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U.S. GOVERNMENT
INFORMATION
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FEDERAL REGISTER

Vol. 83 Tuesday,

No. 132 July 10, 2018

Pages 31841–32060

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3201

RIN 0599–AA27

Designation of Product Categories for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending the Guidelines for Designating Biobased Products for Federal Procurement to add 12 sections that designate product categories within which biobased products will be afforded Federal procurement preference by Federal agencies and their contractors.

DATES: This rule is effective August 9, 2018.

FOR FURTHER INFORMATION CONTACT: Karen Zhang, USDA, Office of Procurement and Property Management, 1400 Independence Ave. SW, Washington, DC 20250; email: *biopreferred_support@amecfw.com;* phone (202) 401–4747. Information regarding the Federal preferred procurement program (one part of the BioPreferred Program) is available on the internet at *http://www.biopreferred.gov*.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Discussion of Public Comments
IV. Summary of Changes
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A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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I. Authority

These product categories are designated under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill), as amended by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), and further amended by the Agricultural Act of 2014 (the 2014 Farm Bill), 7 U.S.C. 8102. (Section 9002 of the 2002 Farm Bill, as amended by the 2008 and the 2014 Farm Bills, is referred to in this document as ''section 9002''.)

II. Background

As part of the BioPreferred Program, USDA published, on January 13, 2017, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of 12 product categories for the preferred procurement of biobased products by Federal agencies (referred to hereafter in this FR notice as the ''preferred procurement program''). This proposed rule can be found at 82 FR 4206. This rulemaking is referred to in this preamble as Round 11 (RIN 0599–AA24).

The term ''product category'' is used as a generic term in the designation process to mean a grouping of specific products that perform a similar function. As originally finalized, the Guidelines included provisions for the designation of product categories that were composed of finished, consumer products such as mobile equipment hydraulic fluids, penetrating lubricants, or hand cleaners and sanitizers.

The 2008 and 2014 Farm Bills directed USDA to expand the scope of the Guidelines to include the designation of product categories composed of intermediate ingredients and feedstock materials. Specifically, the 2008 Farm Bill stated that USDA shall ''designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject'' to the Federal preferred procurement program. The term ''intermediate ingredient and feedstock'' is defined in the Farm Bill as ''a material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or product.'' The term ''intermediates'' is used in the titles of the product categories being designated today to distinguish these categories from the finished, consumer products previously designated by USDA. Although the Federal government does not typically purchase large quantities of intermediate ingredients and feedstock materials, designating such materials represents a means to identify and include finished products made from such designated materials in the Federal preferred procurement program. In the proposed rule, USDA proposed designating the following 12 product categories for the preferred procurement program: Intermediates—Plastic Resins; Intermediates—Chemicals; Intermediates—Paint and Coating Components; Intermediates—Textile Processing Materials; Intermediates—Foams; Intermediates—Fibers and Fabrics; Intermediates—Lubricant Components; Intermediates—Binders; Intermediates—Cleaner Components; Intermediates—Personal Care Product Components; Intermediates—Oils, Fats, and Waxes; and Intermediates—Rubber Materials.

This final rule designates the proposed product categories within which biobased products will be afforded Federal procurement preference. USDA has determined that each of the product categories being designated under this rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: to improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting

biobased products for products derived from imported oil and natural gas.

When USDA designates by rulemaking a product category for preferred procurement under the BioPreferred Program, manufacturers of all products under the umbrella of that product category that meet the requirements to qualify for preferred procurement can claim that status for their products. To qualify for preferred procurement, a product must be within a designated product category and must contain at least the minimum biobased content established for the designated product category. With the designation of these specific product categories, USDA invites the manufacturers and vendors of qualifying products to provide information on the product, contacts, and performance testing for posting on its BioPreferred website, *http://www.biopreferred.gov.* Procuring agencies will be able to utilize this website as one tool to determine the availability of qualifying biobased products under a designated product category. Once USDA designates a product category, procuring agencies are required generally to purchase biobased products within the designated product category where the purchase price of the procurement product exceeds $10,000 or where the quantity of such products or of functionally equivalent products purchased over the preceding fiscal year equaled $10,000 or more.

Minimum Biobased Contents. The minimum biobased contents being established with this rulemaking are based on products for which USDA has biobased content test data. USDA obtains biobased content data in conjunction with product manufacturer's applications for certification to use the USDA Certified Biobased Product label. Products that are certified to display the label must undergo biobased content testing by an independent, third party testing lab using ASTM D6866, ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis''. These test data become part of the BioPreferred Program database and their use in setting the minimum biobased content for designated product categories results in a more efficient process for both the Program and manufacturers of products within the product categories.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002. Some of the products that are within biobased product categories designated for Federal preferred procurement under this program may also be within categories the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for products containing recovered (or recycled) materials. Because this rule designates intermediate ingredient product categories rather than categories of finished, consumer-use products, USDA does not believe that there is a direct overlap between these categories and CPG categories. However, if such an overlap situation is discovered, USDA is asking manufacturers of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products.

Federal Government Purchase of Sustainable Products. The Federal government's sustainable purchasing program includes the following three mandatory preference programs for designated products: the BioPreferred Program, the EPA's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program.

Other Preferred Procurement Programs. Federal procurement officials should also note that many biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and SourceAmerica (formerly known as the National Industries for the Severely Handicapped) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (*www.abilityone.gov*) indicated that the types of intermediate ingredient product categories being designated in this final rule are not available through the AbilityOne Program. USDA notes, however, that if such materials are offered at some point in the future, their procurement through the AbilityOne Program would further the objectives of both the AbilityOne Program and the Federal preferred procurement program.

Outreach. To augment its own research, USDA consults with industry and Federal stakeholders to the Federal preferred procurement program during the development of the rulemaking packages for the designation of product categories. USDA consults with stakeholders to gather information used in determining the order of product category designation and in identifying: Manufacturers producing and marketing products that are categorized within a product category being designated; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

III. Discussion of Public Comments

USDA solicited comments on the proposed rule for 90 days ending on April 13, 2017. USDA received eight comments by that date. Four of the comments were from manufacturers of biobased products, and four were from trade associations. The comments are presented below, along with USDA's responses, and are shown under the product categories to which they apply.

General Process Comments

Comment: One commenter believes that the scope of the proposed intermediate categories is too broad and that the proposed categories are too widely defined. The commenter recommends categorizing intermediates based on functional use descriptions. Further, the commenter notes that by defining intermediates according to their function in finished products, USDA can refine the minimum percent biobased content required for each group.

Response: USDA agrees that the scope of many of the proposed intermediate ingredient product categories is broad. That is by design. There were, however, several factors that had to be considered in creating the product categories. USDA first considered the primary rationale for the designation of these intermediate ingredients. Section 9002 directs USDA to designate intermediate ingredients and also to designate finished products made from those intermediate ingredients. The designation of intermediate ingredients as proposed was intended to facilitate the future designation of the finished products that are made from the intermediate ingredients. USDA believes that the designation of finished products made from intermediate ingredients will provide a significant boost in the market for these products. The Federal government is not expected to purchase significant quantities of intermediate materials even after they are designated for the preferred procurement.

USDA also had to consider the potentially conflicting goals of keeping the proposed number of intermediate

ingredient product categories reasonable while creating a mechanism for the subsequent designation of as many finished product categories as possible. The decision was made that one way to accomplish this was to define many of the intermediate ingredient product categories broadly. One example of this is the proposed category of ''intermediate ingredients—plastic resins.'' There are numerous types of biobased plastic resins either already in use or under development. These resins are then used to make a vast number of biobased plastic finished products. USDA chose to propose a product category that included essentially all plastic resins to be as inclusive as possible.

Another significant factor that affected USDA's decision-making when creating the intermediate ingredient product categories was the availability of product data. USDA created more specific product categories where data were available to support creating those categories. For example, USDA had data supporting the designation of categories specifically for biobased ingredients that are used in the manufacturing of finished products in the textiles, lubricants, cleaners, and personal care industries. Thus, the decision was made to go with a broad definition in hopes that most, if not all, biobased chemicals that are used as intermediate ingredients would be covered.

Finally, USDA points out that the BioPreferred Program has traditionally created product categories that are defined by their function and intends to continue to do so when creating product categories for the finished products that are made from the intermediate ingredients being designated in this rulemaking. USDA has taken the approach that for the designation of intermediate ingredients, however, the designation of broadly defined categories is more reasonable and more inclusive than attempting to create a very large number of function-specific categories.

Comment: One commenter recommends that a validation study be performed to better understand the ranges of inaccuracies of the test method, ASTM D6866, across a number of intermediates and products.

Response: USDA relies on ASTM and the relevant stakeholder committee to confirm the validity of the test method. ASTM D6866 underwent a review and revision during 2016, and USDA is confident that the method yields results that are reliable.

