

144. The reforms required in this Final Rule include a one-time tariff filing with the Commission due 60 days after the effective date of this Final Rule. The reforms will also require each RTO/ISO to maintain and post the three reports on an ongoing basis. We estimate this will require about 36 hours each year (three hours each month) for each RTO/ISO. We anticipate the reforms proposed in this Final Rule, once implemented, would not significantly change currently existing burdens on an ongoing basis. The Commission will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[292]

145. In the NOPR, the Commission requested comments on its need for this information, whether the information will have practical utility, the accuracy of burden and cost estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The comments and the Commission's determinations related to these issues are discussed above.

[283] NOPR, FERC Stats. & Regs. ¶ 32,721 at P 102.

[284] MISO Comments at 20–21.

[285] ISO–NE Comments at 46–47.

[286] PJM Comments at 17.

[287] NYISO Comments at 13.

[288] Direct Energy Comments at 11.

[289] APPA and NRECA Comments at 2, 13.

[290] 44 U.S.C. 3501–3520.

[291] 5 CFR 1320 (2017).

[292] 44 U.S.C. 3507(d).

Burden Estimate and Information Collection Costs: The Commission believes that the burden estimates below are representative of the average burden on respondents, including necessary communications with stakeholders. The estimated burden and cost [293] for the requirements contained in this Final Rule follow.[294]

FERC–516G, AS IMPLEMENTED BY THE FINAL RULE IN DOCKET RM17–2–000

	Number of respondents [295]	Annual number of responses per respondent	Total number of responses	Average burden hours and cost per response	Total annual burden hours and total annual cost	Cost per respondent ($)
	(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = (5)	(5) ÷ (1)
One-Time Effort (in Year 1) to (a) establish process for reporting on company website,[296] & (b) submit tariff filing.	6	1	6	500 hrs.; $38,500.	3,000 hrs.; $231,000.	$38,500
Ongoing Preparing and Posting of 3 reports on company website each month (starting in Year 1), as mentioned above.	6	12	72	3 hrs.; $231	216 hrs.; $16,632.	2,772

Cost to Comply: The Commission has projected the total cost of compliance to industry to be: One-time in Year 1, $231,000; and ongoing, starting in Year 1, $16,632.

Title: FERC–516G, Electric Rate Schedules and Tariff Filings in Docket RM17–2–000.

Action: New information collection.

OMB Control No.: 1902–0295.

Respondents for this Rulemaking: RTOs/ISOs.

Frequency of Information: One-time, and ongoing posting to company website.

Necessity of Information: The Federal Energy Regulatory Commission implements this rule to improve competitive wholesale electric markets in the RTO/ISO regions.

Internal Review: The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], email: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873. Comments concerning the collection of information and the associated burden estimate(s) may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Comments submitted to OMB should refer to FERC–516G and OMB Control No. 1902–0295.

VII. Environmental Analysis

146. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[297] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the Federal Power Act relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.[298]

VIII. Regulatory Flexibility Act

147. The Regulatory Flexibility Act of 1980 (RFA) [299] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

148. This rule would apply to six RTOs/ISOs (all of which are transmission organizations). The average estimated annual PRA-related cost to each of the RTOs/ISOs is $41,272 (one-time and ongoing costs) in Year 1, and $2,772 (ongoing cost) in Year 2 and beyond. This cost of implementing these changes is not significant. Additionally, the RTOs/ISOs are not small entities, as defined by the RFA.[300] This is because the relevant threshold between small and large entities is 500 employees and the Commission understands that each RTO/ISO has more than 500 employees.

[293] The estimated hourly cost (salary plus benefits) provided in this section are based on the salary figures for May 2016 posted by the Bureau of Labor Statistics for the Utilities sector (*available at http://www.bls.gov/oes/current/naics2_22.htm#00-0000*) and benefits effective September 2017 (issued 12/15/2017, *available at http://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are: (a) Legal (code 23–0000), $143.68; (b) Computer and Mathematical (code 15–0000), $60.70; (c) Information Security Analyst (code 15–1122), $66.34; (d) Accountant and Auditor (code 13–2011), $53.00; (e) Information and Record Clerk (code 43–4199), $39.14; (e) Electrical Engineer (code 17–2071), $68.12; (f) Economist (code 19–3011), $77.96; (g) Computer and Information Systems Manager (code 11–3021), $100.68; (h) Management (code 11–0000), $81.52. The average hourly cost (salary plus benefits), weighting all of these skill sets equally, is $76.79. For these calculations, we round that figure to $77 per hour.

[294] The RTOs/ISOs (CAISO, SPP, MISO, PJM, NYISO, and ISO–NE) are required to comply with the reforms in this Final Rule.

[295] Respondent entities are either RTOs or ISOs.

[296] This includes monthly reporting/posting on the company website for: (1) The Zonal Uplift Report (posting within 20 days of end of month), (2) the Resource-Specific Uplift Report (posting within 90 days of end of month), and (3) the Operator-Initiated Commitments Report (posting within 30 days of the end of month).

[297] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[298] 18 CFR 380.4(a)(15) (2017).

[299] 5 U.S.C. 601–612.

[300] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Administrations' regulations at 13 CFR 121.201 define the threshold for a small Electric Bulk Power Transmission and Control entity (NAICS code 221121) to be 500 employees. *See* 5 U.S.C. 601(3), citing to Section 3 of the Small Business Act, 15 U.S.C. 632.

Furthermore, because of their pivotal roles in wholesale electric power markets in their regions, none of the RTOs/ISOs meet the last criterion of the two-part RFA definition a small entity: ''not dominant in its field of operation.'' As a result, we certify that this Final Rule would not have a significant economic impact on a substantial number of small entities.

IX. Document Availability

149. 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 FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

150. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

151. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

X. Effective Date and Congressional Notification

152. These regulations are effective July 9, 2018. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Final Rule will be provided to both Houses of Congress, the Government Accountability Office, and the Small Business Administration.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Issued: April 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Regulatory Text

In consideration of the foregoing, the Commission amends part 35, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

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

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.28 by adding paragraph (g)(10) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(g) * * *

(10) *Transparency*—(i) *Uplift reporting.* Each Commission-approved independent system operator or regional transmission organization must post two reports, at minimum, regarding uplift on a publicly accessible portion of its website. First, each Commission-approved independent system operator or regional transmission organization must post uplift, paid in dollars, and categorized by transmission zone, day, and uplift category. Transmission zone shall be defined as the geographic area that is used for the local allocation of charges. Transmission zones with fewer than four resources may be aggregated with one or more neighboring transmission zones, until each aggregated zone contains at least four resources, and reported collectively. This report shall be posted within 20 calendar days of the end of each month. Second, each Commission-approved independent system operator or regional transmission organization must post the resource name and the total amount of uplift paid in dollars aggregated across the month to each resource that received uplift payments within the calendar month. This report shall be posted within 90 calendar days of the end of each month.

(ii) *Reporting Operator-Initiated Commitments.* Each Commission-approved independent system operator or regional transmission organization must post a report of each operator-initiated commitment listing the size of the commitment, transmission zone, commitment reason, and commitment start time on a publicly accessible portion of its website within 30 calendar days of the end of each month. Transmission zone shall be defined as a geographic area that is used for the local allocation of charges. Commitment reasons shall include, but are not limited to, system-wide capacity, constraint management, and voltage support.

(iii) *Transmission constraint penalty factors.* Each Commission-approved independent system operator or regional transmission organization must include, in its tariff, its transmission constraint penalty factor values; the circumstances, if any, under which the transmission constraint penalty factors can set locational marginal prices; and the procedure, if any, for temporarily changing the transmission constraint penalty factor values. Any procedure for temporarily changing transmission constraint penalty factor values must provide for notice of the change to market participants.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—List of Short Names/Acronyms of Commenters

Short name/acronym	Commenter
APPA/NRECA	American Public Power Association and National Rural Electric Cooperative Association.
Appian Way	Appian Way Energy Partners, LLC.
AWEA	American Wind Energy Association.
Brookfield	Brookfield Energy Marketing LP.
CAISO	California Independent System Operator Corporation.
CAISO Market Monitor	Department of Market Monitoring for the California Independent System Operator Corporation.
California SWP	California Department of Water Resources State Water Project.
Calpine	Calpine Energy Solutions, LLC.
Competitive Suppliers	Electric Power Supply Association; PJM Power Providers; and Western Power Trading Forum.
Direct Energy	Direct Energy Business, LLC, on behalf of itself and its affiliate, Direct Energy Business Marketing, LLC.
Diversified Trading/eXion Energy	Diversified Trading Company, LLC and eXion Energy, Inc.
EDF	EDF Renewable Energy, Inc.

Short name/acronym	Commenter
EEI	Edison Electric Institute.
ELCON	Electricity Consumers Resource Council.
Exelon	Exelon Corporation.
Financial Marketers Coalition	Financial Marketers Coalition.
Golden Spread	Golden Spread Electric Cooperative, Inc.
ISO–NE	ISO New England, Inc.
IRC	ISO/RTO Council.
Joint Marketers	DC Energy, LLC; Mercuria Energy Trading, Inc.; and Perdisco Trading, LLC.
MISO	Midcontinent Independent System Operator, Inc.
MISO Transmission Owners	Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.
NCPA	Northern California Power Agency.
NYISO	New York Independent System Operator, Inc.
PG&E	Pacific Gas and Electric Company.
PJM	PJM Interconnection, L.L.C.
PJM Market Monitor	Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM.
Potomac Economics	Potomac Economics, Ltd.
R Street Institute	R Street Institute.
Six Cities	Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.
SPP	Southwest Power Pool, Inc.
SPP Market Monitor	Southwest Power Pool, Inc. Market Monitoring Unit.
TAPS	Transmission Access Policy Study Group.
XO Energy	XO Energy, LLC.

[FR Doc. 2018–08609 Filed 4–24–18; 8:45 am]

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Part III

Federal Reserve System

12 CFR Parts 217, 225, and 252

Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 217, 225, and 252

[Regulations Q, Y, and YY; Docket No. R–1603]

RIN 7100–AF 02

Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Board is inviting comment on a notice of proposed rulemaking (proposal) that would integrate the Board's regulatory capital rule (capital rule) and the Board's Comprehensive Capital Analysis and Review (CCAR) and stress test rules in order to simplify the capital regime applicable to firms subject to the capital plan rule. The proposal would amend the Board's capital plan rule, capital rule, and stress testing rules, and make amendments to the Stress Testing Policy Statement that was proposed for public comment on December 15, 2017. Under the proposal, the Board's supervisory stress test would be used to establish the size of a stress capital buffer requirement and a stress leverage buffer requirement. The proposal would apply to bank holding companies with $50 billion or more in total consolidated assets and U.S. intermediate holding companies of foreign banking organizations established pursuant to Regulation YY. The proposal would not apply to any community bank, any bank holding company with total consolidated assets of less than $50 billion, or to any state member bank or savings and loan holding company. The proposal would be effective on December 31, 2018. Under the proposal, a firm's first stress capital buffer and stress leverage buffer requirements would generally be effective on October 1, 2019.

DATES: Comments must be received by June 25, 2018.

ADDRESSES: You may submit comments, identified by [Docket No. R–1603 and RIN 7100–AF 02] by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number and RIN number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx* as submitted, unless modified for technical reasons or to remove sensitive PII at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Lisa Ryu, Associate Director, (202) 263–4833, Constance Horsley, Deputy Associate Director, (202) 452–5239, (202) 475–6316, Juan Climent, Manager (202) 872–7526, Christine Graham, Senior Supervisory Financial Analyst, (202) 452–3005, Page Conkling, Senior Supervisory Financial Analyst, (202) 912–4647, Joseph Cox, Senior Supervisory Financial Analyst, (202) 452–3216, or Hillel Kipnis, Senior Financial Analyst, (202) 452–2924, Division of Banking Supervision and Regulation; Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036, Julie Anthony, Counsel, (202) 475–6682, Mark Buresh, Senior Attorney, (202) 452–5270, Asad Kudiya, Senior Attorney, (202) 475–6358, or Mary Watkins, Attorney, (202) 452–3722, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Summary of the Proposal

A. Description of the Capital Plan and Capital Rules

The resiliency of large financial institutions is critical to the stability of the financial sector. As shown in the 2007–2008 financial crisis, problems at large financial institutions can lead to significant market disruption, spread rapidly throughout the financial system, and cause a credit crunch, worsening economic downturns. To be resilient, a financial institution must maintain sufficient levels of capital to support the risks associated with its exposures and activities. In the years leading up to the financial crisis, neither the regulatory capital regime nor financial institutions' own models sufficiently captured the actual risk exposures of financial institutions, resulting in a level of capital that was inadequate to cover losses as conditions deteriorated, putting the economic activity at risk.

The risks to the ability of the financial system to support economic growth were exacerbated by actions taken by firms during the crisis. Rather than conserve loss-absorbing resources, many firms continued to distribute capital to shareholders in an attempt to reassure the market of their health and resiliency. Further, the lack of transparency into firms' actual risk profiles during the crisis increased uncertainty, left counterparties unable to distinguish between healthy and unhealthy banks, and prompted a large and sudden reaction from the markets as the full scale of risks was revealed. The systematic loss of confidence in the banking sector that ensued led to sharply tighter credit conditions for businesses and households and caused extreme strains in crucial markets; the economic consequences prompted public sector intervention by the Congress, U.S. Treasury, Board,[1] and Federal Deposit Insurance Corporation to avoid further deterioration and restore economic activity.

At the height of the crisis, the Board turned to stress testing, under the Supervisory Capital Assessment Program (SCAP), to determine potential losses at the largest firms if the prevailing stress severely worsened and to restore confidence in the financial sector.[2] Building on the success of the SCAP, the Board introduced the current stress testing regime and CCAR to assess whether the largest firms have sufficient capital to continue to lend and absorb potential losses under severely adverse conditions, and to ensure that they have sound, forward-looking capital planning practices.[3] The Board publishes the results of its stress tests and assessment of firms' capital planning practices, which enhances market discipline.

The Board adopted the capital plan rule in 2011, which requires each bank holding company with $50 billion or more in total consolidated assets to submit an annual capital plan to the Board.[4] The Board may limit a firm's capital distributions under the rule if the Board finds deficiencies in the firm's capital plan or pro forma post-stress level of capital.[5] As part of CCAR, the Board evaluates the ability of each of the largest bank holding companies to maintain capital above minimum regulatory capital requirements under expected and stressful conditions, assuming that a firm makes all planned capital actions (for example, dividends, capital issuances, and repurchases of capital instruments) that are in its capital plan (supervisory post-stress capital assessment).

Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires the Board to adopt enhanced capital standards, including supervisory stress tests, company-run stress tests, and enhanced risk-based and leverage capital requirements, for bank holding companies with total consolidated assets of $50 billion or more. The enhanced prudential standards that the Board adopts pursuant to section 165 must increase in stringency based on the systemic importance of the firm. The Board's supervisory stress test conducted pursuant to the Dodd-Frank Act evaluates whether firms have sufficient capital to continue operations throughout times of economic and financial stress using firm-provided data and a common set of scenarios, models, and assumptions.[6] In the company-run stress tests, firms use the same scenarios that the Board uses to conduct the supervisory stress tests.

Similar to the Board's capital planning and stress testing rules, the Board's capital rule also addresses weaknesses observed during the 2007–2008 financial crisis. In 2013, the Board adopted a final rule that revised the Board's risk-based and leverage capital requirements for firms.[7] The revisions to the Board's capital rule strengthened the quality and quantity of capital held by firms by implementing, among other changes, a new minimum common equity tier 1 (CET1) capital requirement, a higher minimum tier 1 capital requirement, and capital buffer requirements above the minimum requirements. A firm must maintain risk-based capital ratios in excess of the minimum plus buffer requirements in order to avoid limitations on capital distributions and certain discretionary bonus payments.[8] In addition, the Board adopted a supplementary leverage ratio that measures capital against on- and off-balance sheet exposures for firms with total consolidated assets greater than or equal to $250 billion or total consolidated on-balance sheet foreign exposures of at least $10 billion, or that otherwise meet the conditions set forth in 12 CFR 217.100(b).[9]

In July 2015, the Board adopted the GSIB surcharge rule as part of its implementation of section 165 of the Dodd-Frank Act.[10] The GSIB surcharge rule establishes the criteria for identifying a GSIB and the methods that those firms must use to calculate a risk-based capital surcharge, which is calibrated to each firm's overall systemic risk and which expands the capital conservation buffer requirement for these firms.[11]

Strengthening the regulatory capital regime, including the introduction of capital planning and stress testing requirements, has been an important supervisory response to the financial crisis. Stress testing makes the capital regime more forward-looking, risk-sensitive, and firm-specific. As a result of this program and the enhancements made to the Board's regulatory capital regime, large U.S. bank holding companies are much more resilient to stress than in the past. Common equity capital levels among the nation's largest bank holding companies have risen by over $720 billion since 2009, making U.S. firms among the strongest in the world.[12]

B. Review of Capital Planning and Stress Testing Programs

The Board periodically reevaluates its programs to ensure that they remain effective and that unintended consequences are minimized. Accordingly, the Board has reviewed the CCAR program to assess its effectiveness and to identify any areas that should be refined (CCAR review). The CCAR review included an internal assessment as well as a series of feedback meetings with outside parties. The participants in such meetings included senior management from firms currently subject to the capital plan rule, debt and equity market analysts,

[1] References to the Board in this preamble may also refer to the Federal Reserve.

[2] SCAP applied to domestic bank holding companies with $100 billion or more in total consolidated assets.

[3] The changes in this proposal would apply to bank holding companies with total consolidated assets of $50 billion or more, any nonbank financial company supervised by the Board that becomes subject to the capital planning requirements pursuant to a rule or order of the Board, and to U.S. intermediate holding companies established pursuant to the Board's Regulation YY (12 CFR part 252) in accordance with the transition provisions under the capital plan rule. Currently, no nonbank financial companies supervised by the Board are subject to the capital planning requirements. References to ''bank holding companies'' or ''firms'' in this preamble should be read to include all of these companies, unless otherwise specified.

[4] *See* 12 CFR 225.8. A firm's capital plan must include (i) an assessment of the expected uses and sources of capital over the planning horizon; (ii) a detailed description of the firm's processes for assessing capital adequacy; (iii) the firm's capital policy; and (iv) a discussion of any expected changes to the firm's business plan that could materially affect its capital adequacy. A firm may be required to include other information and analysis relevant to its capital planning processes and internal capital adequacy assessment.

[5] 12 CFR 225.8(f). As discussed below, a large and noncomplex firm is no longer subject to the qualitative assessment in CCAR.

[6] The supervisory post-stress capital assessment in CCAR is based on the supervisory stress test conducted pursuant to the Dodd-Frank Act.

[7] 78 FR 62018 (October 11, 2013), adopted as 12 CFR part 217 (Regulation Q) and subsequently amended.

[8] The limitations apply to discretionary bonus payments made to executive officers of a banking organization.

[9] 12 CFR part 217.

[10] 12 CFR part 217, subpart H; 80 FR 49082 (August 14, 2015).

[11] In addition, a GSIB must maintain a supplementary leverage ratio in excess of 5 percent in order to avoid limitations on capital distributions and discretionary bonus payments. 79 FR 24528 (May 1, 2014) (*revised* 80 FR 49082 (August 14, 2015)).

The Board expects to release a proposal that would recalibrate the enhanced supplementary leverage ratio standards for GSIBs and their state member bank insured depository institution subsidiaries. The proposal would set the enhanced supplementary leverage ratio standards to 3 percent plus one half of the GSIB surcharge applicable to the bank holding company. That proposal would amend the Board's capital rule, as well as make conforming changes to the Board's total loss-absorbing capacity rule.

[12] Staff calculations based on the Consolidated Financial Statements for Holding Companies.

representatives from public interest groups, and academics in the fields of economics and finance. The Board also examined the interaction between the capital rule and its capital planning and stress testing rules.