Comment: One commenter supports the designation of intermediate product categories and encourages USDA to develop a more efficient mechanism for adding future new product categories. The commenter acknowledges that the Federal government may not acquire significant amounts of biobased intermediates, but the commenter believes that having product categories that cover renewable chemicals used in final products allows for greater flexibility in the acquisition of biobased products and easier identification of biobased products that would qualify as biobased under the Program.

Further, the commenter notes that the development of biobased products and renewable chemicals is occurring at a rapid pace. Thus, the commenter encourages USDA to explore opportunities to streamline the process of designating new product categories.

Response: USDA appreciates the commenter's support for the proposed designation of intermediate ingredient product categories. USDA agrees that innovation is constantly occurring in the biobased products industry; the development of these biobased intermediate ingredients, and the products made from them, is progressing rapidly. The process of designating new product categories is one that USDA is constantly seeking to improve. USDA will continue to evaluate changes to the Program that have the potential to streamline the process for designating product categories.

Comment: One commenter supports the purpose and implementation of the USDA BioPreferred Program and acknowledges the challenge of identifying the wide range of biobased intermediate ingredients and feedstock materials. The commenter encourages USDA to carefully review the technical information it receives regarding finished products that are being made from these intermediates or feedstocks. The commenter believes that after reviewing this technical information, USDA may want to consider adjusting the definitions, setting subcategories, or adjusting the minimum biobased content requirements for the twelve proposed intermediates categories.

The commenter also supports the use of subcategories at the finished product level and not at the intermediate ingredient or feedstock material level. Further, the commenter believes USDA should consider the need to create subcategories to allow for variations in the minimum biobased content of different end use products. When setting the minimum biobased content for finished products, the commenter encourages USDA to verify that there are products within a given category or subcategory that are commercially available.

The commenter believes that the designation of intermediate categories will have a positive impact on many small businesses that are now using or would like to use biobased materials in their finished products.

The commenter also believes that the designation of intermediate ingredients and feedstocks will allow small businesses easy access to useable information on the types and categories of biobased materials that are available for use in finished products. The commenter states that the use of biobased materials is one way for small businesses to distinguish themselves in both the government and private sector marketplaces.

The commenter also supports and encourages USDA to continue and expand outreach efforts as stated in the **Federal Register**.

Response: USDA thanks the commenter for their support of the BioPreferred Program and for their suggestions on technical considerations such as revising the definitions, creating subcategories, and adjusting the minimum biobased contents of the intermediate ingredient product categories. USDA is aware that the information used to support the designation of these intermediate ingredient product categories is often a small sample of the universe of knowledge related to a specific biobased technology or material. As additional information becomes available, USDA will evaluate the need to revise or adjust the technical components of the rulemaking (such as definitions, subcategories, and minimum biobased content requirements). If such revisions or adjustments are found to be warranted, USDA will undertake a new rulemaking to amend the Guidelines as needed. In the case of upcoming rulemakings to designate finished products, USDA will continue to gather and evaluate technical information from the biobased products industry to support the decisions that go into the rulemaking.

USDA appreciates the support for the approach of defining product categories at the finished product level as opposed to the intermediate ingredient level. As discussed earlier, USDA believes that broad definitions of the intermediate ingredient product categories and, subsequently, more specific functional definitions at the finished product category level is a reasonable approach.

USDA also appreciates the commenter's statements regarding the positive impact of the BioPreferred

Program and biobased products on the industry's small businesses.

Intermediates—Plastic Resins

Comment: One commenter suggests that the proposed definition be amended to include polymers.

Response: Although the name of the product category was not changed, USDA has revised the proposed definition of this product category to include the term ''polymers.''

Comment: One commenter supports designating the proposed intermediates—plastic resins category. The commenter believes that the proposal to certify intermediates has the potential to streamline the certification process for future finished products.

Response: USDA thanks the commenter for their support of the proposed designation of the intermediate ingredients product categories.

Comment: One commenter believes the minimum biobased content should be set at 17%. The commenter states that there are commercial plastic films available that contain 20% biobased content, and these films are stronger than films made from petro-based resins. The commenter believes that setting the minimum biobased content at 17% could have a significant positive impact by encouraging more recycling of films and bags.

Response: USDA did not revise the proposed minimum biobased content for this product category. As discussed in the Preamble to the proposed rule, USDA has data from over 60 manufacturers who make about 150 biobased plastic resins. These resins are used to make a wide variety of finished products. The biobased contents of the resins in the database range from 25 percent to 100 percent. USDA believes that setting the minimum biobased content requirement for this product category at 22 percent is reasonable. USDA also points out that the product mentioned by the commenter (plastic film) is already included in the designated product category ''Films'' found in § 3201.27. The Films product category includes subcategories for semi-durable films and non-durable films and the minimum biobased content requirements are 45 percent and 85 percent, respectively.

Intermediates—Chemicals

Comment: One commenter states that the proposed intermediates—chemicals category is too widely defined as it includes reactants, building block chemicals, secondary chemicals, and chemicals with specific functional properties. Moreover, the commenter believes that the proposed minimum of 22 percent gives no incentive for chemical producers to increase biobased content. The commenter recommends that USDA instead categorize by function, which will allow for increased minimums for several functional classes.

Response: As discussed in previous responses, USDA believes that creating more specific definitions based on the product's function is more appropriate for the finished products made from intermediate ingredients. USDA also believes that the goal of including as many renewable chemicals in the Program as possible is best met by being more inclusive when designating the intermediate ingredient product categories. USDA also believes that for the broadly defined product category setting the minimum biobased content at the proposed 22 percent level is appropriate and that competition among manufacturers will tend to drive the actual biobased contents higher than the required minimum. Maintaining the level at 22 percent will also allow many chemical producers to participate in the Program while they make technological improvements that increase the biobased content rather than excluding them from the Program as they strive for improvement. USDA also believes that it is appropriate to set more specific minimum biobased content requirements at the finished product level. The consumers of finished products are expected to be the motivating force that encourages manufacturers to increase the biobased content of the products they make and hope to sell. USDA believes that the most reasonable approach is to include a wide range of intermediate ingredients in the Program and then let the demand for finished products with high biobased contents encourage advances in intermediate ingredients.

Comment: One commenter suggests that the proposed definition be amended to include viscosity reducers, rheology modifiers, adhesion agents, polyols, and polymers.

Response: The definition, as proposed, was not intended to be an all-inclusive list. USDA agrees with the commenter that the materials they listed are reasonable additions to the proposed definition and has revised the final definition to include them. However, USDA points out that the list is still not considered to be all-inclusive. It is likely that biobased intermediate ingredients exist that are not specifically included in the definition and it is USDA's intention that they be eligible for preferred procurement under the Program.

Intermediates—Paint and Coating Components

Comment: One commenter suggests that the proposed definition be amended to include humectants/open time additives, coalescent alkyd latex resins, and polymers.

Response: The definition, as proposed, included examples of the types of components intended to be covered by the product category and was not intended to be an all-inclusive list. USDA agrees with the commenter that the materials they listed are reasonable additions to the proposed definition and has revised the final definition to include them. However, USDA points out that the list is still not considered to be all-inclusive. It is likely that biobased intermediate ingredients exist that are not specifically included in the definition and it is USDA's intention that they be eligible for preferred procurement under the Program.

Intermediates—Foams

Comment: One commenter states that foams are used in a wide variety of products, and as such, there is a wide variety of foams with biobased contents that have been developed to meet the performance needs of the foam containing products. The commenter believes that the proposed intermediates—foams category is one for which USDA should establish subcategories based on the types of end uses and corresponding performance requirements of the foams. Further, the commenter believes that USDA should set minimum biobased contents for these subcategories, noting that the proposed 22% minimum for intermediates—foams will be too high for some applications.

Response: USDA thanks the commenter for their input regarding this proposed product category. USDA also agrees that this product category certainly includes a wide variety of products used to make a large number of finished products. As the commenter pointed out, USDA requested information from intermediate ingredient manufacturers on finished products made from their intermediates. Unfortunately, for the product category intermediates-foams, no additional information was provided. USDA is, therefore, finalizing this product category as proposed; however, USDA is continuing the process of gathering data to support the upcoming designation of finished products make from these designated intermediate ingredients. As additional product data are obtained and evaluated, USDA will consider

revisions or adjustments that may need to be made in this (and all other) intermediate ingredient product categories. Such revisions could include creating subcategories, clarifying changes to the definitions, or adjustments to the required minimum biobased content.

Intermediates—Binders

Comment: One commenter suggests that the proposed definition be amended to include ''binders are generally polymers or polymer precursors (such as epoxies) and include the polymeric materials used to formulate coatings, adhesives, sealants and elastomers.'' The commenter also believes that the proposed definition should include adhesives and glues that are finished products.

Response: USDA has revised the proposed definition to include the phrase recommended by the commenter. As discussed earlier, USDA agrees that including examples in the definitions may provide more clarity but cautions that such examples are not intended to be all-inclusive or to restrict the definition so that it only applies to those examples.

USDA disagrees with the commenter's suggestion to revise the proposed definition so that it includes finished product adhesives and glues. These types of products will be included in the upcoming rulemaking that designates finished products made from designated intermediate ingredients.

Intermediates—Cleaner Components

Comment: One commenter notes that the proposed intermediates—cleaner components category includes a wide range of substances that perform very different functions in cleaning products. The commenter further states that this definition does not include an exhaustive list of cleaning ingredients.

Response: As discussed in previous responses, USDA has intentionally established intermediate ingredient product categories that are very broad in scope. The commenter is also correct that the definitions do not attempt to include exhaustive lists of materials that are covered by the definition. Examples of the types of materials that fit within the definition are provided in most cases. Because of the continuing technological advances within the biobased products industry, USDA does not believe it is reasonable to attempt to create exhaustive or all-inclusive lists of materials that could result in the exclusion of materials still under development.

Intermediates—Personal Care Product Components

Comment: One commenter states that the personal care product industry and the cleaning industry use many of the same ingredients. Thus, the commenter believes that the proposed intermediates—personal care product components category overlaps with the proposed intermediates—cleaner components category and is redundant.

Response: USDA agrees that there is a strong probability that some intermediate ingredients may be used in both the personal care product components and the cleaner components categories. Because many of the intermediate ingredient materials being designated are very basic, multi-purpose chemicals, their use in multiple finished product categories is expected. There are also expected to be some ingredients that are unique to one category or the other. USDA believes that creating these intermediate ingredient product categories (and others with potential overlapping materials) will ultimately make the process of cataloging product information simpler for the BioPreferred Program and will make it easier for manufacturers of finished products, Federal procuring officials, and the consuming public, to identify and locate biobased products that are available to them.

Intermediates—Oils, Fats and Waxes

Comment: One commenter notes that the proposed minimum biobased content is lower than the content found naturally in oils, fats, and waxes.

Response: USDA evaluated data on 24 intermediate ingredient materials within this category. These materials ranged in biobased content from 68 percent to 100 percent. The proposed 65 percent minimum biobased content was based on the sample with the lowest biobased content. Raw materials that are 100 percent fats and oils derived from animals and plants would be expected to be essentially 100 percent biobased. However, it is likely that many of the products that would fall into this category have been modified, blended, or in some way altered in the process of extracting or refining them. It is also likely that the commercial products that are produced within this category are a combination of ingredients, not all of which may be 100 percent biobased. Because of these possibilities, USDA has not changed the minimum biobased content proposed for this product category.

Comment: One commenter suggests that the proposed definition be amended to include proteins and carbohydrates.

Response: USDA has not revised the proposed definition because the term ''oils, fats, and waxes'' is believed to be sufficiently broad to cover the materials that are expected to be found in this product category. Also, proteins and carbohydrates are, generally, chemically different from oils, fats, and waxes. Oils, fats, and waxes are typically made up of long carbon chains where proteins and carbohydrates have a lower carbon to non-carbon molecule ratio. USDA believes that the types of intermediate ingredient materials derived from proteins and carbohydrates are more likely to be included in the intermediate—chemicals product category.

New Categories

Comment: One commenter suggests designating a product category for ''can liners.'' The commenter notes that the Federal government uses a large number of can liners and that can liners are typically made from non-biobased materials. Thus, the commenter believes that there would be significant benefit in designating a ''can liners'' category in the next round.

Another commenter believes that it is important to have a product category designation for FSC code 4253 Hazardous Material Spill Containment and Clean-up Equipment.

Response: USDA thanks the commenters for their interest in the BioPreferred Program and their suggestions regarding possible new product categories. The product categories suggested by these commenters will be evaluated along with the potential categories of finished products made from designated intermediate ingredients. USDA plans to propose a rulemaking action that will identify those categories selected for possible designation and the public will be invited to submit comments.

IV. Summary of Changes

After consideration of the public comments received in response to the proposed rule, USDA made several changes in the final rule. These changes are summarized below.

In the final rule, USDA has revised the definition of the categories intermediates—plastic resins, intermediates—chemicals, intermediates—paint and coating components, and intermediates—binders as explained in the following paragraph. These changes were made to clarify or add examples of intermediates that can be included in each of these categories.

The definition for the intermediate—plastic resins category has been revised to include the term ''polymers.'' The definition for the intermediates—chemicals category has been revised to list additional materials such as viscosity reducers, rheology modifiers, adhesion agents, polyols, and polymers. Additional examples of paint and coating components, such as humectants, open time additives, and polymers, have been added to the definition of the intermediates—paint and coating components category. The intermediates—binders category definition has been revised to expand on the types of chemicals that typically make up binders. Additionally, the definition has been expanded to include examples of materials that binders can be used to formulate. The definition for this category has been revised to include the phrase ''binders are generally polymers or polymer precursors (such as epoxies) and include the polymeric materials used to formulate coatings, adhesives, sealants and elastomers.''

V. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866, as supplemented by Executive Order 13563, requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant regulatory action'' as one 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.''

This final rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with this final rule. As discussed in the preamble to the proposed rulemaking, USDA made extensive efforts to obtain information on the Federal agencies' usage within the 12 designated product categories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of this final rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing biobased products within designated product categories if price is ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of this final rule. Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable price.

1. Summary of Impacts

This final rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses that may be adversely affected by this final rule. The final rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Final Rule

The designation of these 12 product categories provides the benefits outlined in the objectives of section 9002: to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, this final rule can result in expanding and strengthening markets for biobased materials used in these product categories.

3. Costs of the Final Rule

Like the benefits, the costs of this final rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability and price reasonableness of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its designation of these product categories to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the final rule will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of product categories for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers.

The intent of section 9002 is largely to stimulate the production of new

biobased products and to energize emerging markets for those products. Because the program is focused on innovative developments within the biobased products industry, which is still in its infancy, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the product categories designated by this rulemaking, the number is expected to be small because this industry is still materializing. As such, USDA anticipates that only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The Federal preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being designated for Federal preferred procurement in this rule are expected to be included under the following NAICS codes: 324191 (petroleum lubricating oil and grease manufacturing), 325320 (pesticide and other agricultural chemicals manufacturing), 325411 (medicinal and botanical manufacturing), 325412 (pharmaceutical preparation manufacturing), 325510 (paint and coating manufacturing), 325612 (polish and other sanitation goods manufacturing), and 325620 (toilet preparation manufacturing). USDA obtained information on these seven NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 4,756 companies within these 7 NAICS categories and that these companies own a total of about 5,374 establishments. Thus, the average number of establishments per company is about 1.13. The Census data also reported that of the 5,374 individual establishments, about 5,228 (97.3 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 92 and that the pharmaceutical preparation manufacturing segment (with an average of about 250) is the only segment reporting an average of more than 100 employees per company. Thus, nearly all of the businesses meet the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the product categories being designated, but believes that the impact will not be significant. Most of the product categories being designated in this rulemaking are not typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the product categories being designated and selling significant quantities of those products to government agencies affected by this rulemaking will be relatively low. Also, this final rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased products when biobased products do not meet the availability, performance, or reasonable price criteria. This final rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

After considering the economic impacts of this final rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the final rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This final rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this final rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule does not significantly or uniquely affect ''one or more Indian tribes . . . the relationship between the Federal Government and Indian tribes, or . . . the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this final rule is currently approved under OMB control number 0503–0011.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in

general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA allows for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated product category at *http://www.biopreferred.gov*. For information pertinent to E-Government Act compliance related to this rule, please contact Karen Zhang at (202) 401–4747.

K. Congressional Review Act

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, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USDA has submitted 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**.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXXII as follows:

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Add §§ 3201.108 through 3201.119 to subpart B to read as follows:

Sec.

3201.108 Intermediates—Plastic Resins.
3201.109 Intermediates—Chemicals.
3201.110 Intermediates—Paint and Coating Components.
3201.111 Intermediates—Textile Processing Materials.
3201.112 Intermediates—Foams.
3201.113 Intermediates—Fibers and Fabrics.
3201.114 Intermediates—Lubricant Components.
3201.115 Intermediates—Binders.
3201.116 Intermediates—Cleaner Components.
3201.117 Intermediates—Personal Care Product Components.
3201.118 Intermediates—Oils, Fats, and Waxes.
3201.119 Intermediates—Rubber Materials.

§ 3201.108 Intermediates—Plastic Resins.

(a) *Definition.* Intermediates—Plastic Resins are materials that are typically viscous liquids with the ability to harden permanently and may exist in liquid or solid (powder or pellets) states. Intermediates—Plastic Resins may be used in a variety of finished products neat, consisting of a single resin or polymer, or a homogeneous blend of two or more neat resins or polymers, or a composite, containing two or more distinct materials such as fiber-reinforced resins. Additionally, Intermediates—Plastic Resins may be used in finished products as additives such as plasticizers, pigments, thermal stability agents, or impact modifiers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Plastic Resins. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Plastic Resins.