Some participants in the CCAR review expressed support for increasing post-stress capital requirements by the amount of the GSIB surcharge and countercyclical capital buffer amount, arguing that such buffer requirements are intended to further macroprudential and countercyclical objectives in a manner that is not currently addressed directly in the supervisory post-stress capital assessment. On the other hand, some participants argued it would not be appropriate to increase post-stress minimum requirements by the GSIB surcharge because it would treat the GSIB surcharge as a minimum capital requirement rather than as a buffer as intended in the capital rule and because the supervisory post-stress capital assessment already includes scenario components that, historically, were only applicable to GSIBs.[13]

Participants in the CCAR review also raised concerns about the interactions between the capital rule and the supervisory post-stress capital assessment. The supervisory post-stress capital assessment includes an assumption that a firm makes all planned capital distributions, reflecting the historical experience from the financial crisis in which the largest banking organizations continued to repurchase shares and pay dividends to shareholders well after the financial system came under severe stress.[14] Some participants in the CCAR review argued that the Board should not assume in the supervisory post-stress capital assessment that a firm continues to make all of its planned capital distributions if the capital distributions would not be permitted under the capital rule.

Some participants in the CCAR review viewed other assumptions in the supervisory post-stress capital assessment as unrealistic and overly conservative. Since the 2014 CCAR cycle, in projecting a firm's balance sheet, the supervisory stress test has included the assumption that credit supply does not contract. This assumption furthered the Board's macroprudential objectives by evaluating whether firms could pass the supervisory post-stress capital assessment while continuing to lend and support the real economy. In implementing this assumption, the Board used a model calibrated to historical data that tended to project that a firm's balance sheet and risk-weighted assets would grow over the planning horizon, even in the severely adverse scenario.[15] Some participants in the CCAR review argued that this assumption is overly conservative, and suggested that the Board modify this growth assumption to account for certain portfolios where it is unrealistic (such as legacy portfolios).

The Board received other feedback from participants in the CCAR review regarding changes to its processes associated with CCAR. For example, participants recommended further enhancing the transparency of the supervisory post-stress capital assessment and eliminating the heightened supervisory scrutiny of a capital plan that includes a dividend payout ratio of more than 30 percent.

C. Actions Following the CCAR Review

The Board has identified several areas where the capital plan rule and CCAR could be further refined or improved, including by reducing burden for non-GSIBs subject to CCAR; addressing the role of the GSIB surcharge in the supervisory post-stress capital assessment; addressing inconsistencies between the assumptions in the supervisory stress test and the distribution limitations in the capital rule; eliminating one or more post-stress capital ratio minimums in CCAR; and simplifying certain supervisory stress test assumptions.

In January 2017, the Board adopted a rule to reduce the burden associated with the qualitative aspects of CCAR for less complex firms. Under that rule, firms that are not identified as GSIBs and that have average total consolidated assets of $50 billion or more but less than $250 billion and total nonbank assets of less than $75 billion (large and noncomplex firms) are no longer subject to the provisions of the capital plan rule whereby the Board may object to a firm's capital plan on the basis of qualitative deficiencies in the firm's capital planning process.[16]

Additionally, in December 2017, the Board released a package of proposals that would increase the transparency of the supervisory stress test.[17] The package included three proposals for public comment: (1) Enhanced model disclosure that would provide additional detail about the supervisory stress test models and how they function; (2) a Stress Testing Policy Statement that would provide the key principles and policies that govern the Board's approach to model development, implementation, use, and validation in the supervisory stress test; and (3) an amendment to the Board's Policy Statement on the Scenario Design Framework for Stress Testing (Scenario Design Policy Statement) that would make the scenario development process more countercyclical.

D. Summary of Proposal

The capital rule and capital plan rule each place separate limitations on firms' capital distributions to address the fact that many firms made significant distributions of capital in the lead up to and during the crisis without fully considering the effects that a prolonged economic downturn could have on their capital adequacy. Under the capital rule, a firm is subject to one or more buffer requirements above its minimum capital requirements and becomes subject to increasingly strict limitations on the distributions and bonus payments as its capital ratios decline below the buffer requirements toward the minimum capital requirements. Under the capital plan rule, a firm is required to follow the capital distributions included in its capital plan and, except in limited circumstances, seek the Board's approval before making additional capital distributions.[18]

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[13] The supervisory stress test includes a trading and counterparty component (the global market shock) and large counterparty default scenario component. Historically, the global market shock has included six U.S. GSIBs with significant trading activity. However, in December 2017, additional firms were identified as having ''significant trading activity,'' and beginning in 2019, will be subject to the global market shock. The large counterparty default scenario component has been applied to the firms with the largest derivatives exposures and securities financing transaction activities, which to date, has included the eight U.S. GSIBs.

[14] Beverly Hirtle, ''Bank Holding Company Dividends and Repurchases during the Financial Crisis,'' FRBNY Staff Report, (April 2016), *www.newyorkfed.org/medialibrary/media/research/staff_reports/sr666.pdf* and Viral V. Acharya, Irvind Gujral, Nirupama Kulkarni, Hyun Song Shin, ''Dividends and Bank Capital in the Financial Crisis of 2007–2009,'' (March 2011) NBER Working Paper No. 16896, *www.nber.org/papers/w16896.*

[15] *See* the Board's letter regarding the Federal Reserve's independent balance sheet and risk-weighted asset projections (December 16, 2013) available at *www.federalreserve.gov/bankinforeg/independent-projections-letter-20131216.pdf.* This letter includes information on historical experiences of banking assets in past recessions.

[16] The capital planning processes for these large and noncomplex firms would be evaluated through the regular supervisory process. *See* 81 FR 9308 (February 3, 2017).

[17] *See* 82 FR 59529 (December 15, 2017).

[18] The Board may object to the capital plan of a firm that does not demonstrate an ability to maintain capital levels above minimum regulatory capital requirements on a pro forma basis under expected and stressful conditions. A firm receiving such an objection can make only those capital distributions permitted by the Board. In assessing a firm's capital plan under the capital plan rule, the

The proposal would use the results of the annual supervisory stress test to size specific buffer requirements above minimum capital requirements that restrict capital distributions under the capital rule and establish a single approach to capital distribution limitations, effectively integrating the capital rule and the capital plan rule. Integrating the two capital regimes would simplify the Board's overall approach to capital regulation. The proposal would replace the static 2.5 percent of risk-weighted assets portion of the capital conservation buffer requirement under the standardized approach with a stress capital buffer requirement, which is forward-looking, risk-sensitive, and firm-specific. The proposal would also establish a stress leverage buffer requirement in addition to the minimum 4 percent tier 1 leverage ratio requirement.[19]

A firm would be required to maintain capital ratios above its minimum plus its buffer requirements in order to avoid restrictions on its capital distributions and discretionary bonus payments. A firm would be bound by the most stringent distribution limitations, if any, as determined by the firm's standardized approach capital conservation buffer requirement (as defined below), the firm's stress leverage buffer requirement and, if applicable, the firm's advanced approaches capital conservation buffer requirement and enhanced supplementary leverage ratio standard. The stress capital buffer and stress leverage buffer requirements (together, the stress buffer requirements) are described in greater detail in section II.

As noted, participants in the CCAR review observed an inconsistency between the distribution limitations of the capital rule and the distribution assumptions used in the supervisory post-stress capital assessment. To address this inconsistency, certain assumptions used in the supervisory stress test would be modified as part of the proposal. Specifically, in calculating the stress buffer requirements, the proposal would remove the current assumption that a firm would make all planned capital distributions over the planning horizon, including any planned common stock dividends and repurchases of common stock. Instead, the stress buffer requirements would include only four quarters of planned common stock dividends in order to preserve the current incentives for a firm to engage in disciplined, forward-looking dividend planning. The stress buffer requirements would include dividends—but not repurchases—based on the experience in the recent financial crisis, when large bank holding companies began to reduce share repurchases early in the crisis but continued to pay dividends at nearly the pre-crisis rate through 2008.[20]

In addition, the Board would also adjust the methodology used in the supervisory stress test to assume that the firm takes actions to maintain a constant level of assets, including loans, trading assets, and securities over the planning horizon. As a related matter, the Board would assume that a firm's risk-weighted assets and leverage ratio denominator generally remain unchanged over the planning horizon.[21]

The Board would further modify certain elements of CCAR to reflect the introduction of the proposed stress buffer requirements. Specifically, the proposal would remove the quantitative objection in CCAR and instead rely on the capital rule's automatic restrictions on capital distributions that are triggered if a firm breaches its buffer requirements. For firms subject to supervision by the Board's Large Institution Supervision Coordination Committee (LISCC firms) and other large and complex firms,[22] the Board would retain the CCAR qualitative supervisory review and the ability to object to a firm's capital plan on qualitative grounds based on the adequacy of the firm's capital planning processes (qualitative objection).[23] The Board would also eliminate the 30 percent dividend payout ratio as a criterion for heightened scrutiny of a firm's capital plan. Incorporating four quarters of planned common stock dividends in the stress buffer requirements would provide sufficient incentive for prudent dividend payouts.

The proposal would continue to require a firm to describe its planned capital distributions in its capital plan and not exceed those planned capital distributions. Further, as described in section III.B of this preamble, a firm's planned capital distributions would need to be consistent with the effective capital distribution limitations that would apply under the firm's own baseline financial projections (BHC baseline scenario).

As discussed in detail in section II.D of this preamble, the Board estimates that non-GSIBs subject to CCAR would generally need to hold less capital under the proposal, as compared with the current supervisory post-stress capital assessment in CCAR, which is the binding constraint for most of these firms. In contrast, the Board estimates based on the most recent CCAR results the proposal would generally maintain or in some cases increase CET1 capital requirements for GSIBs. However, the Board's estimates suggest that no firm that participated in recent CCAR exercises would need to raise additional capital in order to avoid the proposal's limitations on capital distributions. The impact of the proposal will vary throughout the economic cycle.

II. Proposed Stress Buffer Requirements

A. Introduction to the Stress Buffer Requirements

As a general matter, capital buffer requirements are designed to help ensure that a firm maintains an adequate amount of loss-absorbing capital to stay above minimum regulatory requirements during stress. The capital buffer requirements restrict a firm's ability to distribute capital as the firm's actual capital levels approach minimum ratios.[24] These requirements therefore strengthen the ability of individual firms and the banking system to continue to function and to serve as financial intermediaries in times of stress.

Federal Reserve assumes that the firm makes all planned capital actions (*e.g.* dividends and issuances and repurchases of capital instruments) even in the severely adverse scenario.

[19] The leverage ratio is the ratio of a firm's tier 1 capital to its average total consolidated assests.

[20] Hirtle, Beverly, ''Bank Holding Company Dividends and Repurchases during the Financial Crisis,'' FRBNY Staff Report, (April 2016), *www.newyorkfed.org/medialibrary/media/research/staff_reports/sr666.pdf.* And Viral V. Acharya, Irvind Gujral, Nirupama Kulkarni, Hyun Song Shin, ''Dividends and Bank Capital in the Financial Crisis of 2007–2009,'' (March 2011) NBER Working Paper No. 16896, *http://www.nber.org/papers/w16896.*

[21] The leverage ratio denominator is equal to the difference between projected total consolidated assets and amounts projected to be deducted from tier 1 capital under 12 CFR 217.22(a), (c), and (d).

[22] A list of the current LISCC portfolio firms is available at *www.federalreserve.gov/bankinforeg/large-institution-supervision.htm.* Those LISCC firms that are currently subject to the capital plan rule are: Bank of America Corporation; The Bank of New York Mellon Corporation; Barclays PLC; Citigroup Inc.; Credit Suisse Group AG; Deutsche Bank AG; The Goldman Sachs Group, Inc.; JP Morgan Chase & Co.; Morgan Stanley; State Street Corporation; UBS AG; and Wells Fargo & Company. Large and complex firms include any bank holding company that has average total consolidated assets of at least $250 billion or average total nonbank assets of at least $75 billion.

[23] *See* 82 FR 9308 (February 3, 2017).

[24] Under the capital rule, a firm's maximum amount of capital distributions and certain discretionary bonus payments during the current calendar quarter are based on its applicable maximum payout ratio multiplied by the firm's eligible retained income. The maximum payout ratio declines as a firm's capital ratio approaches the minimum requirement. Eligible retained income is defined as net income attributable to the institution for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income.

Under the current capital rule, a firm's capital conservation buffer requirement is equal to 2.5 percent of risk-weighted assets plus any applicable GSIB surcharge and countercyclical capital buffer amount. The proposal would replace the 2.5 percent of risk-weighted assets with a stress capital buffer requirement, for firms subject to the supervisory stress test. A firm's stress capital buffer requirement would be tailored to its risk profile and potential vulnerability to stress. The firm's capital conservation buffer requirement under the standardized approach would be equal to its stress capital buffer and any applicable GSIB surcharge plus any applicable countercyclical capital buffer amount (standardized approach capital conservation buffer requirement).

Currently, a firm subject to the advanced approaches calculates a given risk-based capital ratio under both the standardized and advanced approaches, and uses the lower of the two ratios as its operative ratio. Under the proposal, a firm would continue to calculate a given risk-based capital ratio under both the standardized and advanced approaches, and would calculate a different capital conservation buffer requirement for each. The capital conservation buffer requirement under the advanced approaches would be equal to 2.5 percent of risk-weighted assets (rather than the stress capital buffer requirement) plus any applicable GSIB surcharge plus any applicable countercyclical capital buffer amount (advanced approaches capital conservation buffer requirement). To date, the Board has not used or required the use of the capital rule's advanced approaches in the supervisory stress test due to the significant resources required to implement the advanced approaches on a pro forma basis and due to the complexity and opaqueness associated with introducing the advanced approaches in supervisory stress test projections. In addition, both the supervisory stress test and the advanced approaches are calibrated to reflect tail-risks; thus it could be duplicative to require a firm to meet the requirements of the advanced approaches on a post-stress basis.

For firms subject to the capital plan rule, the proposal would introduce a stress leverage buffer requirement in addition to the 4 percent minimum tier 1 leverage ratio requirement. This stress leverage buffer requirement would help to maintain the current complementary relationship between the risk-based and leverage capital requirements in normal and stressful conditions. In addition, it would continue the current practice of evaluating a firm's vulnerability to declines in its leverage ratio under stressful conditions.

The proposal would not, however, extend the stress buffer concept to the supplementary leverage ratio. A single stress leverage buffer, applicable to all firms, would provide a sufficient backstop and avoid adding additional complexity.[25]

A firm would need to maintain capital ratios above all minimum and buffer requirements to avoid restrictions on its capital distributions and discretionary bonus payments. A firm would be subject to the most stringent distribution limitations, if any, as determined by the firm's standardized approach capital conservation buffer requirement, the firm's stress leverage buffer requirement and, if applicable, the firm's advanced approaches capital conservation buffer requirement, and the enhanced supplementary leverage ratio standard.

The Board's supervisory stress test conducted under Regulation YY would be used to size each firm's stress buffer requirements. The stress buffer requirements would be calculated under the supervisory stress test's severely adverse scenario, designed in accordance with the Policy Statement on the Scenario Design Framework for Stress Testing. As described in appendix A to 12 CFR part 252, severely adverse scenarios are designed to be plausible, relevant, and guided in large part by historical experience in severe U.S. recessions.[26]

As in the current supervisory post-stress capital assessment in CCAR, under the proposal, the supervisory stress test would continue to use a common set of scenarios, models, and assumptions across firms. The performance of each model used in the supervisory stress test is assessed using a variety of metrics and benchmarks, including benchmark model results, where applicable. Each model is validated annually by an independent supervisory model validation function. In December 2017, the Board issued a Stress Testing Policy Statement for public comment describing its approach to supervisory model development, implementation, use, and validation.[27]

Each component of a firm's standardized approach capital conservation buffer requirement serves a distinct purpose and is calibrated and designed according to that purpose. The stress capital buffer requirement would be calibrated based on each firm's vulnerability to adverse economic or financial market conditions. As such, it would help ensure that the firm holds sufficient capital to continue to serve as a financial intermediary during a period of financial stress. The GSIB surcharge is designed to mitigate the risk posed to financial stability by certain large and systemic financial institutions, and is calibrated based on the externalities posed by these firms as measured by factors such as size, interconnectedness, and complexity. Finally, the countercyclical capital buffer is a macroprudential tool intended to strengthen the resiliency of financial firms and the financial system, by allowing the Board to raise capital standards when credit growth in the economy becomes excessive. Taken together, a firm's standardized approach capital conservation buffer requirement ensures that the firm has sufficient capital to continue to serve as a financial intermediary during stress, internalizes the cost that its failure would have on the broader economy, and builds capital when there is an elevated risk of above-normal losses.

In the CCAR review, certain discussion participants disagreed with the view that the supervisory post-stress capital assessment and the GSIB surcharge serve different purposes because two elements of the Board's supervisory post-stress capital assessment, the global market shock and the large counterparty default scenario component, apply only to GSIBs. However, the global market shock and large counterparty default scenario component apply to any firm that has material trading, derivatives, and securities financing transaction activities to capture direct losses stemming from these activities.[28] The market shock measures the trading mark-to-market losses associated with sudden changes in asset prices, and the large counterparty default scenario component measures the losses

[25] GSIBs would continue to be subject to an enhanced supplementary leverage ratio standard under the capital rule.

[26] 12 CFR part 252, appendix A.

[27] *See* 82 FR 59528 (Dec. 15, 2017) as proposed 12 CFR part 252, appendix B. This proposal re-proposes only section 2.7 of the proposed Stress Testing Policy Statement for public comment and proposes to add a new section 3.4 relating to a simple approach for projecting risk-weighted assets.

[28] On December 15, 2017, the Board modified the applicability criteria for the global market shock to more accurately identify the risks and capital needs of firms participating in the supervisory stress test. As revised, the global market shock applies to any bank holding company or intermediate holding company that (1) has aggregate trading assets and liabilities of $50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets, and (2) is not a large and noncomplex firm. In this proposal, the Board proposes to move the applicability criteria for the global market shock from the FR Y–14 reporting form to Regulation YY.

associated with repricing counterparty exposures based on the market shock, and then assumes the default of the counterparty that represents the largest net exposure. These components of the current supervisory post-stress capital assessment (and future modified supervisory stress test) therefore do not capture the potential adverse impact of the failure of a GSIB on the financial system as a whole—the risks that are the basis for the GSIB surcharge.

As described below in section II.B of this preamble, the proposed stress buffer requirements would incorporate different capital action assumptions than are currently used in the supervisory post-stress capital assessment in CCAR. Those revised capital action assumptions would also be incorporated in the Board's supervisory stress tests and the company-run stress tests conducted under Regulation YY, in order to harmonize the publicly disclosed supervisory and company-run stress test results with the stress buffer requirements.[29]

Question 1: What are the advantages and disadvantages of incorporating the stress capital buffer and stress leverage buffer requirements into the capital rule? How well does the proposal enhance regulatory simplicity, transparency, and efficiency for firms subject to the capital plan rule? What refinements or additional approaches should the Board consider to enhance these goals, and why? Please provide data on the impact of any proposed refinements or additional proposals.

Question 2: What are the advantages and disadvantages of including or excluding the stress capital buffer requirement from the advanced approaches capital conservation buffer requirement when considered in combination with other elements of the proposal or alternatives to the proposal? What if any, alternatives should the Board consider and why? For example, should the Board consider scaling the stress capital buffer requirement by the ratio of a firm's standardized total risk-weighted assets to its advanced approaches total risk-weighted assets in cases where the firm's advanced approaches capital ratio calculations are lower than its standardized capital ratio calculations? What are the advantages or disadvantages of such an approach?

Question 3: What are the advantages or disadvantages of not extending the stress buffer concept to the supplementary leverage ratio?

Question 4: Would modifications to the enhanced supplementary leverage ratio standards impact the responses to the questions above or any other aspect of the proposal, and if so how?

Question 5: How should the Board contemplate the appropriate level of the countercyclical capital buffer in light of the proposal?