§ 3201.109 Intermediates—Chemicals.

(a) *Definition.* Intermediates—Chemicals are those used as reactants for organic synthesis reactions rather than for their functional properties in a chemical mixture; those used as building block chemicals and secondary chemicals such as glycerol, succinic acid, propanediol, and monomers such as lactic acid and propylene; those used for specific functional properties during manufacturing of other products such as pH regulators, flocculants, precipitants, neutralizing agents, emulsifiers, viscosity reducers, rheology modifiers, adhesion agents, detergents, wetting agents, foaming agents, or dispersants; those that are added to end-use products for their specific functional properties including polyols, polymers, and solvents for thinning and drying applications but excluding solvents used for cleaning; and those used for dyes, pigments, and scents including flavorings for non-food products such as lip balm.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Chemicals. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Chemicals.

§ 3201.110 Intermediates—Paint and Coating Components.

(a) *Definition.* Intermediates—Paint and Coating Components are ingredients used to formulate finished waterborne or solvent borne paint and coating products. Examples of Intermediates—Paint and Coating Components include binders, pigments, thickeners, curing agents, modifiers, humectants, open time additives, alkyd latex resins, polymers, polyols, reactive oligomers, or reactive diluents.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Paint and Coating Components. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Paint and Coating Components.

§ 3201.111 Intermediates—Textile Processing Materials.

(a) *Definition.* Intermediates—Textile Processing Materials are used to treat or finish textiles for the purposes of altering textile characteristics such as color, fading, wrinkle resistance, texture, or moisture management.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a

percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Textile Processing Materials. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Textile Processing Materials.

§ 3201.112 Intermediates—Foams.

(a) *Definition.* Intermediates—Foams are dry polymer foams used for non-construction purposes, such as cushions for furniture.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Foams. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Foams.

§ 3201.113 Intermediates—Fibers and Fabrics.

(a) *Definition.* Intermediates—Fibers and Fabrics encompasses plant and animal fibers, fibers made from plant-derived polymers that are not yet formed into more complex products such as carpet or fabrics, fabrics made from natural fibers, fabrics made from synthetic fibers, or fabrics made from a blend of the two. These materials are used to manufacture finished products such as clothing, upholstery, or drapes.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 25 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Fibers and Fabrics. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Fibers and Fabrics.

§ 3201.114 Intermediates—Lubricant Components.

(a) *Definition.* Intermediates—Lubricant Components are ingredients that used specifically to formulate finished lubricant products. Examples of Intermediates—Lubricant Components include base oils, base fluids, additives, or friction modifiers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 44 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Lubricant Components. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Lubricant Components.

§ 3201.115 Intermediates—Binders.

(a) *Definition.* Intermediates—Binders are materials used to provide cohesiveness throughout an entire finished product. Binders are generally polymers or polymer precursors (such as epoxies) and include the polymeric materials used to formulate coatings, adhesives, sealants, and elastomers. The product category does not include adhesives and glues that are finished products used to attach the surfaces of two or more distinct and separate components to one another.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 47 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Binders. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Binders.

§ 3201.116 Intermediates—Cleaner Components.

(a) *Definition.* Intermediates—Cleaner Components are intermediate ingredients used specifically for formulating finished cleaning products. Examples of Intermediates—Cleaner Components include chelating agents, surfactants, hydrotropes, fatty acids, or solvents.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 55 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Cleaner Components. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Cleaner Components.

§ 3201.117 Intermediates—Personal Care Product Components.

(a) *Definition.* Intermediates—Personal Care Product Components are ingredients used to formulate finished personal care products. Examples of Intermediates—Personal Care Product Components include surfactants, oils, humectants, emollients, or emulsifiers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 62 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Personal Care Product Components. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Personal Care Product Components.

§ 3201.118 Intermediates—Oils, Fats, and Waxes.

(a) *Definition.* Intermediates—Oils, Fats, and Waxes include raw or modified fats and oils derived from plants or animals.

(b) *Minimum biobased content.* The Federal preferred procurement product

must have a minimum biobased content of at least 65 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Oils, Fats, and Waxes. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Oils, Fats, and Waxes.

§ 3201.119 Intermediates—Rubber Materials.

(a) *Definition.* Intermediates—Rubber Materials are used in finished products such as rubber gloves, vehicle tires, footwear, sports apparel and equipment, bedding and pillow foams, tubing, catheters, gasketing, or cosmetic adhesives and bases.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 96 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 10, 2019, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Rubber Materials. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Rubber Materials.

Donald K. Bice,

Deputy Assistant Secretary For Administration, U.S. Department of Agriculture.

[FR Doc. 2018–14594 Filed 7–9–18; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0606; Product Identifier 2018–CE–018–AD; Amendment 39–19321; AD 2018–14–01]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. (Piper) Models PA–46–600TP (M600) airplanes. This AD requires inserting temporary airspeed limitations into the pilot's operating handbook, installing a temporary placard, inspecting rivets on the cockpit canopy above the left and right cockpit side windows, and installing a repair kit based on the findings of the rivet inspection. This AD was prompted by a report of undersized fasteners installed during manufacturing. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 25, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 25, 2018.

We must receive comments on this AD by August 24, 2018.

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

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

For service information identified in this final rule, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; internet: *www.piper.com.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0606.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0606; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Aerospace Engineer, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5548; fax: (404) 474–5606; email: *william.mccully@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report from Piper that some rivets installed through the fuselage skin at the cockpit area during manufacture are below the minimum required strength on certain Model PA–46–600TP (M600) airplanes. This condition, if not corrected, could result in failure of the skin joint resulting in loss of pressurization or fuselage structural failure. We are issuing this AD to correct the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed Piper Aircraft, Inc. Service Bulletin No. 1318B, dated June 7, 2018. The service bulletin describes procedures for incorporating temporary airspeed limitations into the pilot's operating handbook (POH) and fabricating and installing an airspeed limitations placard on the airplane until an inspection is completed and a minimum of 16 specific rivets are replaced. The service bulletin also describes procedures for the inspection of the rivets on the cockpit canopy above the left and right cockpit side window and the replacement of the rivets. This service information is reasonably available because the

interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires inserting temporary airspeed limitations into the POH, installing a temporary placard with the airspeed limitations in the cockpit, inspecting the rivets on the cockpit canopy above the left and right cockpit side windows, and installing a repair kit based on the findings of the inspection.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because undersized and understrength rivets through the fuselage skin at the cockpit area could result in failure of the skin joint, which could result in loss of pressurization or fuselage structural failure. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0606 and product identifier 2018–CE–018–AD at the beginning of your comments.

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this final rule.

Costs of Compliance

We estimate that this AD affects 31 airplanes, of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Insert airspeed limitations into the POH and install an airspeed temporary placard.	.5 work-hour × $85 per hour = $42.50	Not applicable	$42.50	$1,317.50
Inspect the size of the cockpit side window rivets.	2 work-hours (1 work-hour on each side) × $85 per hour = $170.	Not applicable	170	5,270

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. Each airplane would require one of the kits on each side based on the inspection. We have presented what the cost on U.S. operators would be for each kit on both sides even though each airplane would have one of the two kits on each side and could have different kits on each side. This would make the total cost on U.S. operators significantly less, but we have no way of determining how many would require each kit.

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace rivets using Rivet Replacement Kit, Piper part number P/N 88623–701.	16 work-hours (8 work-hours each side) × $85 per hour = $1,360.	$6 ($3 each side)	$1,366	$42,346
Replace rivets using Rivet Replacement Kit, Piper part number P/N 88624–701.	60 work-hours (30 work-hours each side) × $85 per hour = $5,100.	244 ($122 each side).	5,344	165,664

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has

delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–14–01 Piper Aircraft, Inc.: Amendment 39–19321; Docket No. FAA–2018–0606; Product Identifier 2018–CE–018–AD.

(a) Effective Date

This AD is effective July 25, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piper Aircraft, Inc. (Piper) Model PA–46–600TP (M600) airplanes, serial numbers 4698004 through 4698041, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5330, Fuselage Skin.

(e) Unsafe Condition

This AD was prompted by a report from Piper of rivets installed through the fuselage skin at the cockpit area during manufacture that are below the minimum required strength. We are issuing this AD to prevent failure of the skin joint, which could result in loss of pressurization or fuselage structural failure.

(f) Compliance

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

(g) Insert Temporary Airspeed Limitations Into Pilot's Operating Handbook

(1) Before further flight after July 25, 2018 (the effective date of this AD), insert the temporary airspeed limitations page into the pilot's operating handbook (POH), following the instructions in Part 1 of Piper Aircraft, Inc. Service Bulletin (SB) No. 1318B, dated June 7, 2018.

(2) The insertion of the temporary operating limitations page into the POH may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the airplane records showing compliance with paragraph (g) of this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Temporary Placard

(1) Before further flight after July 25, 2018 (the effective date of this AD), install onto the cockpit instrument panel Placard—Flight Limitations, Piper P/N 46G110013–701, following the instructions in Part 1, paragraph 2.a. of Piper Aircraft, Inc. Service Bulletin (SB) No. 1318B, dated June 7, 2018; or fabricate a placard from locally sourced materials following the instructions in Part 1, paragraph 2.a.1 and 2.a.2 of Piper Aircraft, Inc. Service Bulletin (SB) No. 1318B, dated June 7, 2018.

(2) This action may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(i) Install Rivet Replacement Kit

(1) At the next inspection after July 25, 2018 (the effective date of this AD), but no later than the next 100 hours time-in-service (TIS) after July 25, 2018 (the effective date of this AD), inspect the rivets at the canopy area above both cockpit side windows, determine their size, and replace with either Rivet Replacement Kit Piper part number (P/N) 88623–701, Revision A or Rivet Replacement Kit Piper P/N 88624–701, Revision A, as applicable, following Part II of the instructions in Piper Aircraft, Inc. Service Bulletin (SB) No. 1318B, dated June 7, 2018.

(2) After the rivets have been replaced following the requirement in paragraph (i)(1) of this AD, the temporary airspeed limitations required in paragraph (g) and (h) of this AD are no longer in effect, and you should remove the temporary airspeed limitations page inserted into the POH that was required for compliance with paragraph (g) of this AD, and the temporary placard required for compliance with paragraph (h) of this AD, and update aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(j) Credit for Previous Actions

This AD allows credit for doing the actions required in paragraphs (g) and (i) of this AD using Piper Aircraft, Inc. SB No. 1318, dated December 20, 2017; or Piper Aircraft, Inc. SB No. 1318A, dated March 6, 2018, if done before the effective date of this AD.

(k) Special Flight Permit

A special flight permit is allowed per 14 CFR 39.23 with the following limitations: No special flight permit is required for the POH insertion. A one-time special flight with fuel stops is permitted to the Piper service facility for the inspection and replacement. Maximum operating speed (V_{mo}) is restricted to 230 knots calibrated air speed (KCAS).

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (m) of this AD.

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

(3) AMOCs approved for AD 2018–02–05 are not approved as AMOCs for the corresponding provisions of this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with this AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(m) Related Information

For more information about this AD, contact Dan McCully, Aerospace Engineer, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5548; fax: (404) 474–5606; email: *william.mccully@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Piper Aircraft, Inc. Service Bulletin (SB) No. 1318B, dated June 7, 2018.

(ii) Reserved.

(3) For Piper Aircraft, Inc. service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; telephone: (772) 567–4361; internet: *www.piper.com/technical-publications-documents/.*

(4) You may view this service information at FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on June 22, 2018.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2018–14080 Filed 7–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0128; Airspace Docket No. 18–AEA–3]

RIN 2120–AA66

Amendment of Class D Airspace and Class E Airspace; Aberdeen, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amends Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace area extending upward from 700 feet or more above the surface at Phillips Army Air Field (AAF), Aberdeen, MD. This action accommodates airspace reconfiguration due to the decommissioning of Aberdeen non-directional radio beacon (NDB), and cancellation of the NDB approaches. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport. This action also updates the geographic coordinates of the airport, and replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the legal descriptions of associated Class D and E airspace.

DATES: Effective 0901 UTC, September 13, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 16259, April 16, 2018) for Docket No. FAA–2018–0128 to amend Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace area extending upward from 700 feet or more above the surface at Phillips Army Air Field, Aberdeen, MD.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA found the geographic coordinates for Phillips AAF were incorrect. This action corrects that error.

Class D and E airspace designations are published in paragraph 5000, 6004, and 6005, respectively, of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) amends part 71 by:

Amending Class D airspace at Phillips AAF, Aberdeen, MD, by updating the geographic coordinates of the airfield; and

Amending Class E airspace designated as an extension to a Class D surface area to within a 4.4-mile radius of Phillips AAF, and within 2 miles each side of the 028° bearing from Phillips AAF, extending from the 4.4-mile radius to 9 miles northeast of the airport. The northeast extension from the Aberdeen NDB is removed due to the

decommissioning of the navigation aid and cancelation of the NDB approach.

The geographic coordinates of Phillips AAF are adjusted in the associated airspace areas to be in concert with the FAA's aeronautical database. These changes enhance the safety and management of IFR operations at the airport.

An editorial change is made removing the city from the airport name to comply with a change to FAA Order 7400.2L, Procedures for Handling Airspace Matters, in the Class E airspace areas.

Also, an editorial change is made replacing the outdated term Airport/Facility Directory with the term Chart Supplement in the associated Class D and E airspace legal descriptions.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA MD D Aberdeen, MD [Amended]

Phillips AAF, MD
(Lat. 39°27′56″ N, long. 76°10′06″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.4-mile radius of Phillips AAF; excluding that airspace in Restricted Area R–4001A when it is in effect. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The specific date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

AEA MD E4 Aberdeen, MD [Amended]

Phillips AAF, MD
(Lat. 39°27′56″ N, long. 76°10′06″ W)

That airspace extending upward from the surface within 2 miles each side of the 028° bearing from Phillips AAF, extending from the 4.4-mile radius of the airport to 9 miles northeast of the airport; excluding that airspace in Restricted Area R–4001A when it is in effect. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The specific date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AEA MD E5 Aberdeen, MD

Phillips AAF, MD
(Lat. 39°27′56″ N, long. 76°10′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Phillips AAF and within an 8.3-mile radius of Phillips AAF extending clockwise from the 260° bearing to the 030° bearing from the airport, excluding the airspace in Restricted Areas R–4001A and R–4001B when they are in effect.

Issued in College Park, Georgia, on July 2, 2018.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–14664 Filed 7–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0217; Airspace Docket No. 17–ASO–4]

RIN 2120–AA66

Establishment of Class E Airspace; Ellijay, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Ellijay, GA, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving Gilmer County Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, September 13, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group,

Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Gilmer County Airport, Ellijay, GA, to support IFR operations in standard instrument approach procedures at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 14608, April 5, 2018) for Docket No. FAA–2018–0217 to establish Class E airspace extending upward from 700 feet above the surface at Gilmer County Airport, Ellijay, GA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Gilmer County Airport, Ellijay, GA providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for the airport. These changes are necessary for continued safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

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

* * * * *

ASO GA E5 Ellijay, GA [New]

Gilmer County Airport, GA
(Lat. 34°37′42″ N, long. 84°31′36″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Gilmer County Airport.

Issued in College Park, Georgia, on July 2, 2018.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–14663 Filed 7–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0050; Airspace Docket No. 17–AEA–3]

RIN 2120–AA66

Establishment of Canadian Area Navigation (RNAV) Route T–705; Northeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Canadian area navigation (RNAV) route T–705 in the Northeastern United States (U.S.) by extending the route into U.S. airspace. The FAA is taking this action to expand the availability of RNAV routing and fill a gap in routing in northeastern New York that resulted from the decommissioning of the Plattsburgh, NY, VHF Omnidirectional Range Tactical Air Navigation (VORTAC).

DATES: Effective date 0901 UTC, September 13, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation

Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** for Docket No. FAA–2018–0050 (83 FR 9452; March 6, 2018), to establish Canadian area navigation (RNAV) route T–705 in the Northeastern United States (U.S.) by extending the route into U.S. airspace. The FAA proposed this action to expand the availability of RNAV routing and to fill a gap in routing in northeastern New York that resulted from the decommissioning of the Plattsburgh, NY, VORTAC. The PBERG, NY, waypoint (WP) has been established and charted near the location of the former Plattsburgh, NY, VORTAC.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Two comments were received; both supported the proposal.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR), part 71 by establishing Canadian RNAV route T–705 in the northeastern U.S. by extending the route into U.S. airspace. T–705 currently extends between the IKNAR, Canada, WP, located approximately 90 nautical miles (NM) north of Montreal, Canada, and the DUNUP, Canada, WP, located approximately 25 NM southeast of Montreal. This action extends T–705 from the DUNUP, Canada, WP through the EBDOT, Canada WP, then into U.S. airspace via the LATTS, NY, and PBERG, NY, WPs. From the PBERG WP, the route proceeds to the RIGID, NY, fix, and from that point, it overlies VOR Federal airway V–196 to the Utica, NY, VORTAC. The amended T–705 provides continuous RNAV routing between Utica, NY, and Montreal, Canada, and points north of Montreal to the IKNAR, Canada, WP.

Canadian area navigation routes that extend into United States airspace are published in paragraph 6013 of FAA Order 7400.11B, dated August 3, 2017 and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The area navigation route listed in this document will be subsequently published in the Order.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of establishing Canadian RNAV route T–705 in the U.S. qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, Paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017 and effective September 15, 2017, is amended as follows:

Paragraph 6013 Canadian Area Navigation Routes.