Calculation of the Proposed Stress Capital Buffer Requirement

Under the proposal, the Board would determine a firm's stress capital buffer requirement as the difference between the firm's starting and lowest projected CET1 capital ratios under the severely adverse scenario in the supervisory stress test, calculated under the standardized approach, plus the sum of the ratios of the dollar amount of the firm's planned common stock dividends to projected risk-weighted assets for each of the fourth through seventh quarters of the planning horizon. The stress capital buffer requirement would be floored at 2.5 percent of a firm's risk-weighted assets.

Under the current capital rule, all banking organizations are subject to a capital conservation buffer requirement. The capital rule's current static 2.5 percent of risk-weighted assets component of the capital conservation buffer requirement was calibrated to reflect how firms' capital positions were affected during periods of severe stress, including the most recent financial crisis.[30] Placing a 2.5 percent of risk-weighted assets floor on the stress capital buffer requirement would ensure a minimum level of stringency across firms of all sizes and complexity and that a smaller firm would not be subject to more a stringent buffer requirement than a firm with total consolidated assets of $50 billion or more.

Calculation of the Proposed Stress Leverage Buffer Requirement

The stress leverage buffer requirement would be determined based on the same annual supervisory stress test that the Board conducts to determine the stress capital buffer requirement. Under the proposal, the Board would determine a firm's stress leverage buffer requirement as the difference between the firm's starting and lowest projected Tier 1 leverage ratio under the severely adverse scenario in the supervisory stress test plus the sum of the ratios of the dollar amount of the firm's planned common stock dividends to projected leverage ratio denominator for each of the fourth through seventh quarters of the planning horizon. The stress leverage buffer requirement would not have a floor, as there is no generally applicable leverage buffer requirement today, and would apply to all firms subject to the capital plan rule.

B. Assumptions and Methodologies Used in Determining the Proposed Stress Buffer Requirements

For the supervisory stress test used to calculate the stress buffer requirements, the Board proposes to revise certain assumptions it currently uses in the supervisory post-stress capital assessment in CCAR. Currently, in the CCAR post-stress capital assessment, the Board assumes that a firm will make all of its planned capital actions, including dividends and repurchases, and issuances of regulatory capital instruments. The proposal would narrow the set of planned capital actions assumed to occur in the supervisory stress test.

The current CCAR capital distribution assumptions were introduced to assess whether a firm could meet minimum capital requirements during severe stress conditions even if the firm did not reduce its planned capital distributions. However, the stress buffer requirements would reduce the need for the assumption that a firm makes all common stock distributions in a stress scenario because the restriction on a firm's capital distributions on an ongoing basis would be a function of the firm's performance under stress. Accordingly, the Board would no longer assume that a firm makes any repurchases or redemptions of any capital instrument.

However, in order to preserve the current incentives for a firm to engage in disciplined, forward-looking dividend planning, a firm's stress buffer requirements would include four quarters of planned common stock dividends (in the fourth through seventh quarters of the planning horizon), added to the projected decline in the firm's capital under stress. Requiring a firm to pre-fund one year of planned dividends would preserve the current incentives for a firm to engage in disciplined, forward-looking dividend planning. As noted, this aspect of the proposal is based on the Board's experience with large bank holding companies' capital distribution practices during the recent financial crisis. Additionally, evidence in the academic literature generally indicates that repurchases are more flexible than

[29] The supervisory and company-run stress tests conducted under Regulation YY would not include four quarters of planned dividends.

[30] *See* Basel Committee on Banking Supervision, Calibrating regulatory minimum capital requirements and capital buffers: A top-down approach (October 2010), available at: *https://www.bis.org/publ/bcbs180.htm.*

dividends.[31] A reduction in dividends by a publicly-traded firm could be interpreted by market participants as a signal of long-run deterioration in firm profitability, which could lead to a negative stock price reaction. Hence, even if the outlook for a publicly traded firm has significantly worsened, public pressure and competition may deter the firm from reducing dividend payments. Requiring a firm to pre-fund one year of dividends reflects the assumption that the firm will strive to maintain its current level of dividends even during times of stress.

As in the current supervisory post-stress capital assessment, the Board would continue to assume in the supervisory stress test that a firm would make payments on any instrument that qualifies as additional tier 1 capital or tier 2 capital equal to the stated dividend, or contractual interest or principal due on such instrument during the quarter. Based on supervisory experience, reductions in these payments are generally viewed by market participants as a sign of material weakness and firms are therefore likely to make them even under stressful conditions.[32]

The Board would also generally assume in the supervisory stress test that a firm does not make any planned issuance of regulatory capital instruments, parallel to the assumption that a firm does not repurchase any regulatory capital instruments. However, as under the current capital plan rule, the supervisory stress test would include issuances of common or preferred stock in connection with a planned merger or acquisition to the extent that the merger or acquisition is reflected in a firm's pro forma balance sheet estimates. Including such issuances, for purposes of the supervisory stress tests, would allow the Board to assess how a planned merger or acquisition would affect a firm's post-stress capital position.

The proposal would revise the required capital action assumptions in the company-run stress test rules to be consistent with the proposed capital actions used to calculate a firm's stress buffer requirements and would introduce those assumptions into the supervisory stress test rules.[33]

Since the first CCAR exercise, any capital plan implying a common stock dividend payout ratio above 30 percent has received heightened scrutiny in the qualitative assessment of each firm's capital planning processes. Participants in the CCAR review expressed general opposition to any specific cap on dividends, and argued that if a cap were deemed necessary, it should be higher than 30 percent. Including four quarters of planned dividends in a firm's stress buffer requirements as proposed would foster an incentive for prudent dividend payouts, removing the need for heightened scrutiny based on a capital plan's dividend payout ratio. Accordingly, in connection with this proposal, in future CCAR exercises the Board would eliminate the 30 percent dividend payout ratio as a criterion for heightened supervisory scrutiny of a firm's capital plan.

In addition, in response to comments regarding the current assumption that a firm's credit supply does not contract, resulting in growth of a firm's balance sheet in stress scenarios, the Board is proposing to modify its Stress Testing Policy Statement to include the assumption that a firm takes actions to maintain its current level of assets, including its securities, trading assets, and loans, over the planning horizon (no growth assumption).[34] The no growth assumption would simplify the current supervisory stress test assumptions while preventing firms from planning to reduce credit supply in a stress scenario. In addition, the proposal would clarify in the Stress Testing Policy Statement that, in projecting risk-weighted assets and the leverage ratio denominator, the Board would assume that a firm's risk-weighted assets and leverage ratio denominator remain unchanged over the planning horizon except for changes primarily related to deductions from regulatory capital or due to changes to the Board's regulations. Similar to the Board's current methodology, balance sheet, risk-weighted asset, and leverage ratio denominator projections would reflect the impact of a change to a firm's business plan, such as a planned merger or acquisition, or completed or contractually agreed-on divestiture.[35]

Question 6: What aspects of the calculation of the stress buffer requirements could be modified to increase the effectiveness of the proposal in ensuring that firms maintain stress buffer requirements that are appropriately sized to withstand stressful economic and financial conditions while permitting such firms to continue lending and supporting the real economy? Please describe the advantages or disadvantages of any alternative approach.

Question 7: Besides stated payments on regulatory capital instruments and issuance of common or preferred stock associated with a merger or acquisition, what, if any, other types of planned capital actions should the Board incorporate into the supervisory stress test for the purposes of calculating the stress buffer requirements, and why?

Question 8: What are the advantages and disadvantages of including or excluding dividend payouts and certain other planned capital actions in the calculation of the stress buffer requirements when considered in combination with other elements of the proposal or alternatives to the proposal?

Question 9: What, if any, additional factors beyond a planned divestiture, merger, or acquisition, should the Board incorporate into its projected changes in a firm's balance sheet or risk-weighted assets over the planning horizon and why?

Question 10: What are the advantages and disadvantages of integrating the distribution assumptions used in calculating a firm's stress buffer requirements with those used in the supervisory stress test?

C. Effective Dates for Proposed Stress Buffer Requirements

A firm's stress buffer requirements would be effective on October 1 of each year, and remain in effect until September 30 of the following year, unless the firm received updated stress buffer requirements from the Board.[36] The rule would be effective December 31, 2018. Under the proposal, a firm's

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[31] *See* Franklin Allen and Roni Michaely (2003), ''Payout Policy'' in Handbook of the Economics of Finance, and Martin Schmalz, Joan Farre-Mensa, and Roni Michaely (2014) ''Payout Policy'' in Robert Jarrow (Ed.), Annual Review of Financial Economics.

[32] 12 CFR 217.20(c) and (d).

[33] Under the proposal, in their company-run stress test, covered companies would no longer include in their capital action assumptions: (1) Actual capital actions for the first quarter of the planning horizon; (2) any common stock dividends; or (3) issuance of common or preferred stock relating to expensed employee compensation. For the first quarter of the planning horizon, firms would include any payments on any other instrument that is eligible for inclusion in the numerator of a regulatory capital ratio equal to the stated dividend, interest, or principal due on such instrument during the quarter. The capital action assumptions used in the company-run and supervisory stress tests would not include the four quarters of planned dividends.

[34] While the Board would assume in the supervisory post-stress capital assessment that a firm's balance sheet does not grow, in a firm's company-run stress tests, the Board expects each firm's projected balance sheet to be consistent with each scenario and the firm's business strategy.

[35] A firm's capital plan must include a discussion of any expected changes to its business plan that are likely to have a material impact on its capital adequacy or liquidity. *See* 12 CFR 225.8(e)(2)(iv).

[36] A firm may receive updated stress buffer requirements in connection with a resubmitted capital plan or in connection with a request for reconsideration (as described in section III.D of this preamble).

first stress buffer requirements would be effective on October 1, 2019.[37]

The process for determining the stress buffer requirements would be codified in the Board's capital plan rule (discussed further in section III below), and the restrictions associated with these requirements would be codified in the Board's capital rule (discussed further in section IV below).

Question 11: What if any operational complications or challenges to capital planning processes would the proposed effective dates create, and how might the Board address these issues consistent with the goals of the proposal?

Question 12: What advantages or disadvantages are associated with making the rule effective on December 31, 2018 and generally making the stress buffer requirements effective on October 1, 2019?

D. Impact of the Proposed Stress Buffer Requirements

To avoid limitations on capital distributions under the Board's current rules, a firm must manage to two distinct capital regimes. Specifically, the firm must both (1) maintain risk-based capital ratios above the capital rule's minimum requirements plus the capital conservation buffer requirement (a GSIB must also maintain a supplementary leverage ratio above 5 percent), and (2) demonstrate an ability to maintain capital ratios above minimum regulatory capital requirements in the supervisory post-stress capital assessment in CCAR. This proposal would simplify and integrate these requirements, eliminating the need for firms to manage to both potential sources of limitations on capital distributions. In conjunction with the proposal, the Board would also modify certain assumptions used in the supervisory stress test. To assess the impact of both the integration and the modified assumptions, the Board reviewed the levels of capital currently required of each firm across the two current regimes to avoid limitations on capital distributions and compared the higher of those amounts to the estimated level of capital that would be required of each firm under the proposal.[38]

For firms with over $50 billion in assets that are not GSIBs, the proposal would generally result in a reduction to a firm's required level of capital to avoid capital distribution limitations relative to what is required today.[39] This estimated reduction is attributable to the proposal's modified assumptions regarding balance sheet growth and capital distributions. While these assumptions would more appropriately reflect the expected performance of bank portfolios under stress, they would be somewhat less stringent than the assumptions currently used in the supervisory stress test. For GSIBs, the proposal would generally maintain or in some cases increase CET1 capital requirements. The estimated increase for these firms would occur because the capital conservation buffer requirement under the proposal—which, for a GSIB, includes both the stress capital buffer requirement and the GSIB surcharge—would be greater than the capital required under the current supervisory post-stress capital assessment.

All other things being equal, the proposal generally would lower the amount of tier 1 capital that a firm would need to maintain with respect to the assessment of the leverage ratio in stress. This is because the modified balance sheet and distribution assumptions in the supervisory stress test would reduce the stringency of the Tier 1 leverage ratio in stress and the stress leverage buffer requirement would not include a GSIB surcharge or any applicable countercyclical capital buffer amount.

The impact of the proposal would vary through the economic and credit cycle based on the risk profile and planned capital distributions of individual firms, as well as on the specific severely adverse stress scenario used in the supervisory stress test. Based on data from CCAR 2015, 2016, and 2017, the impact of the proposal would range from an aggregate reduction in CET1 capital requirements of about $35 billion (based on 2017 data) to an aggregate increase in CET1 capital requirements of about $40 billion (based on 2015 data). For GSIBs, this represents a corresponding increase in CET1 capital requirements of approximately $10 billion to $50 billion in aggregate, respectively, while non-GSIBs would have a decrease of approximately $45 billion to $10 billion, respectively. Had the proposal been in effect during recent CCAR exercises, analysis of those CCAR results and the current level of capital at participating firms indicates that no such firm would have needed to raise additional capital in order to avoid the proposal's limitations on capital distributions.

III. Proposed Changes to the Capital Plan Rule

A. Removal of Quantitative Objection

The proposal would remove the quantitative objection from the capital plan rule. Under the current capital plan rule, a firm may receive an objection to its capital plan if the firm does not demonstrate the ability to maintain capital ratios above the minimum requirements on a post-stress basis. The proposal would replace the quantitative objection with the stress buffer requirements.

B. Requirements for a Firm's Planned Capital Distributions

A focus on firms' capital planning would continue to be a key element of the Board's regulatory and supervisory regime. The proposal would continue to require a firm to describe its planned capital distributions in its capital plan and not exceed those planned capital distributions. Firms should plan to maintain capital levels above their minimum requirements plus relevant buffer requirements during normal economic periods and also to plan for capital needs during adverse economic conditions. These practices allow firms to continue to lend and operate as viable financial intermediaries even during adverse periods.

To help ensure a firm engages in prudent capital planning, the firm would be required to limit its planned capital distributions for the fourth through seventh quarters of the planning horizon to those that would be consistent with any effective capital distribution limitations that would apply under the firm's own BHC baseline scenario projections.[40] For

[37] To provide a transition between the 2018 CCAR cycle and the first stress buffer requirement, for the period from July 1 through September 30, 2019, under the proposal, a firm would be authorized to make capital distributions that do not exceed the four-quarter average of capital distributions for which the Board or Reserve Bank indicated its non-objection in the previous capital plan cycle, unless otherwise determined by the Board.

[38] This analysis assumes a countercyclical capital buffer amount of zero, consistent with the current level as affirmed by the Board on December 1, 2017: *www.federalreserve.gov/newsevents/pressreleases/bcreg20171201a.htm.*

[39] In connection with this analysis, the Board analyzed the stress test results in CCAR 2015 through 2017. U.S. IHC subsidiaries of foreign banking organizations were not subject to supervisory stress testing for this full period, and accordingly, were excluded from this quantitative analysis. None of these firms is subject to the GSIB surcharge, and all would benefit from the modified capital distribution and balance sheet assumptions.

[40] A firm would be required to ensure its planned capital distributions are consistent with any limitations on capital distributions it anticipates would apply in baseline conditions in the upcoming year. Those limitations would include the projected standardized approach capital conservation buffer requirement, stress leverage buffer requirement, supplementary leverage buffer requirement, internal and external total loss-absorbing capacity buffer requirements, and any capital directive established by the Board by order or regulation. The limitations would not be calculated using the advanced approaches, as a firm

Continued

example, in a given calendar quarter, if a firm estimates that the amount of its capital conservation buffer will be less than the corresponding capital conservation buffer requirement, the firm would be required to limit its planned distributions in that quarter to those permitted under the capital rule. When determining conformance under the capital plan rule with effective capital distribution limitations established by the Board under the capital rule, a firm would not be required to consider planned discretionary bonus payments.[41]

In its capital plan, a firm would also be required to plan for all limitations on capital distributions in the Board's rules, except the advanced approaches capital conservation buffer requirement and total loss-absorbing capacity buffer requirement calculated using the advanced approaches.[42] In addition, a firm's GSIB surcharge and countercyclical capital buffer amount may vary over the planning horizon, consistent with the requirements of the capital rule. The proposal would require a firm's planned capital distributions to be consistent with, as applicable, the firm's current GSIB surcharge and countercyclical capital buffer amount, as well as any known changes to these items during the planning horizon. Any assumption that the GSIB would rapidly shrink and reduce its other measures of systemic risk during a stress period such that it no longer would be a GSIB would be inconsistent with the expectation that the GSIB remain a financial intermediary and continue to support the real economy. The proposal would therefore require a firm to assume its GSIB surcharge in the ninth quarter of the planning horizon is the same as its GSIB surcharge in the eighth quarter of the planning horizon.

For instance, a firm that became subject to a higher GSIB surcharge in its most recent annual surcharge calculation would use the higher surcharge beginning in the fifth quarter of the planning horizon (which would coincide with the quarter in which the higher GSIB surcharge would come into effect under the capital rule) and retain that amount through the end of the planning horizon. Otherwise, a firm would assume that its current GSIB surcharge applies for all quarters of the planning horizon (as it would not have knowledge of a decrease in its GSIB surcharge when it finalized its plan). With regard to the countercyclical capital buffer, a firm would reflect any applicable countercyclical capital buffer amount as established by the Board. For example, if the Board had established a countercyclical capital buffer amount beginning in the fifth quarter of the planning horizon that remained in effect for one year, the firm would reflect the countercyclical capital buffer amount in quarters five through eight of the planning horizon.

Under the proposal, a firm's planned capital distributions would be required to be consistent with effective capital distribution limitations that would apply in the firm's pro forma projections under the BHC baseline scenario. The BHC baseline scenario would be defined as a scenario that reflects the bank holding company's reasonable expectation of the economic and financial outlook, including expectations related to the bank holding company's capital adequacy and financial condition. The firm's projections under the BHC baseline scenario must incorporate the firm's expected performance, business plan, management actions, and all planned capital actions.[43]

Basing capital distribution restrictions on a firm's projections in its BHC baseline scenario may create incentives for a firm to be overly optimistic about its baseline projections in order to increase the amount of permissible capital distributions. In order to maintain strong incentives for a firm to project realistic baseline earnings, the Board intends to monitor and evaluate a firm's quarterly performance relative to its baseline projections to help ensure that the firm adopts processes that realistically project performance and capital levels. A pattern of materially underperforming baseline projections for earnings, capital levels, or capital ratios may be indicative of weaknesses in the firm's capital planning and result in heightened scrutiny in the qualitative assessment. Additionally, as under the current rule, the Board may require a firm that materially underperforms its projected capital ratios to resubmit its capital plan if such underperformance results from material changes in the firm's risk exposures or operating conditions. Additionally, under the proposal, the Board would continue to be able to object to the capital plans of large and complex firms and LISCC firms on qualitative grounds.

Further, the proposal would provide that the Board would consider the results of any stress test conducted by the bank holding company or the Board in conducting its review of a firm's capital plan, similar to the provision in the current capital plan rule. Those results would inform the Board's view of the financial condition of the firm, which has implications for the reasonableness and appropriateness of the firm's capital plan.

Question 13: What are the advantages and disadvantages of not requiring a firm to project and meet the limitations of the capital rule regarding discretionary bonus payments on a pro forma basis?

Question 14: What, if any, modifications should the Board make to the definition of BHC baseline scenario?

Question 15: What are the advantages and disadvantages of not requiring a firm to make BHC baseline scenario projections that would enable it to evaluate whether its planned capital actions would be consistent with advanced approaches-based capital distribution restrictions, such as the advanced approaches capital conservation buffer requirement or the total loss absorbency capacity buffer requirements?

C. Summary of the Proposed Timeline for Reviewing Capital Plans and Calculating the Stress Buffer Requirements

Under the current capital plan rule, the Board completes its assessment of a firm's capital plan, including the supervisory stress test, by June 30. Similarly, under the proposal, the Board would complete the assessment of a firm's capital plan and provide each firm with initial notice of the firm's stress buffer requirements by June 30. The proposal would modify certain other procedural requirements associated with the capital plan rule.