* * * * *

T–705 Utica, NY (UCA) to IKNAR, Canada
[New]

Utica, NY (UCA)	VORTAC	(Lat. 43°01′35.45″ N, long. 75°09′52.28″ W).
USICI, NY	Fix	(Lat. 43°11′23.04″ N, long. 75°03′06.15″ W).
GACKE, NY	Fix	(Lat. 43°19′11.10″ N, long. 74°57′40.88″ W).
BECKS, NY	Fix	(Lat. 43°32′56.63″ N, long. 74°48′03.47″ W).
SMAIR, NY	Fix	(Lat. 44°03′32.47″ N, long. 74°26′20.99″ W).
FOSYU, NY	Fix	(Lat. 44°12′25.39″ N, long. 74°19′58.15″ W).
Saranac Lake, NY (SLK)	VOR/DME	(Lat. 44°23′04.41″ N, long. 74°12′16.21″ W).
RIGID, NY	Fix	(Lat. 44°35′19.53″ N, long. 73°44′34.07″ W).
PBERG, NY	WP	(Lat. 44°42′06.25″ N, long. 73°31′22.18″ W).
LATTS, NY	WP	(Lat. 44°51′29.78″ N, long. 73°32′29.26″ W).
EBDOT, CD	WP	(Lat. 45°05′25.23″ N, long. 73°34′01.25″ W).
DUNUP, CD	WP	(Lat. 45°17′34.90″ N, long. 73°35′21.89″ W).
TAMKO, CD	INT	(Lat. 46°02′54.00″ N, long. 73°54′39.00″ W).
LIVBA, CD	WP	(Lat. 46°14′17.05″ N, long. 73°57′05.38″ W).
NOSUT, CD	WP	(Lat. 46°21′38.00″ N, long. 73°58′38.00″ W).
IKNAR, CD	WP	(Lat. 47°11′35.44″ N, long. 74°09′31.38″ W).

Excluding the airspace within Canada.

Issued in Washington, DC, on July 2, 2018.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2018–14672 Filed 7–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–1188; Airspace Docket No. 17–AEA–23]

RIN 2120–AA66

Amendment of Class D Airspace and Class E Airspace; Wrightstown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface by updating the airport name to McGuire Field (Joint Base McGuire-Dix-Lakehurst). This action also amends Class E airspace extending upward from 700 feet above the surface in Wrightstown, NJ, by updating the name and geographic coordinates of Ocean County Airport (formerly Robert J. Miller Airpark, Toms River, NJ). Also, an editorial change is made where necessary, removing the city from the airport name in the airspace designation. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area. This action also updates the geographic coordinates of the Lakehurst (Navy) TACAN and Colts Neck VOR/DME.

DATES: Effective 0901 UTC, September 13, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 12511, March 22, 2018) for Docket No. FAA–2017–1188 to amend Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet or more above the surface at McGuire Field (Joint Base McGuire-Dix-Lakehurst), Wrightstown, NJ (formerly McGuire AFB (Joint Base McGuire-Dix-Lakehurst), and Ocean County Airport, (formerly Robert J. Miller Airpark).

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000, 6004, and 6005, respectively, of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2016. FAA Order 7400.11B is publicly available as

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet or more above the surface by updating the names of McGuire Field (Joint Base McGuire-Dix-Lakehurst), (formerly McGuire AFB), Wrightstown, NJ, and Ocean County Airport, (formerly Robert J. Miller Airpark, Toms River, NJ).

The geographic coordinates of the Ocean County Airport, Lakehurst (Navy) TACAN, and Colts Neck VOR/DME also are adjusted in the associated airspace listed above to coincide with the FAA's aeronautical database. These changes enhance the safety and management of IFR operations in the area.

An editorial change is also made to the Class E airspace extending upward from 700 feet above the surface by removing the city from the airport names listed to comply with a change to FAA Order 7400.2L, Procedures for Handling Airspace Matters, and removing the exclusionary language from the airspace description.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA NJ D Wrightstown, NJ [Amended]

McGuire Field (Joint Base McGuire-Dix-Lakehurst), NJ
(Lat. 40°00′56″ N, long. 74°35′30″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of McGuire Field (Joint Base McGuire-Dix-Lakehurst).

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

AEA NJ E4 Wrightstown, NJ [Amended]

McGuire Field (Joint Base McGuire-Dix-Lakehurst), NJ
(Lat. 40°00′56″ N, long. 74°35′30″ W)
McGuire VORTAC
(Lat. 40°00′34″ N, long. 74°35′47″ W)

That airspace extending upward from the surface within 1.8 miles each side of the McGuire VORTAC 350° radial extending from the 4.5-mile radius of McGuire Field (Joint Base McGuire-Dix-Lakehurst), to 6.1 miles north of the VORTAC and within 1.8 miles each side of the McGuire VORTAC 051° radial extending from the 4.5-mile radius of the airport to 6.1 miles northeast of the VORTAC and within 1.8 miles each side of the McGuire VORTAC 180° radial extending from the 4.5-mile radius of the airport to 5.2 miles south of the VORTAC, and within 1.8 miles each side of the McGuire Field (Joint Base McGuire-Dix-Lakehurst), ILS localizer southwest course extending from the 4.5-mile radius of the airport to 7 miles southwest of the localizer.

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

* * * * *

AEA NJ E5 Wrightstown, NJ [Amended]

Lakewood Airport, NJ
(Lat. 40°04′00″ N, long. 74°10′40″ W)
McGuire Field (Joint Base McGuire-Dix-Lakehurst), NJ
(Lat. 40°00′56″ N, long. 74°35′30″ W)
Trenton-Robbinsville Airport, NJ
(Lat. 40°12′50″ N, long. 74°36′06″ W)
Monmouth Executive Airport, NJ
(Lat. 40°11′12″ N, long. 74°07′28″ W)
Ocean County Airport, NJ
(Lat. 39°55′34″ N, long. 74°17′44″ W)
Lakehurst (Navy) TACAN
(Lat. 40°02′13″ N, long. 74°21′11″ W)
Colts Neck VOR/DME
(Lat. 40°18′42″ N, long. 74°09′35″ W)
Coyle VORTAC
(Lat. 39°49′02″ N, long. 74°25′54″ W)
Robbinsville VORTAC
(Lat. 40°12′09″ N, long. 74°29′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lakewood Airport, and within a 10.5-mile radius of McGuire Field (Joint Base McGuire-Dix-Lakehurst), and within an 11.3-mile radius of the Lakehurst (Navy) TACAN extending clockwise from the TACAN 310° radial to the 148° radial and within 4.4 miles each side of the Coyle VORTAC 031° radial extending from the VORTAC to 11.3 miles northeast, and within 2.6 miles southwest and 4.4 miles northeast of the Lakehurst (Navy) TACAN 148° radial extending from the TACAN to 12.2 miles southeast, and within a 6.4-mile radius of Trenton-Robbinsville Airport and within 5.7 miles north and 4 miles south of the Robbinsville VORTAC 278° and 098° radials extending from 4.8 miles west to 10 miles east of the VORTAC, and within a 6.7-mile radius of Monmouth Executive Airport and within 1.8 miles each side of the Colts Neck VOR/DME 167° radial extending from the Monmouth Executive Airport 6.7-mile radius to the VOR/DME and within 4 miles each side of the 312° bearing from Monmouth Executive airport extending from the 6.7-mile radius of the airport to 9 miles northwest of the airport and within a 6.5-mile radius of Ocean County Airport and within 1.3 miles each side of the Coyle VORTAC 044° radial extending from the 6.5-mile radius to the VORTAC.

Issued in College Park, Georgia, on July 2, 2018.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–14668 Filed 7–9–18; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 274

[Release No. IC–33142; File No. S7–04–18]

RIN 3235–AM30

Investment Company Liquidity Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to its forms designed to improve the reporting and disclosure of liquidity information by registered open-end investment companies. The Commission is adopting a new requirement that funds disclose information about the operation and effectiveness of their liquidity risk management program in their reports to shareholders. The Commission in turn is rescinding the requirement in Form N–PORT under the Investment Company Act of 1940 that funds publicly disclose aggregate liquidity classification information about their portfolios. In addition, the Commission is adopting amendments to Form N–PORT that will allow funds classifying the liquidity of their investments pursuant to their liquidity risk management programs to report multiple liquidity classification categories for a single position under specified circumstances. The Commission also is adding a new requirement to Form N–PORT that funds and other registrants report their holdings of cash and cash equivalents.

DATES: *Effective Date:* This rule is effective September 10, 2018.

Compliance Dates: The applicable compliance dates are discussed in section II.D of this final rule.

FOR FURTHER INFORMATION CONTACT: Zeena Abdul-Rahman, Senior Counsel, or Thoreau Bartmann, Senior Special Counsel, at (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Form N–PORT [referenced in 17 CFR 274.150] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act'' or ''Act'') and amendments to Form N–1A [referenced in 17 CFR 274.11A] under the Investment Company Act and the Securities Act of 1933 (''Securities Act'') [15 U.S.C. 77a *et seq.*].