Consistent with the current practice, the as-of date for the capital plan cycle would be December 31 of the previous calendar year, and the planning horizon for capital planning would be a period of nine consecutive quarters from that date. Firms would submit their capital plans and related regulatory reports by April 5. The Board generally would determine each firm's stress buffer requirements and conduct a qualitative evaluation of the capital plans of large and complex firms and LISCC firms in the second quarter of the year (April through June). By June 30, the Board generally would disclose to the public

is not required to use the advanced approaches to calculate its regulatory capital ratios in the capital plan rule.

[41] The capital plan rule and corresponding regulatory reports do not require a firm to describe or separately identify discretionary bonus payments.

[42] *See e.g.,* 12 CFR 217.11, 12 CFR 252.63, 12 CFR 252.165, and 12 CFR part 263.

[43] Consistent with current practice, a firm may use the same baseline scenario as the supervisory baseline scenario if the bank holding company determines the supervisory baseline scenario appropriately represents its view of the most likely outlook for the risk factors salient to the firm.

each firm's stress buffer requirements and the Board's decision to object or not object to the capital plan of each large and complex and LISCC firm on qualitative grounds.

Currently, upon completion of the supervisory stress test but before the disclosure of the final CCAR results, the Board provides each firm with the results of its post-stress capital analysis, and each firm has an opportunity to make a one-time adjustment to its planned capital actions. Similarly, under the proposal, within two business days of receipt of initial notice of its stress buffer requirements, a firm would be required to assess whether its planned capital distributions are consistent with the effective capital distribution limitations that would apply on a pro forma basis under the BHC baseline scenario throughout the fourth through seventh quarters of the planning horizon. In the event of an inconsistency, a firm would be required to reduce the capital distributions in its capital plan to be consistent with such limitations for those quarters of the planning horizon.[44] A firm would be required to notify the Board of any reductions in capital distributions in its capital plan.

Each firm's updated annual stress buffer requirements would become effective for purposes of the capital rule on October 1. From October 1 through September 30 of the following calendar year, a firm would not be permitted to exceed the amount of capital distributions in the firm's capital plan without prior notification to or approval from the Board.

Table 1 below summarizes the key dates and actions in the annual capital plan cycle under the proposal.

TABLE 1—KEY DATES AND ACTIONS IN THE ANNUAL CAPITAL PLAN CYCLE UNDER THE PROPOSAL

Date	Action
December 31 of the preceding calendar year.	As of date of the capital plan cycle.
By February 15	Board publishes scenarios for the upcoming capital plan cycle.
By April 5	Each firm submits its capital plan (including results of the bank holding company's stress tests) and relevant regulatory reports.
April through June	Board performs its supervisory stress test and calculates each firm's stress buffer requirements. Concurrently, the Board conducts a qualitative evaluation of each large and complex and LISCC firm's capital plan.
By June 30	The Board provides to a firm and publishes initial notice of the firm's stress buffer requirements, and for each large and complex and LISCC firm, the Board's decision to object or not object to the capital plan on a qualitative basis.
Within two business days of initial notice.	Each firm must analyze its planned capital distributions for the period of October 1 through September 30 of the following calendar year, and adjust downward any amount not consistent with effective capital distribution limitations that would apply on a pro forma basis under baseline conditions, and provide the Board its final planned capital distributions.
October 1 through September 30 of the following calendar year.	Effective dates of a firm's stress buffer requirements.

Transition to the Stress Buffer Requirement Regime

Currently, the Board's review and approval of planned capital actions covers the four-quarter period between July 1 and June 30 of the following calendar year. Were a firm's stress buffer requirements to become effective on October 1, 2019, as proposed, for the period July 1 to September 30, 2019, a bank holding company would be authorized to make capital distributions that do not exceed the four-quarter average of capital distributions to which the Board indicated its non-objection for the previous capital plan cycle, unless otherwise determined by the Board. To the extent that a firm wishes to make additional capital distributions beyond its four-quarter average of capital distributions to which the Board indicated its non-objection for the previous capital plan cycle, it would be able to use the established notification or request for approval processes in the current capital plan rule.

Question 16: The proposal would maintain the Board's current practice of providing firms with two business days to make any adjustments to planned capital actions to minimize the time when a firm has material nonpublic information. What if any challenges are posed by this timeframe for a firm to adjust its planned capital actions?

Question 17: What are the advantages or disadvantages of the proposed transition from the current process to the proposed process? What if any alternative transition processes should the Board consider and why?

D. Requests for Reconsideration

The proposed rule would revise the procedures for a firm to request reconsideration of a qualitative objection to its capital plan and would provide similar procedures to allow a firm to request reconsideration of its stress buffer requirements.

Under the proposal, a firm that determines to request reconsideration of any of its stress buffer requirements or of a qualitative objection to its capital plan would be required to submit a request to the Board, and the Board would respond in writing within 30 days. By requiring a firm to submit a request for reconsideration through this procedure, the proposal would provide the Board with an opportunity to consider justifications and additional information that the firm believes would support its request in light of the results of the Board's supervisory stress test, additional information received during the CCAR process, and any other relevant information. The proposed procedures also would provide a firm with an opportunity to respond to any of its stress buffer requirements and help ensure that the stress capital buffer requirements are appropriately sized. Likewise, the proposed procedures would provide a firm with an opportunity to respond to a qualitative objection to its capital plan, and to help ensure that the Board has considered all relevant aspects of the firm's capital planning process and capital adequacy process. While a firm's request for reconsideration is pending, the requirements under reconsideration

[44] In addition, a firm that is not required to reduce its planned capital distributions would be permitted to do so after receiving its initial notice. For instance, a firm may choose to reduce its planned dividends in order to lower its stress buffer requirements.

would not be final, and therefore would not be effective.

Timing and Contents of Request for Reconsideration

The proposal would establish requirements for the timing and contents of a request for reconsideration. Under the proposal, a firm wishing to request reconsideration of a qualitative objection to its capital plan or any of its stress buffer requirements would be required to submit to the Board in writing such request within fifteen calendar days of receipt of notice of its objection or stress buffer requirements. The request would be required to include an explanation of why the firm believes that the objection to its capital plan or either of its stress buffer requirements should be reconsidered. To facilitate the Board's review of a firm's request for reconsideration, the request should identify all supporting reasons for the request. For information not previously provided as part of the capital plan, the request should include an explanation of why the information should be considered.

Within 30 calendar days of receipt of the firm's request for reconsideration, the Board would notify the firm of its decision to affirm or modify any of the firm's stress buffer requirements or affirm or withdraw its objection to the firm's capital plan.[45] The Board's response would include an explanation of its decision, including responses to the firm's supporting reasons and consideration of additional information provided.

The proposed timeline is intended to provide an adequate opportunity for response, while ensuring that the results of the supervisory stress test and a firm's most recent capital plan are integrated into the firm's ongoing capital requirements and planned distributions as quickly as possible. The proposed process should provide the firm with an opportunity to present any issues or arguments in an efficient manner and allow the Board to respond to the items raised in the request for reconsideration taking into account the results of the stress test and its supervisory experience in light of information and arguments presented by the firm.

Effectiveness of Stress Buffer Requirements During Request for Reconsideration

While a firm's request for reconsideration is pending, its stress buffer requirement(s) or qualitative objection to the firm's capital plan, if under reconsideration, would not be final, and therefore would not be effective.[46] The firm generally would be able to continue to make capital distributions that were included in the last capital plan for which the firm received a non-objection.[47]

Adjustments Following Reconsideration Determination

In the case that the Board adjusted a firm's stress buffer requirements in response to a request for reconsideration of a firm's stress buffer requirement(s), the firm would follow the procedures provided for the initial notification of the stress buffer requirements. To enable the firm to make the capital distributions included in its original capital plan, if the Board reduced the firm's stress buffer requirements, the firm would have an opportunity to increase its planned capital distributions up to the amount included in the firm's original capital plan. A firm would be required to notify the Board of any adjustments in planned capital distributions.

Informal Hearing Procedures

Currently, the capital plan rule provides that a firm that requests reconsideration of an objection to its capital plan may request an informal hearing as an alternative to requesting reconsideration of an objection to its capital plan. Consistent with the current capital plan rule, the proposal would provide a firm with an opportunity to request an informal hearing as part of its request for request for reconsideration.

Question 18: What are the advantages and disadvantages of the proposed procedures for requesting reconsideration of a qualitative objection to a capital plan or any of the stress buffer requirements? What, if any, modifications would enhance the proposed procedures?

Question 19: During the pendency of a request for reconsideration, a firm's stress buffer requirements or objection to a firm's capital plan would not go into effect and a firm generally would continue to be bound by existing limitations on capital distributions. What are the advantages and disadvantages of this approach?

Question 20: The proposal would require a firm to submit a request for reconsideration within 15 calendar days of receiving notice of a qualitative objection to its capital plan or any of its stress buffer requirements. What if any challenges are posed by this proposed timeframe?

Question 21: The Board has not received any requests for an informal hearing under the capital plan rule. What are the advantages and disadvantages of continuing to provide an opportunity to request an informal hearing? What information would not be adequately addressed in a written reconsideration process that would be better addressed in an informal hearing? Discuss and provide examples of any issues that are likely to be raised in an informal hearing that would not be adequately presented through a written submission.

E. Capital Plan Resubmission and Circumstances Warranting Recalculation of the Stress Buffer Requirements

The capital plan rule currently provides that the Board may require a firm to resubmit its capital plan if the Board determines that there has been a material change in the firm's risk profile, financial condition, or corporate structure or if the bank holding company stress scenario(s) used in the firm's most recent capital plan are no longer appropriate for the firm's business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on a firm's risk profile and financial condition require the use of updated scenarios (material change). Additionally, a firm must resubmit its capital plan if it determines there has been or will be a material change in the firm's risk profile, financial condition, or corporate structure since the firm last submitted the capital plan to the Board. Until the Board has acted on that resubmitted capital plan, a firm is not permitted to make any capital distributions other than those approved by the Board in

[45] The Board would be able to extend the time for action on a request for reconsideration upon notice to the firm.

[46] A qualitative objection to a capital plan and any of a firm's stress buffer requirements also would not be effective during the 15-day period following the notice of objection or stress buffer requirements but prior to the deadline for submitting a request for reconsideration.

[47] To maintain a firm's status quo during the request for reconsideration, if the Board has not yet indicated its non-objection for a quarter during which a decision for a request for reconsideration is pending, a firm would be able to make capital distributions so long as these distributions do not exceed the four-quarter average of capital distributions to which the Board indicated its non-objection for the previous capital plan cycle, unless otherwise determined by the Board. A limitation based, in part, on an average of final planned capital actions for the previous capital plan cycle would account for variations in a firm's capital actions from quarter to quarter.

writing. A firm that wishes to increase its capital distributions can choose to resubmit its capital plan to the Board. These provisions would be maintained in the proposal.

Similar to the current procedure, under the proposal, the Board may recalculate a firm's stress buffer requirements whenever the firm chooses or is required to resubmit its capital plan. The Board would review a resubmitted capital plan within 75 calendar days after receipt and, at the Board's discretion, provide the firm with one or more updated stress buffer requirements, and, for a large and complex or LISCC firm, would object or not object to the resubmitted capital plan on qualitative grounds. Under the proposal, upon a determination by the Board or the firm of a material change, the Board may conduct an updated supervisory stress test and recalculate a firm's stress buffer requirements based on the resubmitted capital plan.[48] Similar to the process for submitting the annual capital plan, the planned capital distributions in the firm's resubmitted capital plan would be required to be consistent with any effective capital distribution limitations that would apply on a pro forma basis over the planning horizon. Any updated stress buffer requirements, approved planned capital actions, and, for a LISCC or large and complex firm, the Board's action on the resubmitted capital plan, would be in effect until the firm's updated stress buffer requirements from the next annual assessment by the Board become effective (unless the firm experienced another material change prior to that date).

Question 22: Under the proposal, the Board may recalculate a firm's stress buffer requirements if the firm resubmits its capital plan. Accordingly, the Board also would recalculate the firm's stress buffer requirement using an updated severely adverse scenario. What are the advantages or disadvantages of using an updated severely adverse scenario to recalculate a firm's stress buffer requirements?

Question 23: What, if any, other changes to CCAR or the capital plan rule should the Board consider? For example, what advantages or disadvantages would be associated with:

i. Removing or adjusting the provisions that allow the Board to object to a large and complex or LISCC firm's capital plan on the basis of qualitative deficiencies in the firm's capital planning process;

ii. Publishing for notice and comment the severely adverse scenario used in calculating a firm's stress buffer requirements;

iii. Providing additional flexibility for a firm to exceed the capital distributions included in its capital plan if its earnings and capital ratios are above those in its BHC baseline; or

iv. Providing additional flexibility to a firm to increase the planned capital actions above what was included in its original capital plan based on the results of the supervisory stress test or request for reconsideration?

IV. Proposed Changes to the Capital Rule and Explanation of the Mechanics of the Distribution Limitations of the Stress Buffer Requirements

A. Proposed Changes to the Capital Rule

Conceptually, a firm's capital buffer is the amount by which its regulatory capital ratios exceed minimum requirements. For example, for risk-based capital purposes under the current capital rule, a firm's capital conservation buffer is equal to the lowest of the following ratios: The firm's CET1 capital ratio minus its minimum CET1 capital ratio requirement, its tier 1 capital ratio minus its minimum tier 1 capital ratio requirement, and its total capital ratio minus its minimum total capital ratio requirement. The proposal would retain this concept for determining a firm's buffer above its minimum risk-based capital requirements, and would extend the concept for purposes of determining a firm's buffer above its minimum 4 percent tier 1 leverage ratio requirement (leverage buffer). Under the proposal, a firm would compare a given buffer to the relevant buffer requirement to determine whether it is subject to limitations on its capital distributions and discretionary bonus payments.

To incorporate the stress buffer requirements into the capital rule, the proposal would revise the capital rule to introduce the terms ''stress capital buffer requirement'' and ''stress leverage buffer requirement,'' and to define standardized approach capital conservation buffer requirement and advanced approaches capital conservation buffer requirement for firms subject to the capital plan rule. A firm would determine its standardized approach capital conservation buffer using risk-based capital ratios calculated under the capital rule's standardized approach, and, if applicable, would determine its advanced approaches capital conservation buffer using risk-based capital ratios calculated under the rule's advanced approaches.[49] The firm would compare each of these buffers to the corresponding capital conservation buffer requirement. A subject firm's standardized approach capital conservation buffer requirement would be equal to the sum of: (1) Its stress capital buffer requirement, (2) as applicable, the firm's GSIB surcharge; and, (3) as applicable, the firm's countercyclical capital amount. A subject firm's advanced approaches capital conservation buffer requirement would be equal to the sum of: (1) 2.5 Percent of risk-weighted assets, (2) as applicable, the firm's GSIB surcharge; and, (3) as applicable, the firm's countercyclical capital buffer amount. Similarly, under the proposal, a firm would compare its leverage buffer to its stress leverage buffer requirement.

B. Mechanics of the Distribution Limitations of the Stress Buffer Requirements

A firm would be subject to the most stringent distribution limitation, if any, as determined by the firm's standardized approach capital conservation buffer requirement, the firm's stress leverage buffer requirement and, if applicable, the firm's advanced approaches capital conservation buffer requirement, and the enhanced supplementary leverage ratio standard. The firm would determine the maximum amount it could pay in capital distributions and discretionary bonus payments that quarter (maximum payout amount) by multiplying the firm's eligible retained income by the most stringent payout ratio, if any, that it is subject to as determined under Table 2 to 12 CFR 217.11 of the proposed rule.

For example, in order to determine the maximum payout amount that a firm may pay in capital distributions and discretionary bonus payments for the first quarter of 2020, a firm would multiply its maximum payout ratio by its eligible retained income. For the period from January 1, 2020 to March 31, 2020, the eligible retained income of the firm would be based on the firm's net income for the year 2019 and the maximum payout ratio would be determined based on the capital ratios of the firm as of December 31, 2019. Firms that are subject to stress buffer requirements are expected to know their

[48] For this purpose, the planning horizon would be the nine quarter period beginning on the date after the as-of date of the projections. For instance, if the as-of date of the projections was June 30, 2019, the planning horizon would extend from July 1, 2019, through September 30, 2021.

[49] As under the current capital rule, under § 217.10, a firm subject to the advanced approaches must calculate each of its risk-based capital ratios (common equity tier 1, tier 1, and total capital) under the standardized approach (12 CFR part 217, subpart D) and under the advanced approaches (12 CFR part 217, subpart E).

capital positions on a daily basis. If a firm has any uncertainty regarding its quarter-end capital ratios prior to filing its regulatory reports, it should be conservative with capital distributions (including buybacks) during the beginning of a calendar quarter in order to avoid a situation in which it distributes more than the amount permitted under the capital rule.

The proposal would not amend the current definitions of ''distribution'' and ''capital distribution'' found in the capital rule and capital plan rule, respectively. Under the capital rule, the definition of distribution includes reductions in tier 1 capital through a repurchase or any other means, except when the institution, in the same quarter as the repurchase, fully replaces the tier 1 instrument by issuing another similar instrument. Under the capital plan rule, a capital distribution means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Board determines to be in substance a distribution of capital. Unlike the definition of distribution in the capital rule, the definition of capital distribution in the capital plan rule does not provide an exception for distributions accompanied by an offsetting issuance. The discrepancy between the two definitions reflects the different purposes of the two rules. The broader definition included in the capital plan rule ensures that all distributions, including those offset by issuances, are included in a firm's capital plan. However, because distributions offset by equivalent issuances within a quarter do not affect a firm's capital position, this type of distribution is not included in the definition in the capital rule.

Question 24: What are the advantages or disadvantages of maintaining the current definitions of distribution and capital distribution in the capital rule and capital plan rule, respectively, or of amending the definition of capital distribution in the capital plan rule to match the definition of distribution in the capital rule or vice versa?

V. Proposed Changes to the Stress Test Rules

To increase the transparency regarding the application of an additional trading and counterparty scenario component, the proposal would expressly include the definition of ''significant trading activity'' into the Board's company-run stress test requirements,[50] rather than defining this term with reference to the Capital Assessments and Stress Testing report (FR Y–14). Currently, significant trading activity is defined in the FR Y–14. The FR Y–14 defines a firm with significant trading activity as any domestic bank holding company or U.S. intermediate holding company that is subject to supervisory stress tests and that (1) has aggregate trading assets and liabilities of $50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets, and (2) is not a ''large and noncomplex firm'' under the Board's capital plan rule. Under the proposal, this definition of significant trading activity would be adopted in the stress test rules for the annual company-run stress test. This change would be responsive to feedback that it is more transparent to define the scope of applicability for the trading and counterparty component in the stress test rules, rather than by cross-reference to the FR Y–14.

VI. Proposed Changes to Regulatory Reports

The proposal would modify the Consolidated Financial Statements for Holding Companies Report (FR Y–9C; OMB: 7100–0128) to collect information regarding the stress buffer requirements applicable to a firm and the Capital Assessments and Stress Testing Report (FR Y–14A; OMB No. 7100–0341). Specifically, the proposal would add new line items to the quarterly FR Y–9C in order to collect information regarding a firm's stress capital buffer requirement, stress leverage buffer requirement, and GSIB surcharge and countercyclical capital buffer amount, as applicable, and information necessary to calculate a firm's distribution limitations, including its capital conservation buffer, advanced approaches capital conservation buffer, leverage buffer, eligible retained income, and distributions. This information would enable the Board and the public to identify any distribution limitations and monitor a bank holding company's performance on a quarterly basis.

The proposal would add similar items to the semi-annual FR Y–14A schedule to collect the information necessary to compare a firm's projected capital ratios to expected buffer requirements and implement the proposed evaluation of planned capital actions under the BHC baseline scenario.[51] As described in section III.C above, the proposal provides that, within two business days of receipt of notice of its stress buffer requirements, a firm would be required to assess whether its planned capital distributions are consistent with the effective capital distribution limitations that would apply on a pro forma basis under the BHC baseline scenario throughout the fourth through seventh quarters of the planning horizon. In the event of an inconsistency, a firm would be required to reduce the capital distributions in its capital plan to be consistent with such limitations for those quarters of the planning horizon and provide the Board with its final planned capital actions following any such adjustments.[52]

To implement this requirement, a firm would be required to report its capital distributions on the FR Y–14A filed in connection with its initial capital plan on April 5, and in the event of any downward adjustments to its planned capital distributions, resubmit the FR Y–14A summary schedule within two business days of receiving its stress buffer requirements, that reflect the stress buffer requirements and its reduced planned capital distributions.[53] At the time a firm submits its capital plan and FR Y–14 report (April 5), the firm will not be aware of its stress buffer requirements for the upcoming cycle. For simplicity, the instructions contemplate that the firm would report the stress buffer requirements currently in effect, and assume that the stress buffer requirements remain constant through the planning horizon. However, the capital plan rule requires the firm's planned capital distributions to be consistent with effective capital distribution limitations in the fourth through seventh quarters of the planning horizon and not the distribution limitations in effect in the prior cycle. Thus, it would be possible for a firm to include planned capital distributions in its April 5 FR Y–14A

[50] *See* 12 CFR part 252, subpart F.

[51] A firm generally would only be required to report this information annually in connection with its April 5 capital plan submission.

[52] The proposal also permits a firm to reduce its planned capital distributions if the firm's planned capital distributions are consistent with effective capital distribution limitations.

[53] In the event that a firm requests reconsideration of any of its stress buffer requirements, a firm must evaluate its planned capital distributions in light of any modifications any of the stress buffer requirements. The firm may be required to reduce or permitted to increase its capital distributions depending on any modifications, and must provide the Board with its final planned capital actions reflecting those adjustments. In the event of any adjustment, the firm would be required to file the FR Y–14A to reflect its revised planned capital distributions.

that would exceed those permitted under the previous cycle's capital plan, but be consistent with the capital plan rule because the firm's stress buffer requirements declined.

Question 25: The proposal would require all firms subject to the stress buffer requirements to report their eligible retained income and capital distributions and discretionary bonus payments each quarter on the FR Y–9C, which is publicly available. What concerns, if any, are raised by making this reporting mandatory? What concerns, if any, are raised by making this reporting public as opposed to including this information in a confidential information collection?

VII. Administrative Law Matters

A. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule would revise collection of information requirements subject to the PRA. As described further below, the proposal would revise the reporting requirements found in section 12 CFR 225.8. Additionally, the Board proposes to revise certain other collections of information to reflect the changes proposed in the proposed rule.

The OMB control numbers are 7100–0128, 7100–0341, and 7100–0342 for this information collection.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comment will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to 202–3955806, Attention, Agency Desk Officer.

Proposed Revisions, With Extension for Three Years, of the Following Information Collections:

(1) *Title of Information Collection:* Consolidated Financial Statements for Holding Companies.

Agency Form Number: FR Y–9C; FR Y–9LP; FR Y–9SP; FR Y–9ES; FR Y–9CS.

OMB Control Number: 7100–0128.

Frequency of Response: Quarterly, semi-annually, and annually.

Affected Public: Businesses or other for-profit.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), securities holding companies (SHCs), and U.S. intermediate holding companies (IHCs), (collectively, ''holding companies'').

Abstract: The FR Y–9C serves as standardized financial statements for holding companies. The FR Y–9 family of reporting forms continues to be the primary source of financial data on holding companies that examiners rely on in the intervals between on-site inspections. Financial data from these reporting forms are used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate holding company mergers and acquisitions, and to analyze a holding company's overall financial condition to ensure the safety and soundness of its operations.

Current Actions: The proposal would modify the FR Y–9C for holding companies subject to the capital plan rule in order to collect information regarding a firm's stress capital buffer requirement, stress leverage buffer requirement, GSIB surcharge, countercyclical capital buffer amount, as applicable, and any applicable distribution limitations under the regulatory capital rule. Specifically, the proposal would add new line items to the FR Y–9C Schedule HC–R Part I to collect to collect the following information from holding companies subject to the capital plan rule: (1) The firm's capital conservation buffer requirements (including its standardized approach capital conservation buffer requirement and the advanced approaches capital conservation buffer requirement), stress leverage buffer requirement, and SLR buffer requirement; (2) the firm's capital conservation buffer, advanced approaches capital conservation buffer, leverage buffer, and, as applicable, SLR buffer as of the preceding quarter-end, which is the difference between the firm's relevant capital ratio and the relevant minimum requirement; and (3) information needed to calculate the firm's maximum payout amount, including the firm's planned total capital distributions, eligible retained income, and maximum payout ratio. The proposed revision would apply to top-tier holding companies subject to the Board's capital plan rule (BHCs and IHCs with total consolidated assets of $50 billion or more), for a total of 39 of the existing FR Y–9C respondents. The draft reporting forms and instructions for the FR Y–9C will be available at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

Number of Respondents: FR Y–9C (non-Advanced Approaches holding companies or other respondents): 632; FR Y–9C (Advanced Approaches holding companies or other respondents): 18; FR Y–9LP: 780; FR Y–9SP: 3,889; FR Y–9ES: 80; FR Y–9CS: 236.

Current Estimated Average Hours per Response: FR Y–9C (non-Advanced Approaches holding companies or other respondents): 47.11 hours; FR Y–9C (Advanced Approaches holding companies or other respondents): 48.36 hours; FR Y–9LP: 5.27 hours; FR Y–9SP: 5.4 hours; FR Y–9ES: 0.5 hours; FR Y–9CS: 0.5 hours.

Current Estimated Annual Burden Hours: FR Y–9C (non-Advanced Approaches holding companies or other respondents): 119,094 hours; FR Y–9C (Advanced Approaches holding companies or other respondents): 3,482 hours; FR Y–9LP: 16,442 hours; FR Y–9SP: 42,001; FR Y–9ES: 40; FR Y–9CS: 472.

Proposed Change in Estimated Annual Burden Hours: FR Y–9C: 1,188 hours (an increase of 0.26 hours per response for FR Y–9C (non-Advanced Approaches holding companies or other respondents) and an increase of 8 hours per response for FR Y–9C (Advanced Approaches holding companies or other respondents)).

Proposed Total Estimated Annual Burden Hours: FR Y–9C (non-Advanced Approaches holding companies or other respondents): 119,751 hours; FR Y–9C (Advanced Approaches holding companies or other respondents): 4,058 hours; FR Y–9LP: 16,442 hours; FR Y–9SP: 42,001; FR Y–9ES: 40; FR Y–9CS: 472.

(2) *Title of Information Collection:* Capital Assessments and Stress Testing information collection.

Agency Form Number: FR Y–14A/Q/M.

OMB Control Number: 7100–0341.

Frequency of Response: Annually, semi-annually, quarterly, and monthly.

Affected Public: Businesses or other for-profit.

Respondents: The respondent panel consists of any top-tier bank holding company (BHC) or intermediate holding company (IHC) that has $50 billion or more in total consolidated assets, as determined based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128); or (ii) the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9Cs, if the firm has not filed an FR Y–9C for each of the most recent four quarters. Reporting is required as of the first day of the quarter immediately following the quarter in which it meets this asset threshold, unless otherwise directed by the Board.

Abstract: The data collected through the FR Y–14A/Q/M schedules provide the Board with the information and perspective needed to help ensure that large BHCs and IHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual CCAR exercise is complemented by other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources and regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions.

The Capital Assessments and Stress Testing information collection consists of the FR Y–14A, FR Y–14Q, and FR Y–14M reports. The semi-annual FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[54] The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, and trading assets, and pre-provision net revenue (PPNR) for the reporting period. The monthly FR Y–14M comprises three retail portfolio- and loan-level collections, and one detailed address matching collection to supplement two of the portfolio and loan-level collections.

Current Actions: The proposal would modify the FR Y–14 reports in order to collect information regarding a firm's capital conservation buffer requirements (including the stress buffer requirements) and any applicable distribution limitations under the regulatory capital rule. The proposal would add new line items to the semi-annual FR Y–14A, Schedule A (Summary—Capital) to collect information regarding a firm's projections under BHC baseline conditions. Specifically, the FR Y–14A would be revised to collect the following: (1) The firm's capital conservation buffer requirements (including its standardized approach capital conservation buffer requirement and the advanced approaches capital conservation buffer requirement), stress leverage buffer requirement, and SLR buffer requirement for each quarter of the planning horizon; (2) the firm's capital conservation buffer, advanced approaches capital conservation buffer, leverage buffer, and, as applicable, SLR buffer as of the preceding quarter-end for each quarter of the planning horizon, which is the difference between the firm's relevant capital ratio and the relevant minimum requirement; and (3) information needed to calculate the firm's maximum payout amount, including the firm's planned total capital distributions, eligible retained income, and maximum payout ratio for each quarter of the planning horizon. The draft reporting forms and instructions for the FR Y–14 will be available at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

Number of Respondents: 39.

Current Estimated Average Hours per Response: FR Y–14A: Summary, 887 hours; Macro scenario, 31 hours; Operational Risk, 18 hours; Regulatory capital instruments, 21 hours; and Business plan changes, 16 hours; Adjusted Capital Submission, 100 hours. FR Y–14Q: Retail, 15 hours; Securities, 13 hours; PPNR, 711 hours; Wholesale, 151 hours; Trading, 1,926 hours; Regulatory capital transitions, 23 hours; Regulatory capital instruments, 54 hours; Operational risk, 50 hours; MSR Valuation, 23 hours; Supplemental, 4 hours; Retail FVO/HFS, 15 hours; CCR, 514 hours; and Balances, 16 hours. FR Y–14M: 1st lien mortgage, 516 hours; Home equity, 516 hours; and Credit card, 512 hours. FR Y–14 On-Going automation revisions, 480 hours; and implementation, 7,200 hours. FR Y–14 Attestation: Implementation, 4,800 hours; and on-going, 2,560 hours.

Current Estimated Annual Burden Hours: FR Y–14A: Summary, 69,186 hours; Macro scenario, 2,418 hours; Operational Risk, 702 hours; Regulatory capital instruments, 819 hours; Business plan changes, 624 hours; and Adjusted Capital Submission, 500 hours. FR Y–14Q: Retail, 2,340; Securities, 2,028 hours; Pre-provision net revenue (PPNR), 110,916 hours; Wholesale, 23,556 hours; Trading, 92,448 hours; Regulatory capital transitions, 3,588 hours; Regulatory capital instruments, 8,424 hours; Operational risk, 7,800 hours; Mortgage Servicing Rights (MSR) Valuation, 1,380 hours; Supplemental, 624 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,500 hours; Counterparty, 24,672 hours; and Balances, 2,496 hours. FR Y–14M: 1st lien mortgage, 229,104 hours; Home equity, 191,952 hours; and Credit card, 110,592 hours. FR Y–14 On-going automation revisions, 18,720 hours; and implementation, 0 hours. FR Y–14 Attestation: Implementation, 0 hours; and on-going, 33,280 hours.

Proposed Change in Estimated Annual Burden Hours: FR Y–14A: 780 hours (20 additional hours annually for the 39 FR Y–14 filers).

Proposed Total Estimated Annual Burden Hours: FR Y–14A: Summary, 69,966 hours; Macro scenario, 2,418 hours; Operational Risk, 702 hours; Regulatory capital instruments, 819 hours; Business plan changes, 624 hours; and Adjusted Capital Submission, 500 hours. FR Y–14Q: Retail, 2,340; Securities, 2,028 hours; Pre-provision net revenue (PPNR), 110,916 hours; Wholesale, 23,556 hours; Trading, 92,448 hours; Regulatory capital transitions, 3,588 hours; Regulatory capital instruments, 8,424 hours; Operational risk, 7,800 hours; Mortgage Servicing Rights (MSR) Valuation, 1,380 hours; Supplemental, 624 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,500 hours; Counterparty, 24,672 hours; and Balances, 2,496 hours. FR Y–14M: 1st lien mortgage, 229,104 hours;

[54] A bank holding company that must re-submit its capital plan generally also must provide a revised FR Y–14A in connection with its resubmission.

Home equity, 191,952 hours; and Credit card, 110,592 hours. FR Y–14 On-going automation revisions, 18,720 hours; and implementation, 0 hours. FR Y–14 Attestation: Implementation, 0 hours; and on-going, 33,280 hours.

(3) *Title of Information Collection:* Recordkeeping and Reporting Requirements Associated with Regulation Y (Capital Plans).

Agency Form Number: Reg Y–13.

OMB Control Number: 7100–0342.

Frequency of Response: Annually.

Affected Public: Businesses or other for-profit.

Respondents: BHCs and IHCs.

Abstract: Regulation Y (12 CFR part 225) requires large bank holding companies (BHCs) to submit capital plans to the Federal Reserve on an annual basis and to require such BHCs to request prior approval from the Federal Reserve under certain circumstances before making a capital distribution.

Current Actions: The proposal would modify the capital plan rule in Regulation Y by introducing stress buffer requirements and providing for new procedures regarding their implementation. This includes adding § 225.8(h)(3)(i), which would require a firm to determine whether capital distributions for the fourth through seventh quarters of the planning horizon under the BHC baseline scenario included in the capital plan submitted pursuant to paragraph (e)(1)(ii) would be consistent with effective capital distribution limitations, assuming the stress buffer requirements, and reduce its distributions as necessary to be consistent with such capital distribution limitations.

Number of Respondents: 39.

Current Estimated Average Hours per Response: Annual capital planning recordkeeping (§ 225.8(e)(1)(i)) (LISCC and large and complex firms), 11,920 hours; Annual capital planning recordkeeping (§ 225.8(e)(1)(i)) (large and noncomplex firms), 8,920 hours; annual capital planning reporting (§ 225.8(e)(1)(ii)), 80 hours; annual capital planning recordkeeping (§ 225.8(e)(1)(iii)), 100 hours; data collections reporting (§ 225.8(e)(3)(i)–(vi)), 1,005 hours; data collections reporting (§ 225.8(e)(4)), 100 hours; review of capital plans by the Federal Reserve reporting (§ 225.8(j)), 16 hours; prior approval request requirements reporting (§ 225.8(k)(1), (3), & (4)), 100 hours; prior approval request requirements exceptions (§ 225.8(k)(3)(iii)(A)), 16 hours; prior approval request requirements reports (§ 225.8(k)(6)), 16 hours.

Current Estimated Annual Burden Hours: Annual capital planning recordkeeping (§ 225.8(e)(1)(i)) (LISCC and large and complex firms), 238,400 hours; Annual capital planning recordkeeping (large and complex firms) (§ 225.8(e)(1)(i)) (large and noncomplex firms), 160,560 hours; annual capital planning reporting (§ 225.8(e)(1)(ii)), 2,240 hours; annual capital planning recordkeeping (§ 225.8(e)(1)(iii)), 2,800 hours; data collections reporting (§ 225.8(e)(3)(i)–(vi)), 38,190 hours; data collections reporting (§ 225.8(e)(4)), 1,000 hours; review of capital plans by the Federal Reserve reporting (§ 225.8(j)), 32 hours; prior approval request requirements reporting (§ 225.8(k)(1), (3), & (4)), 2,600 hours; prior approval request requirements exceptions (§ 225.8(k)(3)(iii)(A)), 32 hours; prior approval request requirements reports (§ 225.8(k)(6)), 32 hours.

Proposed Change in Estimated Average Hours per Response: Proposed response to notice; adjustments to planned capital distributions (recordkeeping) (§ 225.8(h)(3)(i)), 2 hours.

Proposed Total Estimated Annual Burden Hours: Annual capital planning recordkeeping (§ 225.8(e)(1)(i)) (LISCC and large and complex firms), 238,400 hours; Annual capital planning recordkeeping (§ 225.8(e)(1)(i)) (large and noncomplex firms), 160,560 hours; annual capital planning reporting (§ 225.8(e)(1)(ii)), 2,240 hours; annual capital planning recordkeeping (§ 225.8(e)(1)(iii)), 2,800 hours; data collections reporting (§ 225.8(e)(3)(i)–(vi)), 38,190 hours; data collections reporting (§ 225.8(e)(4)), 1,000 hours; proposed response to notice: Adjustments to planned capital distributions (recordkeeping) (§ 225.8(h)(3)(i)), 78 hours; prior approval request requirements reporting (§ 225.8(k)(1), (3), & (4)), 2,600 hours; prior approval request requirements exceptions (§ 225.8(k)(3)(iii)(A)), 32 hours; prior approval request requirements reports (§ 225.8(k)(6)), 32 hours.

B. Regulatory Flexibility Act

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[55] In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered. The proposal would also make corresponding changes to the Board's reporting forms.

As discussed in detail above, the proposed rule would amend the capital rule, capital plan rule, stress testing rules, and the proposed Stress Testing Policy Statement, that was previously proposed on December 15, 2017. Under the proposed rule, the Board would use the results of the supervisory stress test to establish the size of a firm's stress capital buffer requirement and stress leverage buffer requirement. The stress capital buffer requirement would replace the static 2.5 percent of standardized risk-weighted assets

[55] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less. As of December 31, 2017, there were approximately 3,384 small bank holding companies, 230 small savings and loan holding companies, and 553 small state member banks.

component of a firm's capital conservation buffer requirement in the capital rule. As under the current capital rule, a firm would be subject to increasingly strict limitations on capital distributions and bonus payments as the firm's capital ratios decline below the firm's buffer requirements. The proposal would also make adjustments to the assumptions used in the supervisory stress test and would replace the capital plan rule's quantitative objection.

The Board has broad authority under the International Lending Supervision Act (ILSA) [56] and the PCA provisions of the Federal Deposit Insurance Act [57] to establish regulatory capital requirements for the institutions it regulates. For example, ILSA directs each Federal banking agency to cause banking institutions to achieve and maintain adequate capital by establishing minimum capital requirements as well as by other means that the agency deems appropriate.[58] The PCA provisions of the Federal Deposit Insurance Act direct each Federal banking agency to specify, for each relevant capital measure, the level at which an IDI subsidiary is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.[59] In addition, the Board has broad authority to establish regulatory capital standards for bank holding companies under the Bank Holding Company Act and the Dodd-Frank Reform and Consumer Protection Act (Dodd-Frank Act).[60]

The proposed rule would apply only to bank holding companies with total consolidated assets of $50 billion or more, any nonbank financial company supervised by the Board that becomes subject to the capital planning requirements pursuant to a rule or order of the Board, and to U.S. intermediate holding companies established pursuant to the Board's Regulation YY. Currently, all nonbank financial companies supervised by the Board are not subject to the capital planning requirements and all U.S. intermediate holding companies established pursuant to Regulation YY have greater than $1 billion in total assets. The proposed rule would not apply to any small entities. Further, the proposal would make changes to the projected reporting, recordkeeping, and other compliance requirements of the rule by proposing to collect information from firms subject to the capital plan rule relating to adjustments to planned capital distributions included in a firm's capital plan and information regarding a firm's capital conservation buffer requirements (including the stress buffer requirements) and any applicable distribution limitations under the capital rule. These changes would not impact small entities. In addition, the Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed changes to the capital rule, capital plan rule, and stress testing rules. Therefore, the Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

C. Solicitation of Comments of Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

For example:

• Have we organized the material to suit your needs? If not, how could the rule be more clearly stated?

• Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?

• Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?

• Would more, but shorter, sections be better? If so, which sections should be changed?

• What else could we do to make the regulation easier to understand?

List of Subjects

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Capital planning, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Capital planning, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

Authority and Issuance

For the reasons stated in the SUPPLEMENTARY INFORMATION, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR chapter II as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

Subpart B—Capital Ratio Requirements and Buffers

■ 2. Section 217.11 is revised to read as follows:

§ 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

(a) *Capital conservation buffer*—(1) *Composition of the capital conservation buffer.* The capital conservation buffer is composed solely of common equity tier 1 capital.

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

(i) *Eligible retained income.* The eligible retained income of a Board-regulated institution is the Board-regulated institution's net income, calculated in accordance with the instructions to the Call Report or the FR Y–9C, as applicable, for the four calendar quarters preceding the current calendar quarter net of any distributions and associated tax effects not already reflected in net income.