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I. Background

On October 13, 2016, the Commission adopted new rules and forms as well as amendments to its rules and forms to modernize the reporting and disclosure of information by registered investment companies (''funds''),[1] including information about the liquidity of funds' portfolios.[2] In particular, the Commission adopted new Form N–PORT, which requires mutual funds and ETFs to report monthly portfolio investment information to the Commission in a structured data format.[3] The Commission also adopted 17 CFR 270.22e–4 (''rule 22e–4'') and related reforms to enhance the regulatory framework for liquidity risk management of funds.[4] Among other things, rule 22e–4 requires a fund to classify each portfolio investment into one of four defined liquidity categories, sometimes referred to as ''buckets.'' [5]

In connection with the liquidity classification requirement of rule 22e–4, a fund is required to report confidentially to the Commission the liquidity classification assigned to each of the fund's portfolio investments on Form N–PORT.[6] As originally adopted, Form N–PORT requires a fund to assign each portfolio holding to a single classification bucket and publicly disclose the aggregate percentage of its portfolio investments falling into each of the four liquidity classification categories noted above.[7] Form N–PORT did not require funds to report the cash they hold.[8]

Rule 22e–4 and the related rules and forms were designed to promote effective liquidity risk management throughout the fund industry and to enhance disclosure regarding fund liquidity and redemption practices.[9] However, since we adopted these requirements, interested parties have

[1] The term ''funds'' used in this release includes open-end management companies, including exchange-traded funds (''ETFs''), and excludes money market funds.

[2] Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (''Reporting Modernization Adopting Release''). *See also* Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)] (''Liquidity Adopting Release'').

[3] Registered money market funds and small business investment companies are exempt from Form N–PORT reporting requirements.

[4] Specifically, we adopted rule 22e–4 and 17 CFR 270.30b1–10 (''rule 30b1–10''), new Form N–LIQUID, as well as amendments to Forms N–1A, N–PORT, and N–CEN. *See* Liquidity Adopting Release, *supra* footnote 2.

[5] Rule 22e–4 requires each fund to adopt and implement a written liquidity risk management program reasonably designed to assess and manage the fund's liquidity risk. A fund's liquidity risk management program must incorporate certain specified elements, including the requirement that a fund classify the liquidity of each of the fund's portfolio investments into one of four defined liquidity categories: Highly liquid investments, moderately liquid investments, less liquid investments, and illiquid investments (''classification''). This classification is based on the number of days in which a fund reasonably expects an investment would be convertible to cash (or, in the case of the less-liquid and illiquid categories, sold or disposed of) without the conversion significantly changing the market value of the investment. Rule 22e–4 requires funds to establish a highly liquid investment minimum, and includes requirements related to policies and procedures on redemptions in kind and evaluation of the liquidity of new unit investment trusts (''UITs''). Rule 22e–4 also includes other required elements, such as limits on purchases of illiquid investments, reporting to the board, and recordkeeping.

[6] Item C.7 of Form N–PORT.

[7] Item B.8.a of Form N–PORT. This information would be disclosed to the public only for the third month of each fiscal quarter with a 60-day delay. Form N–PORT also required public reporting of the percentage of a fund's highly liquid investments that it has segregated to cover, or pledged to satisfy margin requirements in connection with, derivatives transactions that are classified as moderately liquid, less liquid, or illiquid investments. Item B.8.b of Form N–PORT.

[8] Although the requirements of rule 22e–4 and Form N–PORT discussed above are in effect, the compliance date has not yet occurred. Accordingly, no funds are yet reporting this liquidity-related information on Form N–PORT. We previously extended the compliance date for certain classification-related provisions of rule 22e–4 and their associated Form N–PORT reporting requirements by six months. *See* Investment Company Liquidity Risk Management Programs; Commission Guidance for In-Kind ETFs, Investment Company Act Release No. 33010 (Feb. 22, 2018) [83 FR 8342 (Feb. 27, 2018)] (''Liquidity Extension Release'').

[9] *See* Liquidity Adopting Release, *supra* footnote 2, at n.112 and accompanying text.

raised concerns that the public disclosure of a fund's aggregate liquidity classification information on Form N–PORT may not achieve our intended purpose and may confuse and mislead investors.[10]

In light of these concerns,[11] we proposed to replace the Form N–PORT requirement for a fund to publicly report aggregate liquidity portfolio classification information on a quarterly basis with new disclosure in the fund's annual shareholder report that provides a narrative discussion of the operation and effectiveness of the fund's liquidity risk management program over the most recently completed fiscal year.[12] We also proposed additional amendments to Form N–PORT that would allow a fund to report a single portfolio holding in multiple classification buckets under defined circumstances where splitting the holding into multiple buckets would provide the Commission with more or equally accurate information at lower cost to funds (and thus, to fund shareholders). Finally, we proposed additional amendments to Form N–PORT designed to help us monitor trends in the use of cash and cash equivalents and more accurately assess the composition of a fund's highly liquid investment minimum (''HLIM'').[13]

We received 24 comment letters on the proposal. A significant majority of commenters generally supported replacing public disclosure of aggregate liquidity classification information on Form N–PORT with a new narrative discussion of a fund's liquidity risk management program in its report to shareholders.[14] Some expressed concerns, however, about the placement and content of the discussion regarding the operation and effectiveness of the fund's liquidity risk management program in the annual report, and provided alternatives for us to consider.[15] A few commenters objected to the proposed rescission of public aggregate liquidity reporting on Form N–PORT, arguing that classification information would be useful and understandable to investors, and would not result in the potential negative consequences suggested in the proposal.[16] Commenters generally supported the other proposed changes to Form N–PORT.[17] In addition, the majority of commenters urged us to re-examine more broadly the classification requirements and related elements of rule 22e–4.[18] We discuss in Section II.C below additional efforts the Commission and its staff will take in relation to rule 22e–4 and its requirements.

Today, after considering comments we received, we are adopting amendments to Forms N–PORT and N–1A largely as proposed.[19] The amendments will replace the requirement in Form N–PORT that a fund publicly disclose on an aggregate basis the percentage of its investments allocated to each liquidity classification category with a new narrative discussion in the fund's shareholder report regarding its liquidity risk management program.[20]

The Commission also is adopting amendments to Form N–PORT that will provide funds the flexibility to split a fund's portfolio holdings into more than one classification category in three specified circumstances when split reporting equally or more accurately reflects the liquidity of the investment or eases cost burdens. Finally, we are adopting as proposed a Form N–PORT requirement that funds, and other registrants, disclose their holdings of cash and cash equivalents not reported in Parts C and D of the Form.[21] We discuss the comments and changes from the proposal below.

II. Discussion

A. Amendments to Liquidity Public Reporting and Disclosure Requirements

Today we are replacing the requirement in Form N–PORT that a fund publicly disclose on an aggregate basis the percentage of its investments that it has allocated to each liquidity classification category with new narrative discussion in the fund's shareholder report regarding its liquidity risk management program.[22] Funds already are required to disclose a summary of the principal risks of investing in the fund, including liquidity risk if applicable, in its prospectus.[23]

The new narrative discussion will include disclosure about the operation and effectiveness of the fund's implementation of its required liquidity risk management program. Additionally, we are clarifying how funds should discuss liquidity events that materially affected performance in the management's discussion of fund performance (''MDFP'') section of the annual shareholder report.[24] We expect

[10] *See* Investment Company Liquidity Disclosure, Investment Company Act Release No. 33046 (Mar. 14, 2018) [83 FR 11905 (Mar. 19, 2018)] (''Proposing Release'').

[11] Letters detailing these concerns, as well as letters on the Proposing Release, are available at *https://www.sec.gov/comments/s7-04-18/s70418.htm* (File No. S7–04–18). *See, e.g.,* Letter from SIFMA AMG to Chairman Jay Clayton, Commissioner Stein, and Commissioner Piwowar (Sept. 12, 2017) (urging the SEC not to publicly disclose the liquidity classification information submitted via Form N–PORT); Letter from the Investment Company Institute to The Honorable Jay Clayton (July 20, 2017) (''ICI Pre-proposal Letter I'').

[12] *See* Proposing Release, *supra* footnote 10.

[13] *See id.*

[14] *See e.g.,* Comment Letter of Investment Company Institute (May 18, 2018) (''ICI Comment Letter''); Comment Letter of SIFMA AMG (May 18, 2018) (''SIFMA AMG Comment Letter''); Comment Letter of BlackRock Inc. (May 17, 2018) (''BlackRock Comment Letter'').

[15] *See e.g.,* Comment Letter of the Capital Group Companies (May 18, 2018) (''Capital Group Comment Letter''); Comment Letter of Fidelity Investments (May 18, 2018) (''Fidelity Comment Letter''); ICI Comment Letter; Comment Letter of the Investment Adviser Association (May 18, 2018) (''IAA Comment Letter'').