[56] 12 U.S.C. 3901–3911.

[57] 12 U.S.C. 1831o.

[58] 12 U.S.C. 3907(a)(1).

[59] 12 U.S.C. 1831o(c)(2).

[60] *See, e.g.,* sections 165 and 171 of the Dodd-Frank Act (12 U.S.C. 5365 and 12 U.S.C. 5371). Public Law 111–203, 124 Stat. 1376 (2010).

(ii) *Maximum payout amount.* A Board-regulated institution's maximum payout amount for the current calendar quarter is equal to the Board-regulated institution's eligible retained income, multiplied by its maximum payout ratio.

(iii) *Maximum payout ratio.* The maximum payout ratio is the percentage of eligible retained income that a Board-regulated institution can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. For a Board-regulated institution that is not subject to 12 CFR 225.8, the maximum payout ratio is determined by the Board-regulated institution's capital conservation buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to this section. For a Board-regulated institution that is subject to 12 CFR 225.8, the maximum payout ratio is determined under paragraph (c)(1)(ii) of this section.

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a MDB, a PSE, or a GSE.

(v) *SLR buffer requirement.* A bank holding company's SLR buffer requirement is 2.0 percent.

(vi) *Stress capital buffer requirement.* A bank holding company's stress capital buffer requirement is the stress capital buffer requirement determined under 12 CFR 225.8.

(vii) *Stress leverage buffer requirement.* A bank holding company's stress leverage buffer requirement is the stress leverage buffer requirement determined under 12 CFR 225.8.

(3) *Calculation of capital conservation buffer.* (i) A Board-regulated institution that is not subject to 12 CFR 225.8 has a capital conservation buffer equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The Board-regulated institution's common equity tier 1 capital ratio minus the Board-regulated institution's minimum common equity tier 1 capital ratio requirement under § 217.10;

(B) The Board-regulated institution's tier 1 capital ratio minus the Board-regulated institution's minimum tier 1 capital ratio requirement under § 217.10; and

(C) The Board-regulated institution's total capital ratio minus the Board-regulated institution's minimum total capital ratio requirement under § 217.10; or

(ii) Notwithstanding paragraphs (a)(3)(i)(A) through (C) of this section, if the Board-regulated institution's common equity tier 1, tier 1 or total capital ratio is less than or equal to the Board-regulated institution's minimum common equity tier 1, tier 1 or total capital ratio requirement under § 217.10, respectively, the Board-regulated institution's capital conservation buffer is zero.

(4) *Limits on distributions and discretionary bonus payments*—(i) *General limitation.* A Board-regulated institution that is not subject 12 CFR 225.8 shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed its maximum payout amount.

(ii) *No limitations.* A Board-regulated institution that is not subject 12 CFR 225.8 and that has a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital buffer amount in accordance with paragraph (b) of this section is not subject to a maximum payout amount under paragraph (a)(2)(ii) of this section.

(iii) *Negative eligible retained income.* Except as provided in paragraph (a)(4)(iv) of this section, a Board-regulated institution that is not subject to 12 CFR 225.8 may not make distributions or discretionary bonus payments during the current calendar quarter if the Board-regulated institution's:

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 2.5 percent as of the end of the previous calendar quarter.

(iv) *Prior approval.* Notwithstanding the limitations in paragraphs (a)(4)(i) through (iii) of this section, the Board may permit a Board-regulated institution that is not subject to 12 CFR 225.8 to make a distribution or discretionary bonus payment upon a request of the Board-regulated institution, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the Board-regulated institution. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

TABLE 1 TO § 217.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio
Greater than 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount, *and* greater than 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount, *and* greater than 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount *and* greater than 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	0 percent.

(v) *Other limitations on distributions.* Additional limitations on distributions may apply under 12 CFR 225.4 and 263.202 to a Board-regulated institution that is not subject to 12 CFR 225.8.

(b) *Countercyclical capital buffer amount*—(1) *General.* An advanced approaches Board-regulated institution must calculate a countercyclical capital buffer amount in accordance with this paragraph (b) for purposes of determining its maximum payout ratio under Table 1 to this section and, if applicable, Table 2 to this section.

(i) *Extension of capital conservation buffer.* The countercyclical capital buffer amount is an extension of the capital conservation buffer as described in paragraph (a) or (c) of this section, as applicable.

(ii) *Amount.* An advanced approaches Board-regulated institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the Board-regulated institution's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

(iii) *Weighting.* The weight assigned to a jurisdiction's countercyclical capital buffer amount is calculated by dividing the total risk-weighted assets for the Board-regulated institution's private sector credit exposures located in the jurisdiction by the total risk-weighted assets for all of the Board-regulated institution's private sector credit exposures. The methodology a Board-regulated institution uses for determining risk-weighted assets for purposes of this paragraph (b) must be the methodology that determines its risk-based capital ratios under § 217.10. Notwithstanding the previous sentence, the risk-weighted asset amount for a private sector credit exposure that is a covered position under subpart F of this part is its specific risk add-on as determined under § 217.210 multiplied by 12.5.

(iv) *Location.* (A) Except as provided in paragraphs (b)(1)(iv)(B) and (C) of this section, the location of a private sector credit exposure is the national jurisdiction where the borrower is located (that is, where it is incorporated, chartered, or similarly established or, if the borrower is an individual, where the borrower resides).

(B) If, in accordance with subpart D or E of this part, the Board-regulated institution has assigned to a private sector credit exposure a risk weight associated with a protection provider on a guarantee or credit derivative, the location of the exposure is the national jurisdiction where the protection provider is located.

(C) The location of a securitization exposure is the location of the underlying exposures, or, if the underlying exposures are located in more than one national jurisdiction, the national jurisdiction where the underlying exposures with the largest aggregate unpaid principal balance are located. For purposes of this paragraph (b), the location of an underlying exposure shall be the location of the borrower, determined consistent with paragraph (b)(1)(iv)(A) of this section.

(2) *Countercyclical capital buffer amount for credit exposures in the United States*—(i) *Initial countercyclical capital buffer amount with respect to credit exposures in the United States.* The initial countercyclical capital buffer amount in the United States is zero.

(ii) *Adjustment of the countercyclical capital buffer amount.* The Board will adjust the countercyclical capital buffer amount for credit exposures in the United States in accordance with applicable law.[10]

(iii) *Range of countercyclical capital buffer amount.* The Board will adjust the countercyclical capital buffer amount for credit exposures in the United States between zero percent and 2.5 percent of risk-weighted assets.

(iv) *Adjustment determination.* The Board will base its decision to adjust the countercyclical capital buffer amount under this section on a range of macroeconomic, financial, and supervisory information indicating an increase in systemic risk including, but not limited to, the ratio of credit to gross domestic product, a variety of asset prices, other factors indicative of relative credit and liquidity expansion or contraction, funding spreads, credit condition surveys, indices based on credit default swap spreads, options implied volatility, and measures of systemic risk.

(v) *Effective date of adjusted countercyclical capital buffer amount*—(A) *Increase adjustment.* A determination by the Board under paragraph (b)(2)(ii) of this section to increase the countercyclical capital buffer amount will be effective 12 months from the date of announcement, unless the Board establishes an earlier effective date and includes a statement articulating the reasons for the earlier effective date.

(B) *Decrease adjustment.* A determination by the Board to decrease the established countercyclical capital buffer amount under paragraph (b)(2)(ii) of this section will be effective on the day following announcement of the final determination or the earliest date permissible under applicable law or regulation, whichever is later.

(vi) *Twelve month sunset.* The countercyclical capital buffer amount will return to zero percent 12 months after the effective date that the adjusted countercyclical capital buffer amount is announced, unless the Board announces a decision to maintain the adjusted countercyclical capital buffer amount or adjust it again before the expiration of the 12-month period.

(3) *Countercyclical capital buffer amount for foreign jurisdictions.* The Board will adjust the countercyclical capital buffer amount for private sector credit exposures to reflect decisions made by foreign jurisdictions consistent with due process requirements described in paragraph (b)(2) of this section.

(c) *Calculation of buffers for Board-regulated institutions subject to 12 CFR 225.8*—(1) *Limits on distributions and discretionary bonus payments.* (i) A Board-regulated institution that is subject to 12 CFR 225.8 shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed its maximum payout amount.

(ii) *Maximum payout ratio.* The maximum payout ratio of a Board-regulated institution that is subject to 12 CFR 225.8 is the lowest of the following ratios determined by its standardized approach capital conservation buffer, leverage buffer; if applicable, advanced approaches capital conservation buffer; and, if applicable, SLR buffer; as set forth in Table 2 to this section.

(iii) *Capital conservation buffer requirements.* A Board-regulated institution that is subject to 12 CFR 225.8 has:

(A) A standardized approach capital conservation buffer requirement equal to its stress capital buffer requirement plus its applicable countercyclical capital buffer amount in accordance with paragraph (b) of this section plus its applicable GSIB surcharge in accordance with paragraph (d) of this section; and

(B) If the Board-regulated institution calculates risk-weighted assets under subpart E of this part, an advanced approaches capital conservation buffer requirement equal to 2.5 percent plus the Board-regulated institution's countercyclical capital buffer amount in accordance with paragraph (b) of this section plus its applicable GSIB surcharge in accordance with paragraph (d) of this section.

(iv) *No maximum payout amount limitation.* A Board-regulated institution that is subject to 12 CFR 225.8 is not subject to a maximum payout amount under paragraph (a)(2)(ii) of this section if it has:

(A) A standardized approach capital conservation buffer, calculated under paragraph (c)(2) of this section, that is greater than its standardized approach capital conservation buffer requirement

[10] The Board expects that any adjustment will be based on a determination made jointly by the Board, OCC, and FDIC.

calculated under paragraph (c)(1)(iii)(A) of this section;

(B) If applicable, an advanced approaches capital conservation buffer, calculated under paragraph (c)(3) of this section, that is greater than the Board-regulated institution's advanced approaches capital conservation buffer requirement calculated under paragraph (c)(1)(iii)(B) of this section; and

(C) A leverage buffer, calculated under paragraph (c)(4) of this section, that is greater than its stress leverage buffer requirement calculated under paragraph (a)(2)(vii) of this section; and

(D) If applicable, a SLR buffer, calculated under paragraph (c)(5) of this section, that is greater than its SLR buffer requirement as calculated under paragraph (a)(2)(v) of this section.

(v) *Negative eligible retained income.* Except as provided in paragraph (c)(1)(vi) of this section, a Board-regulated institution that is subject to 12 CFR 225.8 may not make distributions or discretionary bonus payments during the current calendar quarter if, as of the end of the previous calendar quarter, the Board-regulated institution's:

(A) Eligible retained income is negative; and

(B)(*1*) Standardized approach capital conservation buffer was less than its stress capital buffer requirement; or

(*2*) If applicable, advanced approaches capital conservation buffer was less than 2.5 percent; or

(*3*) Leverage buffer was less than its stress leverage buffer requirement; or

(*4*) If applicable, SLR buffer was less than its SLR buffer requirement.

(vi) *Prior approval.* Notwithstanding the limitations in paragraphs (c)(1)(i) through (v) of this section, the Board may permit a Board-regulated institution that is subject to 12 CFR 225.8 to make a distribution or discretionary bonus payment upon a request of the Board-regulated institution, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the Board-regulated institution. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

(v) *Other limitations on distributions.* Additional limitations on distributions may apply under 12 CFR 225.4, 225.8, 252.63, 252.165, and 263.202 to a Board-regulated institution that is subject to 12 CFR 225.8.

(2) *Standardized approach capital conservation buffer.* (i) The standardized approach capital conservation buffer for Board-regulated institutions subject to 12 CFR 225.8 is composed solely of common equity tier 1 capital.

(ii) A Board-regulated institution that is subject to 12 CFR 225.8 has a standardized approach capital conservation buffer that is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The ratio calculated by the Board-regulated institution under § 217.10(b)(1) or (c)(1)(i), as applicable, minus the Board-regulated institution's minimum common equity tier 1 capital ratio requirement under § 217.10(a);

(B) The ratio calculated by the Board-regulated institution under § 217.10(b)(2) or (c)(2)(i), as applicable, minus the Board-regulated institution's minimum tier 1 capital ratio requirement under § 217.10(a); and

(C) The ratio calculated by the Board-regulated institution under § 217.10(b)(3) or (c)(3)(i), as applicable, minus the Board-regulated institution's minimum total capital ratio requirement under § 217.10(a).

(iii) Notwithstanding paragraph (c)(2)(ii) of this section, if any of the ratios calculated by the Board-regulated institution under § 217.10(b)(1), (2), or (3), or if applicable § 217.10(c)(1)(i), (c)(2)(i), or (c)(3)(i) is less than or equal to the Board-regulated institution's minimum common equity tier 1 capital ratio, tier 1 capital ratio, or total capital ratio requirement under § 217.10(a), respectively, the Board-regulated institution's capital conservation buffer is zero.

(3) *Advanced approaches capital conservation buffer.* (i) The advanced approaches capital conservation buffer is composed solely of common equity tier 1 capital.

(ii) A Board-regulated institution that calculates risk-weighted assets under subpart E of this part has an advanced approaches capital conservation buffer that is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The ratio calculated by the Board-regulated institution under § 217.10(c)(1)(ii) minus the Board-regulated institution's minimum common equity tier 1 capital ratio requirement under § 217.10(a);

(B) The ratio calculated by the Board-regulated institution under § 217.10(c)(2)(ii) minus the Board-regulated institution's minimum tier 1 capital ratio requirement under § 217.10(a); and

(C) The ratio calculated by the Board-regulated institution under § 217.10(c)(3)(ii) minus the Board-regulated institution's minimum total capital ratio requirement under § 217.10(a).

(iii) Notwithstanding paragraphs (c)(3)(ii) of this section, if any of the ratios calculated by the Board-regulated institution under § 217.10(c)(1)(ii), (c)(2)(ii), or (c)(3)(ii) is less than or equal to the Board-regulated institution's minimum common equity tier 1 capital ratio, tier 1 capital ratio, or total capital ratio requirement under § 217.10(a), respectively, the Board-regulated institution's advanced approaches capital conservation buffer is zero.

(4) *Leverage buffer.* (i) The leverage buffer is composed solely of tier 1 capital.

(ii) A Board-regulated institution has a leverage buffer that is equal to the Board-regulated institution's leverage ratio minus 4 percent, calculated as of the last day of the previous calendar quarter.

(iii) Notwithstanding paragraph (c)(4)(ii) of this section, if the Board-regulated institution's leverage ratio is less than or equal to 4 percent, the Board-regulated institution's leverage buffer is zero.

(5) *SLR buffer.* (i) The SLR buffer is composed solely of tier 1 capital.

(ii) A global systemically important BHC has a SLR buffer that is equal to the global systemically important BHC's supplementary leverage ratio minus 3 percent, calculated as of the last day of the previous calendar quarter.

(iii) Notwithstanding paragraph (c)(5)(ii) of this section, if the global systemically important BHC's supplementary leverage ratio is less than or equal to 3 percent, the global systemically important BHC's SLR buffer is zero.

TABLE 2 TO § 217.11—CALCULATION OF MAXIMUM PAYOUT RATIO

Capital buffer [1]	Payout ratio
Greater than the Board-regulated institution's buffer requirement [2]	No payout ratio limitation applies.

TABLE 2 TO § 217.11—CALCULATION OF MAXIMUM PAYOUT RATIO—Continued

Capital buffer [1]	Payout ratio
Less than or equal to 100 percent of the Board-regulated institution's buffer requirement, *and* greater than 75 percent of the Board-regulated institution's buffer requirement.	60 percent.
Less than or equal to 75 percent of the Board-regulated institution's buffer requirement, *and* greater than 50 percent of the bank holding company's buffer requirement.	40 percent.
Less than or equal to 50 percent of the Board-regulated institution's buffer requirement, *and* greater than 25 percent of the Board-regulated institution's buffer requirement.	20 percent.
Less than or equal to 25 percent of the Board-regulated institution's buffer requirement	0 percent.

[1] A Board-regulated institution's ''capital buffer'' means each of, as applicable, its standardized approach capital conservation buffer, leverage buffer, advanced approaches capital conservation buffer, and SLR buffer.

[2] A Board-regulated institution's ''buffer requirement'' means each of, as applicable, its standardized approach capital conservation buffer requirement, stress leverage buffer requirement, advanced approaches capital conservation buffer requirement, and SLR buffer requirement.

(d) *GSIB surcharge.* A global systemically important BHC must use its GSIB surcharge calculated in accordance with subpart H of this part for purposes of determining its maximum payout ratio under Table 2 to this section.

Subpart G—Transition Provisions

■ 3. In § 217.300, add paragraph (g) to read as follows:

§ 217.300 Transitions.

* * * * *

(g) *Implementation of stress capital buffer requirement and stress leverage buffer requirement.* Notwithstanding any other requirement in § 217.11, unless and until a Board-regulated institution subject to 12 CFR 225.8 has received a stress capital buffer requirement from the Board calculated pursuant to 12 CFR 225.8, for purposes of § 217.11 its stress capital buffer requirement is equal to 2.5 percent; and, unless a Board-regulated institution subject to 12 CFR 225.8 has received a stress leverage buffer requirement, for purposes of § 217.11 its stress leverage buffer requirement is zero.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 4. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

■ 5. Section 225.8 is revised to read as follows:

§ 225.8 Capital planning and stress capital and leverage buffer requirements.

(a) *Purpose.* This section establishes capital planning and prior notice and approval requirements for capital distributions by certain bank holding companies. This section also establishes the Board's process for determining the stress buffer requirements for these bank holding companies.

(b) *Scope and reservation of authority*—(1) *Applicability.* Except as provided in paragraph (c) of this section, this section applies to:

(i) Any top-tier bank holding company domiciled in the United States with average total consolidated assets of $50 billion or more ($50 billion asset threshold);

(ii) Any other bank holding company domiciled in the United States that is made subject to this section, in whole or in part, by order of the Board;

(iii) Any U.S. intermediate holding company subject to this section pursuant to 12 CFR 252.153; and

(iv) Any nonbank financial company supervised by the Board that is made subject to this section pursuant to a rule or order of the Board.

(2) *Average total consolidated assets.* For purposes of this section, average total consolidated assets means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average.

(3) *Ongoing applicability.* A bank holding company (including any successor bank holding company) that is subject to any requirement in this section shall remain subject to such requirements unless and until its total consolidated assets fall below $50 billion for each of four consecutive quarters, as reported on the FR Y–9C and effective on the as-of date of the fourth consecutive FR Y–9C.

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

(5) *Rule of construction.* Unless the context otherwise requires, any reference to bank holding company in this section shall include a U.S. intermediate holding company and shall include a nonbank financial company supervised by the Board to the extent this section is made applicable pursuant to a rule or order of the Board.

(6) *Application of this section by order.* The Board may apply this section, in whole or in part, to a bank holding company by order based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

(c) *Transitional arrangements*—(1) *Transition periods for certain bank holding companies.* (i) A bank holding company that meets the $50 billion asset threshold (as measured under paragraph (b) of this section) on or before September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the next calendar year, unless that time is extended by the Board in writing.

(ii) A bank holding company that meets the $50 billion asset threshold after September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the second calendar year after the bank holding company meets the $50 billion asset threshold, unless that time is extended by the Board in writing.

(iii) The Board or the appropriate Reserve Bank with the concurrence of the Board, may require a bank holding company described in paragraph (c)(1)(i) or (ii) of this section to comply with any or all of the requirements in paragraph (e)(1), (e)(3), (g), or (k) of this section if the Board or appropriate Reserve Bank with concurrence of the Board, determines that the requirement is appropriate on a different date based on the company's risk profile, scope of operation, or financial condition and provides prior notice to the company of the determination.

(2) *Transition periods for subsidiaries of certain foreign banking organizations*—(i) *U.S. intermediate holding companies.* (A) A U.S. intermediate holding company required to be established or designated pursuant to 12 CFR 252.153 on or before September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the next calendar year, unless that time is extended by the Board in writing.

(B) A U.S. intermediate holding company required to be established or designated pursuant to 12 CFR 252.153 after September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the second calendar year after the U.S. intermediate holding company is required to be established, unless that time is extended by the Board in writing.

(C) The Board or the appropriate Reserve Bank with the concurrence of the Board, may require a U.S. intermediate holding company described in paragraph (c)(2)(i)(A) or (B) of this section to comply with any or all of the requirements in paragraph (e)(1), (e)(3), (g), or (k) of this section if the Board or appropriate Reserve Bank with concurrence of the Board, determines that the requirement is appropriate on a different date based on the company's risk profile, scope of operation, or financial condition and provides prior notice to the company of the determination.

(ii) *Bank holding company subsidiaries of U.S. intermediate holding companies required to be established by July 1, 2016.* (A) Notwithstanding any other requirement in this section, a bank holding company that is a subsidiary of a U.S. intermediate holding company (or, with the mutual consent of the company and Board, another bank holding company domiciled in the United States) shall remain subject to paragraph (e) of this section until December 31, 2017, and shall remain subject to the requirements of paragraphs (g) and (k) of this section until the Board issues an objection or non-objection to the capital plan of the relevant U.S. intermediate holding company.

(B) After the time periods set forth in paragraph (c)(2)(ii)(A) of this section, this section will cease to apply to a bank holding company that is a subsidiary of a U.S. intermediate holding company, unless otherwise determined by the Board in writing.

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

(1) *Additional tier 1 capital* has the same meaning as under 12 CFR part 217.

(2) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable.

(3) *Average total nonbank assets* means the average of the total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP, for the four most recent consecutive quarters or, if the bank holding company has not filed the FR Y–9LP for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters, as applicable.

(4) *BHC baseline scenario* means a scenario that reflects the bank holding company's reasonable expectation of the economic and financial outlook, including expectations related to the bank holding company's capital adequacy and financial condition.

(5) *BHC stress scenario* means a scenario designed by a bank holding company that stresses the specific vulnerabilities of the bank holding company's risk profile and operations, including those related to the bank holding company's capital adequacy and financial condition.

(6) *Capital action* means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a bank holding company's consolidated capital.

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

(8) *Capital plan* means a written presentation of a bank holding company's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (e)(2) of this section.

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

(10) *Capital policy* means a bank holding company's written principles and guidelines used for capital planning, capital issuance, capital usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for capital distributions; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

(11) *Common equity tier 1 capital* has the same meaning as under 12 CFR part 217.

(12) *Effective capital distribution limitations* means any limitations on capital distributions established by the Board by order or regulation, including pursuant to 12 CFR 217.11, 252.63, 252.165, and 263.202, provided that, for any limitations based on risk-weighted assets, such limitations must be calculated using the standardized approach, as set forth in 12 CFR part 217, subpart D.[1]

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

(14) *Global systemically important BHC* means a bank holding company identified as a global systemically important BHC under 12 CFR 217.402.

(15) *GSIB surcharge* has the same meaning as under 12 CFR 217.403.

(16) *Large and noncomplex bank holding company* means any bank holding company subject to this section that:

(i) Has, as of December 31 of the calendar year prior to the capital plan cycle:

(A) Average total consolidated assets of less than $250 billion;

(B) Average total nonbank assets of less than $75 billion; and

(ii) Is not a bank holding company that is identified as a global systemically important BHC pursuant to § 217.402.

(17) *Net distributions* means, for each category of regulatory capital, the dollar amount of the bank holding company's capital distributions, net of the dollar amount of its capital issuances.

(18) *Net final planned capital distributions* means the dollar amount of net distributions relating to the bank holding company's final planned capital distributions.

(19) *Nonbank financial company supervised by the Board* means a company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Wall Street Reform and Consumer

[1] Effective capital distribution limitations should not include planned discretionary bonus payments.

Protection Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(20) *Planning horizon* means the period of at least nine consecutive quarters, beginning with the quarter preceding the quarter in which the bank holding company submits its capital plan, over which the relevant projections extend.

(21) *Regulatory capital ratio* means a capital ratio for which the Board has established minimum requirements for the bank holding company by regulation or order, including, as applicable, the bank holding company's regulatory capital ratios calculated under 12 CFR part 217 and the deductions required under 12 CFR 248.12; except that the bank holding company shall not use the advanced approaches to calculate its regulatory capital ratios.

(22) *Stress buffer requirement* means either the stress capital buffer requirement or the stress leverage buffer requirement.

(23) *Stress capital buffer requirement* means the amount calculated under paragraph (f)(2) of this section.

(24) *Stress leverage buffer requirement* means the amount calculated under paragraph (f)(3) of this section.

(25) *Tier 1 capital* has the same meaning as under 12 CFR part 217.

(26) *Tier 2 capital* has the same meaning as under 12 CFR part 217.

(27) *U.S. intermediate holding company* means the top-tier U.S. company that is required to be established pursuant to 12 CFR 252.153.

(e) *Capital planning requirements and procedures*—(1) *Annual capital planning.* (i) A bank holding company must develop and maintain a capital plan.

(ii) A bank holding company must submit its complete capital plan to the Board and the appropriate Reserve Bank by April 5 of each calendar year, or such later date as directed by the Board or by the appropriate Reserve Bank with concurrence of the Board.

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

(A) Review the robustness of the bank holding company's process for assessing capital adequacy;

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

(C) Approve the bank holding company's capital plan.

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

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

(A) Estimates of projected revenues, losses, reserves, and pro forma capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the bank holding company, over the planning horizon under a range of scenarios, including any scenarios provided by the Federal Reserve, the BHC baseline scenario, and at least one BHC stress scenario;

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

(C) A description of all planned capital actions over the planning horizon that are consistent with effective capital distribution limitations and as may be adjusted pursuant to paragraph (h) of this section. In determining whether a bank holding company's planned capital distributions are consistent with effective capital distribution limitations, a bank holding company must assume:

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

(*2*) That any GSIB surcharge currently applicable to the bank holding company when the capital plan is submitted remains at the same level, except that the bank holding company must reflect any increase in its GSIB surcharge pursuant to 12 CFR 217.403(d)(1), beginning in the fifth quarter of the planning horizon.

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

(A) A discussion of how the bank holding company will, under expected and stressful conditions, maintain capital commensurate with its risks, maintain capital above the regulatory capital ratios, and serve as a source of strength to its subsidiary depository institutions;

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

(iii) The bank holding company's capital policy; and

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

(3) *Data collection.* Upon the request of the Board or appropriate Reserve Bank, the bank holding company shall provide the Federal Reserve with information regarding:

(i) The bank holding company's financial condition, including its capital;

(ii) The bank holding company's structure;

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

(iv) The bank holding company's relevant policies and procedures, including risk management policies and procedures;

(v) The bank holding company's liquidity profile and management;

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

(vii) Any other relevant qualitative or quantitative information requested by the Board or by the appropriate Reserve Bank to facilitate review of the bank holding company's capital plan under this section.

(4) *Re-submission of a capital plan.* (i) A bank holding company must update and re-submit its capital plan to the appropriate Reserve Bank within 30 calendar days of the occurrence of one of the following events:

(A) The bank holding company determines there has been or will be a material change in the bank holding company's risk profile, financial condition, or corporate structure since the bank holding company last submitted the capital plan to the Board and the appropriate Reserve Bank under this section; or

(B) The Board or the appropriate Reserve Bank with concurrence of the Board, directs the bank holding company in writing to revise and resubmit its capital plan for any of the following reasons:

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

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

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

(*4*) For a bank holding company subject to paragraph (i) of this section, the capital plan or the condition of the bank holding company raise any of the issues described in paragraph (i)(2) of this section.

(ii) A bank holding company may resubmit its capital plan to the Federal Reserve if the Board or the appropriate Reserve Bank objects to the capital plan.

(iii) The Board or the appropriate Reserve Bank with concurrence of the Board, may extend the 30-day period in paragraph (e)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as the Board or the appropriate Reserve Bank, with concurrence of the Board, determines appropriate.

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

(5) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this section and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

(f) *Calculation methodologies and supervisory practices*—(1) *General.* The Board will determine the stress buffer requirements that apply under 12 CFR 217.11 pursuant to this paragraph (f).

(2) *Stress capital buffer requirement calculation.* A bank holding company's stress capital buffer requirement is equal to the greater of:

(i)(A) The ratio of a bank holding company's common equity tier 1 risk-based capital to risk-weighted assets, as calculated under 12 CFR part 217, subpart D, as of the final quarter of the previous capital plan cycle, unless otherwise determined by the Board; minus

(B) The lowest projected ratio of the bank holding company's common equity tier 1 capital to risk-weighted assets in any quarter of the planning horizon under the supervisory stress test described in paragraph (f)(4) of this section; plus

(C) The sum of the ratios of the bank holding company's planned common stock dividends (expressed as a dollar amount) to projected risk-weighted assets for each of the fourth through seventh quarters of the planning horizon; or

(ii) 2.5 percent.

(3) *Stress leverage buffer requirement calculation.* A bank holding company's stress leverage buffer requirement is equal to:

(i) The ratio of a bank holding company's tier 1 capital to average total consolidated assets, as calculated under 12 CFR part 217, subpart D, as of the final quarter of the previous capital plan cycle, unless otherwise determined by the Board; minus

(ii) The lowest projected leverage ratio for the bank holding company in any quarter during the planning horizon under the supervisory stress test described in paragraph (f)(4) of this section; plus

(iii) The sum of the ratios of the bank holding company's planned common stock dividends (expressed as a dollar amount) to the difference between projected total consolidated assets and amounts projected to be deducted from tier 1 capital under 12 CFR 217.22(a), (c), and (d) for each of the fourth through seventh quarters of the planning horizon.

(4) *Supervisory stress test.* The supervisory stress test is the stress test conducted by the Board pursuant to 12 CFR part 252, subpart E, under the severely adverse scenario using the assumptions regarding a bank holding company's capital actions over the planning horizon that are set forth in that section. For a capital plan resubmitted pursuant to paragraph (e)(4) of this section, the Board may conduct the supervisory stress test using an updated version of the severely adverse scenario.

(g) *Review of capital plans by the Federal Reserve.* The Board, or the appropriate Reserve Bank with concurrence of the Board, will consider the following factors in reviewing a bank holding company's capital plan:

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

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

(3) Relevant supervisory information about the bank holding company and its subsidiaries;

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

(5) The results of any stress tests conducted by the bank holding company or the Federal Reserve; and

(6) Other information requested or required by the Board or the appropriate Reserve Bank, as well as any other information relevant, or related, to the bank holding company's capital adequacy.

(h) *Federal Reserve notice of stress buffer requirements; final planned capital distributions*—(1) *Timing of notice.* The Board will provide a bank holding company with notice of its stress buffer requirements by June 30 of the calendar year in which the capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section, unless otherwise determined by the Board. The notice will include an explanation of the results of the supervisory stress test described in paragraph (f)(4) of this section.

(2) *Response to notice; request for reconsideration of stress capital buffer requirement or stress leverage buffer requirement.* A bank holding company may request reconsideration of the stress buffer requirements provided under paragraph (h)(1) of this section. To request reconsideration of its stress buffer requirements, a bank holding company must submit to the Board a written request pursuant to paragraph (j) of this section.

(3) *Response to notice; adjustments to planned capital distributions.* Within two business days of receipt of notice of its stress buffer requirements under

paragraph (h)(1) or (j)(5) of this section, as applicable, a bank holding company must:

(i) Determine whether the capital distributions for the fourth through seventh quarters of the planning horizon under the BHC baseline scenario included in the capital plan submitted pursuant to paragraph (e)(1)(ii) of this section would be consistent with effective capital distribution limitations, assuming the stress buffer requirements provided by the Board under paragraph (h)(1) or (j)(5) of this section, as applicable; and

(ii) If the capital distributions for the fourth through seventh quarters of the planning horizon under the BHC baseline scenario included in the capital plan submitted pursuant to paragraph (e)(1)(ii) of this section would not be consistent with effective capital distribution limitations assuming the stress buffer requirements, the bank holding company must determine how it would reduce its planned capital distributions such that those planned capital distributions would be consistent with effective capital distribution limitations assuming the stress buffer requirements, and must notify the Board of these reductions; or

(iii) If the capital distributions for the fourth through seventh quarters of the planning horizon under the BHC baseline scenario included in the capital plan submitted pursuant to paragraph (e)(1)(ii) of this section would be consistent with effective capital distribution limitations assuming the stress buffer requirements, the bank holding company may determine to adjust its planned capital distributions, provided that the adjusted planned capital distributions do not exceed the amount included in the capital plan submitted pursuant to paragraph (e)(1)(ii) of this section, and, if any adjustments are made, must notify the Board of these adjustments.

(4) *Response to notice; final planned capital distributions.* (i) If a bank holding company does not request reconsideration under paragraph (j) of this section, the Board will consider the planned capital distributions, including any adjustments made pursuant to paragraph (h)(3) of this section, to be the bank holding company's final planned capital distributions on the expiration of the time for requesting reconsideration under paragraph (j) of this section.

(ii) If a bank holding company requests reconsideration under paragraph (j) of this section, the bank holding company must provide the Board with its final planned capital distributions, including any adjustments made pursuant to paragraph (h)(3) of this section, within 2 business days of receipt of notice of the Board's response under paragraph (j)(5) of this section.

(5) *Final stress capital buffer requirement and stress leverage buffer requirement; effective date.* (i) The Board will provide a bank holding company with its stress buffer requirements and confirmation of the bank holding company's final planned capital distributions by August 31 of the calendar year that a capital plan was submitted, unless otherwise determined by the Board. No stress buffer requirements shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704 during the pendency of a request for reconsideration, pursuant to paragraph (j) of this section, or before the time for requesting reconsideration has expired.

(ii) A bank holding company's final planned capital distributions and stress buffer requirements shall:

(A) Unless otherwise determined by the Board, be effective on October 1 of the calendar year in which a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section; and

(B) Remain in effect until superseded, unless otherwise determined by the Board.

(6) *Publication.* With respect to any bank holding company subject to this section, the Board may disclose publicly any or all of the following items:

(i) The stress buffer requirements provided to a bank holding company under paragraph (h)(1) of this section that includes the adjustments made under paragraph (h)(3) also of this section, if any;

(ii) A summary of the results of the supervisory stress test described in paragraph (f)(4) of this section; and

(iii) A bank holding company's request for reconsideration under paragraph (j) of this section, and the Board's response to any such request for reconsideration or a summary thereof.

(i) *Federal Reserve action on a capital plan for bank holding companies that are not large and noncomplex bank holding companies*—(1) *Timing of action.* The Board or the appropriate Reserve Bank with concurrence of the Board, will object, in whole or in part, to the capital plan of a bank holding company that is not a large and noncomplex bank holding company or provide the bank holding company with a notice of non-objection to its capital plan:

(i) Unless otherwise determined by the Board, by June 30 of the calendar year in which a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section; and

(ii) For a capital plan resubmitted pursuant to paragraph (e)(4) of this section, within 75 calendar days after the date on which a capital plan is resubmitted, unless the Board provides notice to the bank holding company that it is extending the time period.

(2) *Basis for objection to a capital plan.* The Board may object to a capital plan submitted by a bank holding company that is not a large and noncomplex bank holding company if the Board determines that:

(i) The bank holding company has material unresolved supervisory issues, including but not limited to issues associated with its capital adequacy process;

(ii) The assumptions and analysis underlying the bank holding company's capital plan, or the bank holding company's methodologies and practices that support its capital planning process, are not reasonable or appropriate; or

(iii) The bank holding company's capital planning process or proposed capital distributions otherwise constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or condition imposed by, or written agreement with, the Board or the appropriate Reserve Bank. In determining whether a capital plan or any proposed capital distribution would constitute an unsafe or unsound practice, the Board or the appropriate Reserve Bank would consider whether the bank holding company is and would remain in sound financial condition after giving effect to the capital plan and all proposed capital distributions.

(3) *Notification of decision.* The Board or the appropriate Reserve Bank will notify the bank holding company in writing of the reasons for a decision to object to a capital plan.

(4) *General distribution limitation.* If the Board or the appropriate Reserve Bank objects to a capital plan and until such time as the Board or the appropriate Reserve Bank with concurrence of the Board, issues a non-objection to the bank holding company's capital plan, the bank holding company may not make any capital distribution, other than capital distributions arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio or capital distributions with respect to which the Board or the appropriate Reserve Bank has indicated in writing its non-objection.

(5) *Publication of summary results.* The Board may disclose publicly its decision to object or not object to a bank holding company's capital plan under

this section, along with a summary of the results of the supervisory stress test described in paragraph (f)(4) of this section for that company. Any disclosure under this paragraph (i)(5) will occur by June 30 of the calendar year in which a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section, unless otherwise determined by the Board.

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

(1) *General.* To request reconsideration of an objection to a capital plan, provided under paragraph (i) of this section, or of a stress buffer requirement, provided under paragraph (h) of this section, a bank holding company must submit a written request for reconsideration.

(2) *Timing of request.* (i) A request for reconsideration of an objection to a capital plan, provided under paragraph (i) of this section, must be received within 15 calendar days of receipt of a notice of objection to a capital plan.

(ii) A request for reconsideration of a stress buffer requirement, provided under paragraph (h) of this section, must be received within 15 calendar days of receipt of a notice of bank holding company's stress buffer requirement.

(3) *Contents of request.* (i) A request for reconsideration must include a detailed explanation of why reconsideration should be granted. With respect to any information that was not previously provided to the Federal Reserve in the bank holding company's capital plan, the request should include an explanation of why the information should be considered.

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

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

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

(5) *Response to request.* (i) Within 30 calendar days of receipt of the bank holding company's request for reconsideration of an objection to a capital plan submitted under paragraph (j) of this section or within 30 days of the conclusion of an informal hearing conducted under paragraph (j)(4) of this section, the Board will notify the company of its decision to affirm or withdraw the objection to the bank holding company's capital plan, or a specific capital distribution, provided that the Board may extend this period upon notice to the bank holding company.

(ii) Within 30 calendar days of receipt of the bank holding company's request for reconsideration of its stress buffer requirement submitted under paragraph (j) of this section or within 30 days of the conclusion of an informal hearing conducted under paragraph (j)(4) of this section, the Board will notify the company of its decision to affirm or modify, as applicable, the bank holding company's stress buffer requirement, provided that the Board may extend this period upon notice to the bank holding company.

(6) *Distributions during the pendency of a request for reconsideration.* During the pendency of the Board's final decision under paragraph (j)(5) of this section, the bank holding company may make the capital distributions to which the Board or the appropriate Reserve Bank indicated its non-objection, except that, if the Board or the appropriate Reserve Bank has not yet indicated its non-objection for a quarter during which a decision under paragraph (j)(5) of this section is pending, the bank holding company is authorized to make capital distributions that do not to exceed the four-quarter average of capital distributions to which the Board or the appropriate Reserve Bank indicated its non-objection for the previous capital plan cycle, unless otherwise determined by the Board.

(k) *Approval requirements for certain capital actions*—(1) *Circumstances requiring approval.* A bank holding company may not make a capital distribution (excluding any capital distribution arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio) under the following circumstances, unless it receives prior approval from the Board or appropriate Reserve Bank pursuant to paragraph (k)(5) of this section:

(i) After giving effect to the capital distribution, the bank holding company would not meet a minimum regulatory capital ratio;

(ii) The Board or the appropriate Reserve Bank with concurrence of the Board, notifies the company in writing that the Federal Reserve has determined that the capital distribution would result in a material adverse change to the company's capital or liquidity structure or that the company's earnings were materially underperforming projections;

(iii) Except as provided in paragraph (k)(2) of this section, the dollar amount of the capital distribution will exceed the dollar amount of the bank holding company's final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue; or

(iv) The capital distribution would occur after the occurrence of an event requiring resubmission under paragraph (e)(4)(i)(A) or (B) of this section and before the Federal Reserve has responded or acted under paragraphs (h) and (i) of this section, as applicable.

(2) *Exception for well capitalized bank holding companies.* (i) A bank holding company may make a capital distribution for which the dollar amount exceeds the dollar amount of the bank holding company's final planned capital distributions if the following conditions are satisfied:

(A) The bank holding company is, and after the capital distribution would remain, well capitalized as defined in § 225.2(r);

(B) The bank holding company's performance and capital levels are, and after the capital distribution would remain, consistent with its projections under the BHC baseline scenario;

(C) The annual aggregate dollar amount of all capital distributions in the period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year would not exceed the total dollar amounts of the bank holding company's final planned capital distributions by more than 0.25 percent multiplied by the bank holding company's tier 1 capital, as reported to the Federal Reserve on the bank holding company's most recent first-quarter FR Y–9C;

(D) Between July 1 of a calendar year and March 15 of the following calendar year, the bank holding company provides the appropriate Reserve Bank with notice 15 calendar days prior to a capital distribution that includes the elements described in paragraph (k)(4) of this section; and

(E) The Board or the appropriate Reserve Bank with concurrence of the Board, does not object to the transaction proposed in the notice. In determining whether to object to the proposed transaction, the Board or the appropriate Reserve Bank shall apply the criteria described in paragraph (k)(5)(ii) of this section.

(ii) The exception in this paragraph (k)(2) shall not apply if the Board or the appropriate Reserve Bank notifies the bank holding company in writing that it is ineligible for this exception.

(3) *Net distribution limitation*—(i) *General.* Notwithstanding a bank holding company's final planned capital distributions, the bank holding company must reduce its capital distributions in accordance with paragraph (k)(3)(ii) of this section if the bank holding company raises a smaller dollar amount of capital of a given category of regulatory capital instruments than it had included in its capital plan, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the end of the current quarter.

(ii) *Reduction of distributions*—(A) *Common equity tier 1 capital.* If the bank holding company raises a smaller dollar amount of common equity tier 1 capital, the bank holding company must reduce its final planned capital distributions relating to common equity tier 1 capital such that net distributions relating to common equity tier 1 capital are no greater than net final planned capital distributions of common equity tier 1 capital, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the end of the current quarter.

(B) *Additional tier 1 capital.* If the bank holding company raises a smaller dollar amount of additional tier 1 capital, the bank holding company must reduce its final planned capital distributions relating to additional tier 1 capital (other than scheduled payments on additional tier 1 capital instruments) such that the dollar amount of the bank holding company's net distributions relating to additional tier 1 capital is no greater than the dollar amount of its net final planned capital distributions relating to additional tier 1 capital, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the end of the current quarter.

(C) *Tier 2 capital.* If the bank holding company raises a smaller dollar amount of tier 2 capital, the bank holding company must reduce its final planned capital distributions relating to tier 2 capital (other than scheduled payments on tier 2 capital instruments) such that the dollar amount of the bank holding company's net distributions relating to tier 2 capital is no greater than the dollar amount of its net final planned capital distributions relating to tier 2 capital, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the end of the current quarter.

(iii) *Exceptions.* Paragraphs (k)(3)(i) and (ii) of this section shall not apply:

(A) To the extent that the Board or appropriate Reserve Bank indicates in writing its approval pursuant to paragraph (k)(5) of this section, following a request for prior approval from the bank holding company that includes all of the information required to be submitted under paragraph (k)(4) of this section;

(B) To capital distributions arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio that the bank holding company had not included in its capital plan;

(C) To the extent that the bank holding company raised a smaller dollar amount of capital in the category of regulatory capital instruments described in paragraph (k)(3)(i) of this section due to employee-directed capital issuances related to an employee stock ownership plan;

(D) To the extent that the bank holding company raised a smaller dollar amount of capital in the category of regulatory capital instruments described in paragraph (k)(3)(i) of this section due to a planned merger or acquisition that is no longer expected to be consummated or for which the consideration paid is lower than the projected price in the capital plan; or

(E) To the extent that the dollar amount by which the bank holding company's net distributions exceed the dollar amount of its net final planned capital distributions in the category of regulatory capital instruments described in paragraph (k)(3)(i) of this section, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the end of the current quarter, is less than 0.25 percent of the bank holding company's tier 1 capital, as reported to the Federal Reserve on the bank holding company's most recent first-quarter FR Y–9C; between July 1 of a calendar year and March 15 of the following calendar year, the bank holding company provides the appropriate Reserve Bank with notice 15 calendar days prior to any capital distribution in that category of regulatory capital instruments that includes the elements described in paragraph (k)(4) of this section; and the Board or the appropriate Reserve Bank with concurrence of the Board, does not object to the transaction proposed in the notice. In determining whether to object to the proposed transaction, the Board or the appropriate Reserve Bank shall apply the criteria described in paragraph (k)(5)(ii) of this section.

(iv) *Exclusion from exceptions.* The exceptions in paragraph (k)(3)(iii) of this section shall not apply if the Board or the appropriate Reserve Bank notifies the bank holding company in writing that it is ineligible for this exception.

(4) *Contents of request.* (i) A request for a capital distribution under this section shall be filed between July 1 of a calendar year and March 1 of the following calendar year with the appropriate Reserve Bank and the Board and shall contain the following information:

(A) The bank holding company's current capital plan or an attestation that there have been no changes to the capital plan since it was last submitted to the Federal Reserve;

(B) The purpose of the transaction;

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

(D) Any additional information requested by the Board or the appropriate Reserve Bank (which may include, among other things, an assessment of the bank holding company's capital adequacy under a revised stress scenario provided by the Federal Reserve, a revised capital plan, and supporting data).

(ii) Any request submitted with respect to a capital distribution described in paragraph (k)(1)(i) of this section shall also include a plan for restoring the bank holding company's capital to an amount above a minimum level within 30 calendar days and a rationale for why the capital distribution would be appropriate.

(5) *Approval of certain capital distributions.* (i) The Board or the appropriate Reserve Bank with concurrence of the Board, will act on a request under this paragraph (k)(5) within 30 calendar days after the receipt of all the information required under paragraph (k)(4) of this section.

(ii) In acting on a request under this paragraph (k)(5), the Board or appropriate Reserve Bank will apply the considerations and principles in paragraphs (g) and (i) of this section, as appropriate. In addition, the Board or the appropriate Reserve Bank may disapprove the transaction if the bank holding company does not provide all of the information required to be submitted under paragraph (k)(4) of this section.

(6) *Disapproval and hearing.* (i) The Board or the appropriate Reserve Bank will notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 15 calendar days after receipt of a disapproval by the Board, the bank holding company may submit a written request for a hearing.

(A) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

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

(C) Written notice of the final decision of the Board shall be given to the bank holding company within 60 calendar days of the conclusion of any informal hearing ordered by the Board, provided that the Board may extend this period upon notice to the requesting party.

(D) While the Board's final decision is pending and until such time as the Board or the appropriate Reserve Bank with concurrence of the Board, approves the capital distribution at issue, the bank holding company may not make such capital distribution.

(ii) [Reserved]

(*l*) *Transition for certain planned capital actions.* For the period July 1 to September 30, 2019, a bank holding company is authorized to make capital distributions that do not exceed the four-quarter average of capital distributions to which the Board or the appropriate Reserve Bank indicated its non-objection for the previous capital plan cycle, unless otherwise determined by the Board.

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 6. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

Subpart E—Supervisory Stress Test Requirements for U.S. Bank Holding Companies With $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

■ 7. Section 252.44 is amended by adding paragraph (c) to read as follows:

§ 252.44 Annual analysis conducted by the Board.

* * * * *

(c) *Assumptions.* In conducting a stress test under this section, the Board will make the following assumptions regarding a covered company's capital actions over the planning horizon:

(1) The covered company will not pay any dividends on any instruments that qualify as common equity tier 1 capital;

(2) The covered company will make payments on instruments that qualify as additional tier 1 capital or tier 2 capital equal to the stated dividend, interest, or principal due on such instrument;

(3) The covered company will not make a redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio; and

(4) The covered company will not make any issuances of common stock or preferred stock, except for issuances in connection with a planned merger or acquisition to the extent that the merger or acquisition is reflected in the covered company's pro forma balance sheet estimates.

Subpart F—Company-Run Stress Test Requirements for U.S. Bank Holding Companies With $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

■ 8. Section 252.54 is amended by revising paragraph (b)(2)(i) introductory text to read as follows:

§ 252.54 Annual stress test.

* * * * *

(b) * * *

(2) * * *

(i) The Board may require a covered company with significant trading activity (a covered company that has aggregate trading assets and liabilities of $50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets, and is not a large and noncomplex bank holding company, as defined in 12 CFR 225.8) to include a trading and counterparty component in its adverse and severely adverse scenarios in the stress test required by this section:

* * * * *

■ 9. Section 252.56 is amended by revising paragraph (b) to read as follows:

§ 252.56 Methodologies and practices.

* * * * *

(b) *Assumptions regarding capital actions.* In conducting a stress test under §§ 252.54 and 252.55, a covered company is required to make the following assumptions regarding its capital actions over the planning horizon:

(1) The covered company will not pay any dividends on any instruments that qualify as common equity tier 1 capital;

(2) The covered company will make payments on instruments that qualify as additional tier 1 capital or tier 2 capital equal to the stated dividend, interest, or principal due on such instrument;

(3) The covered company will not make a redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio; and

(4) The covered company will not make any issuances of common stock or preferred stock, except for issuances in connection with a planned merger or acquisition to the extent that the merger or acquisition is reflected in the covered company's pro forma balance sheet estimates.

* * * * *

■ 10. Amend appendix B to part 252, as proposed to be added at 82 FR 59528, by revising section 2.7 and adding section 3.4 to read as follows:

Appendix B to Part 252—Stress Testing Policy Statement

* * * * *

2.7. Credit Supply Maintenance

The supervisory stress test incorporates an assumption that restricts the contraction of aggregate credit supply during the stress period. The aim of supervisory stress testing is to assess whether firms are sufficiently capitalized to absorb losses during times of economic stress, while meeting obligations and continuing to lend to households and businesses. While an individual firm may assume that it reacts to rising losses by sharply restricting its lending, (*e.g.,* by exiting a particular business line), the banking industry as a whole cannot do so without creating a "credit crunch" and substantially increasing the severity and duration of an economic downturn. Ensuring that covered companies cannot assume they will "shrink to health," serves the Federal Reserve's goal of helping to ensure that major financial firms remain sufficiently capitalized to accommodate credit demand in a severe downturn.

Accordingly, in projecting a firm's balance sheet, the Federal Reserve will assume that the firm takes actions to maintain a constant level of assets, including loans, trading assets, and securities over the planning horizon. In order to implement this policy, the Federal Reserve must make assumptions about new loan balances. To predict losses on new originations over the planning horizon, newly originated loans are assumed to have the same risk characteristics as the existing portfolio, where applicable, with the exception of loan age and delinquency status. These newly originated loans would be part of a covered company's normal business, even in a stressed economic environment. By precluding the need to make assumptions about how underwriting standards might tighten or loosen during times of economic stress, the Federal Reserve adheres to Principle 1.3 and promotes consistency across covered companies. Similar to the Board's current methodology, balance sheet projections would reflect the impact of a planned merger or acquisition, or completed or contractually agreed-on divestiture.

In projecting the denominator for the calculation of the leverage ratio, the Federal Reserve will account for the effect of changes associated with the calculation of regulatory capital or changes to the Board's regulations. As with the Board's current methodology, leverage ratio denominator projections would reflect the impact of a planned merger or acquisition, or completed or contractually agreed-on divestiture.

* * * * *

3.4. Simple Approach for Projecting Risk-Weighted Assets

In projecting risk-weighted assets, the Federal Reserve will generally assume that a covered company's risk-weighted assets remain unchanged over the planning horizon. This assumption allows the Federal Reserve to independently project firms' risk-weighted assets in line with the goal of simplicity (Principle 1.4). In addition, this approach is forward-looking (Principle 1.2), as this assumption removes reliance on historical data and past outcomes from the projection of risk-weighted assets.

In projecting a firm's risk-weighted assets, the Federal Reserve will account for the effect of changes associated with the calculation of regulatory capital or changes to the Board's regulations in the calculation of risk-weighted assets. As with the Board's current methodology, risk-weighted asset projections would reflect the impact of a planned merger or acquisition, or completed or contractually agreed-on divestiture.

By order of the Board of Governors of the Federal Reserve System, April 10, 2018.

Ann Misback,

Secretary of the Board.

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Part IV

The President

Executive Order 13830—Delegation of Authority To Approve Certain Military Decorations

Federal Register
Vol. 83, No. 80
Wednesday, April 25, 2018

Presidential Documents

Title 3—

The President

Executive Order 13830 of April 20, 2018

Delegation of Authority To Approve Certain Military Decorations

For the purpose of carrying into effect the provisions of sections 1121, 3742, 3743, 3746, 3749, 3750, 6242, 6243, 6244, 6245, 6246, 8742, 8743, 8746, 8749, and 8750 of title 10, and sections 491a, 492, 492a, 492b, and 493 of title 14, United States Code, the following rules and regulations pertaining to the award of the Distinguished Service Cross, Navy Cross, Air Force Cross, Coast Guard Cross, Distinguished Service Medal, Silver Star Medal, Legion of Merit, Distinguished Flying Cross, Soldier's Medal, Navy and Marine Corps Medal, Airman's Medal, and Coast Guard Medal are promulgated:

Section 1. *Distinguished Service Cross, Navy Cross, Air Force Cross, and Coast Guard Cross.* The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Distinguished Service Cross, Navy Cross, Air Force Cross, and Coast Guard Cross in the name of the President to any person who, while serving in any capacity with the Army, Navy, Marine Corps, Air Force, or Coast Guard, as the case may be, distinguishes himself or herself by extraordinary heroism not justifying award of the Medal of Honor:

(a) while engaged in an action against an enemy of the United States;

(b) while engaged in military operations involving conflict with an opposing foreign force or, with respect to the Coast Guard, an international terrorist organization; or

(c) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

Sec. 2. *Distinguished Service Medal.* The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Distinguished Service Medal of each of the respective Armed Forces of the United States in the name of the President to any person who, while serving in any capacity with the Army, Navy, Marine Corps, Air Force, or Coast Guard, as the case may be, distinguishes himself or herself by exceptionally meritorious service to the United States in a duty of great responsibility.

Sec. 3. *Silver Star Medal.* The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Silver Star Medal in the name of the President to any person who, while serving in any capacity with the Army, Navy, Marine Corps, Air Force, or Coast Guard, as the case may be, is cited for gallantry in action that does not warrant award of the Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, or Coast Guard Cross:

(a) while engaged in an action against an enemy of the United States;

(b) while engaged in military operations involving conflict with an opposing foreign force or, with respect to the Coast Guard, an international terrorist organization; or

(c) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

Sec. 4. *Legion of Merit.*

(a) The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Legion of Merit, without degree, in the name of the President to any member of the Armed Forces of the United States, who, after September 8, 1939, has distinguished himself or herself by exceptionally meritorious conduct in performing outstanding services.

(b) The Secretary of Defense, after concurrence by the Secretary of State, may award the Legion of Merit, in the degrees of Commander, Officer, and Legionnaire, to a member of the armed forces of friendly foreign nations.

(c) The Secretary of Defense, after concurrence by the Secretary of State, shall submit to the President for his approval, recommendations for award of the Legion of Merit, in the degree of Chief Commander, to a member of the armed forces of friendly foreign nations.

Sec. 5. *Distinguished Flying Cross.*

(a) The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Distinguished Flying Cross in the name of the President to any eligible person identified in subsection (b) who, while serving in any capacity with the Army, Navy, Marine Corps, Air Force, or Coast Guard, distinguishes himself or herself by heroism or extraordinary achievement while participating in an aerial flight aboard an aircraft or spacecraft.

(b) (i) Any member of the Armed Forces of the United States, including a member not on active duty, who, while participating in an aerial flight aboard an aircraft or spacecraft, performs official duties incident to such membership is eligible for the award of the Distinguished Flying Cross.

(ii) Any member of the armed forces of a friendly foreign nation who, while serving with the Armed Forces of the United States, participates in an aerial flight aboard an aircraft or spacecraft and performs official duties incident to such membership is eligible for the award of the Distinguished Flying Cross.

(iii) Civilians are not eligible for the award of the Distinguished Flying Cross.

(c) No Distinguished Flying Cross may be awarded or presented to any person, or to that person's representative, if the person's service after the qualifying act or achievement has not been honorable.

(d) With regard to the award of the Distinguished Flying Cross for a qualifying act or achievement performed:

(i) on or before July 2, 1926, no award shall be made after July 2, 1929, unless the award recommendation was made on or before July 2, 1928, in which case the award may be made;

(ii) between December 7, 1941, and September 2, 1945, no award shall be made after May 2, 1952, unless the award recommendation was made on or before May 2, 1951, in which case the award may be made;

(iii) between September 3, 1945, and twelve o'clock noon on December 31, 1946 (the date and time World War II hostilities were terminated pursuant to Proclamation 2714 of December 31, 1946), no award shall be made unless the award recommendation was made on or before June 30, 1947;

(iv) between July 2, 1926, and September 10, 2001, with the exception of a qualifying act or achievement authorized pursuant to paragraphs (ii) or (iii) of this subsection, no award shall be made more than 3 years after the date of the qualifying act or achievement unless the award recommendation was made within 2 years of the qualifying act or achievement; or

(v) on or after September 11, 2001, no award shall be made except in accordance with any time limitations established in regulations by the Secretary of the military department concerned or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(e) The Distinguished Flying Cross may be awarded posthumously. When so awarded, it may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(f) Not more than one Distinguished Flying Cross may be awarded to any one person. For each succeeding act of heroism or extraordinary achievement justifying such an award, a suitable bar or other device may be awarded to be worn with the medal.

Sec. 6. *Soldier's Medal, Navy and Marine Corps Medal, Airman's Medal, and Coast Guard Medal.*

(a) The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Soldier's Medal, Navy and Marine Corps Medal, Airman's Medal, and Coast Guard Medal in the name of the President to any person who, while serving in any capacity with the Army, Navy, Marine Corps, Air Force, or Coast Guard, as the case may be, distinguishes himself or herself by heroism not involving actual conflict with an enemy.

(b) The Secretary of the Navy may award the Navy and Marine Corps Medal to any person to whom the Secretary of the Navy, before August 7, 1942, awarded a letter of commendation for heroism, and who applies for that medal, regardless of the date of the act of heroism.

(c) Not more than one Soldier's Medal, Navy and Marine Corps Medal, Airman's Medal, or Coast Guard Medal may be awarded to any one person. For each succeeding act of heroism justifying such an award, a suitable bar or other device may be awarded to be worn with the medal.

Sec. 7. *Regulations.* The Secretary of the military department concerned, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may prescribe such regulations as they may deem appropriate to carry out this order. The regulations of the Secretaries of the military departments concerned with respect to the award of the Silver Star Medal, Distinguished Flying Cross, and Legion of Merit shall, so far as practicable, be uniform and shall be subject to the approval of the Secretary of Defense.

Sec. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

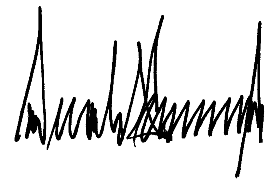
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

(c) This order supersedes Executive Order 4601 of March 1, 1927, as amended, and Executive Order 9260 of October 29, 1942, as amended. However, existing regulations prescribed pursuant to those orders, shall, so far as they are not inconsistent with this order, remain in effect until modified or revoked by regulations prescribed by the Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, under this order.

(d) This order is not intended to, and does not, invalidate any award of military decorations covered by this order made prior to the effective date of this order.

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



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[FR Doc. 2018–08883
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H.R. 3445/P.L. 115–167

African Growth and Opportunity Act and Millennium Challenge Act Modernization Act (Apr. 23, 2018; 132 Stat. 1276)

H.R. 3979/P.L. 115–168

Keep America's Refuges Operational Act (Apr. 23, 2018; 132 Stat. 1284)

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