[16] *See* Comment Letter of Better Markets (May 18, 2018) (''Better Markets Comment Letter''); Comment Letter of Americans for Financial Reform Education Fund (''AFR Comment Letter''); *See* Comment Letter of Ya Li, J.D. Candidate, Boston College of Law (May 1, 2018) (''Ya Li Comment Letter'').

[17] *See, e.g.,* Comment Letter of the Independent Directors Council (May 17, 2018) (''IDC Comment Letter''), Fidelity Comment Letter, and IAA Comment Letter (supporting our proposal to provide funds with the option to split a holding into more than one classification category in certain circumstances); ICI Comment Letter and Comment Letter of State Street Corporation (May 18, 2018) (''State Street Comment Letter'') (supporting our proposal to require additional disclosure relating to holdings of cash and cash equivalents not otherwise reported on Form N–PORT); SIFMA AMG Comment Letter and BlackRock Comment Letter (supporting our proposal to keep the percentage of the fund's highly liquid investments segregated to cover, or pledged to satisfy margin requirements in connection with, certain derivatives transactions non-public).

[18] *See e.g.,* Comment Letter of Federated Investors, Inc. (May 15, 2018) (''Federated Comment Letter''); IAA Comment Letter; Comment Letter of the Vanguard Group, Inc. (May 17, 2018) (''Vanguard Comment Letter'').

[19] If any provision of rule 22e–4 or the related rules and forms, including the amendments adopted today, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or the application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

[20] We also are adopting, as proposed, a related change to make non-public (but not eliminate) the disclosure required under Item B.8 of Form N–PORT about the percentage of a fund's highly liquid investments segregated to cover, or pledged to satisfy margin requirements in connection with, certain derivatives transactions, given that this information is only relevant when viewed together with full liquidity classification information. *See* Item B.8.b of Form N–PORT. The commenters that discussed this change supported keeping it non-public. *See, e.g.,* ICI Comment Letter.

[21] *See* Proposing Release, *supra* footnote 10, at n.15 (noting that the term ''registrant'' refers to entities required to file Form N–PORT, including all registered management investment companies, other than money market funds and small business investment companies, and all ETFs (regardless of whether they operate as UITs or management investment companies)).

[22] *See* revised Item B.8 of Form N–PORT and new Item 27(d)(7)(b) of Form N–1A.

[23] *See* Item 4(b) of Form N–1A. In addition, Item 9(c) of Form N–1A requires a fund to disclose all principal risks of investing in the fund, including the risks to which the fund's particular portfolio as a whole is expected to be subject and the circumstances reasonably likely to affect adversely the fund's net asset value, yield, or total return.

[24] *See infra* footnote 59 and accompanying text.

that the clarity we are providing and the shareholder report disclosure we are adopting will improve funds' disclosure about liquidity events that materially affect fund performance as well as the operation and effectiveness of their liquidity risk management programs.[25] These disclosures will provide new and existing investors with a holistic view of the liquidity risks of the fund and how effectively the fund's liquidity risk management program managed those risks on an ongoing basis over the reporting period. This revised approach is designed to provide accessible and useful disclosure about liquidity risks and risk management to investors, with appropriate context, so that investors have a more comprehensive picture of the fund's liquidity risks and their management and may understand the nature and relevance of these risks to their investments.

1. Public Aggregate Liquidity Profile

As noted in the Proposing Release, since the Commission adopted rule 22e–4 and the related reforms, Commission staff has engaged extensively with interested parties and we have received letters from industry participants discussing the complexities of the classification process. These letters raised three general types of concerns that informed our revised approach to public fund liquidity-related disclosure. First, the commenters described how variations in methodologies and assumptions used to conduct liquidity classification can significantly affect the classification information reported on Form N–PORT in ways that investors may not understand (''subjectivity'').[26] Second, they suggested that Form N–PORT may not be the most accessible and useful way to communicate information about liquidity risk and may not provide the necessary context for investors to understand how the fund's classification results relate to its liquidity risk and risk management (''lack of context'').[27] Third, they argued that because this reporting item on Form N–PORT singles out liquidity risk, and does not place it in a broader context of the risks and factors affecting a fund's risk, returns, and performance, it may inappropriately focus investors on one investing risk over others (''liquidity risk in isolation'').[28]

As we discussed in the Proposing Release, these concerns led us to propose a new approach to liquidity-related disclosure. Most commenters on the proposal agreed with our approach, and supported replacing quarterly public disclosure of aggregate liquidity classification information on Form N–PORT with a new requirement that funds discuss the operation and effectiveness of their liquidity risk management program in their shareholder reports.[29] These commenters generally reiterated the concerns that led us to propose these changes, stating that the new approach would be less likely to confuse or mislead investors.[30] These commenters emphasized that classification data is inherently subject to variability due to model design and the assumptions used, and that this model risk introduces yet another element of subjectivity to the classification process.[31] Several commenters also argued that the forward-looking nature of classification data, which is based on assumptions about how fast a fund could sell securities, makes the data inappropriate for public consumption.[32]

However, a few commenters objected to the proposed amendments, arguing that investors would benefit from being able to access the aggregated liquidity bucketing information of the funds in which they invest.[33] They argued that the Commission should err on the side of providing more information to investors about their funds, rather than less.[34] While these commenters acknowledged that there may be subjectivity in funds' classification decisions, they argued that subjectivity is inherent in finance and the use of subjective judgments was an intended consequence of the rule.[35] One commenter stated that replacing a ''quantitative measure with a qualitative discussion is an inherently more subjective approach.'' [36] One commenter also suggested that investors are capable of understanding the aggregate liquidity classification data and weighing its value in the context of other types of disclosure and information available to them.[37] Finally, one commenter asserted that, because the Commission had not engaged in investor testing of classification data, any conclusions as to its utility or the potential confusion to investors would not have an empirical basis.[38]

We continue to believe that it is important for investors to understand the liquidity risks of the funds they hold and how those risks are managed. We appreciate commenters' concerns regarding the elimination of public disclosure of aggregate liquidity classification reporting. We also recognize that subjectivity is inherent in many financial decisions and is in fact desirable to some extent in the classification information that is reported to us.[39] However, the subjectivity of the classification process when applied to this public disclosure concerns us for several specific reasons.

First, the quantitative presentation of the aggregate liquidity information may imply precision and uniformity in a way that obscures its subjectivity. When disclosure is clearly subjective, we believe investors are likely better able to understand and appreciate its nature. In this case, however, we believe the presentation of quantitative data may pose a significant risk of confusing and misleading investors.[40] Second, we continue to share the concern expressed by many commenters that public dissemination of the aggregate classification information, without an accompanying full explanation to investors of the underlying subjectivity, model risk, methodological decisions, and assumptions that shape this information, may potentially be misleading to investors.[41] Absent that kind of detailed contextual explanation, we believe that such aggregate classification data may not be useful for investors, as it would not result in an ''apples to apples'' comparison between

[25] *See* new Item 27(d)(7)(b) of Form N–1A.

[26] *See* Proposing Release, *supra* footnote 10, at nn.20–27 and accompanying text.

[27] *See id.,* at nn.28–30 and accompanying text.

[28] *See id.,* at n.31 and accompanying text.

[29] *See, e.g.,* IDC Comment Letter; BlackRock Comment Letter; SIFMA AMG Comment Letter.

[30] *See, e.g.,* IDC Comment Letter (''A narrative discussion about a fund's liquidity risk management program would provide shareholders with clearer, more understandable, and more useful information about the fund—in plain English.'').

[31] *See* Comment Letter of MSCI (May 18, 2018) (''MSCI Comment Letter'').

[32] *See, e.g.,* ICI Comment Letter; SIFMA Comment Letter.

[33] *See* Ya Li Comment Letter; Better Markets Comment Letter; AFR Comment Letter; Comment Letter of Bondview (May 17, 2018) (''Bondview Comment Letter'').

[34] *See* Better Markets Comment Letter.

[35] *See* Better Markets Comment Letter; Bondview Comment Letter.

[36] *See* AFR Comment Letter.

[37] *See* Better Markets Comment Letter (arguing that investors ''can and do read and digest a broad range of information when making investment decisions'' and stating that the aggregated liquidity classification data ''can easily be understood as it simply states the percentages of liquid-to-illiquid holdings a fund has in its portfolio. Investors and those who serve them then can add this liquidity classification information to their total mix of information and make better and more informed investment decisions.'').

[38] *See* Better Markets Comment Letter.

[39] Liquidity Adopting Release, *supra* footnote 2, at text accompanying n.597.

[40] For example, because the aggregate liquidity profile would be a backward looking review of a fund's liquidity presented only quarterly, with a 60-day delay, it may be misleading if investors were to base investing decisions on this information without being provided a significant amount of additional context about its staleness.

[41] *See* Proposing Release, *supra* footnote 10, at n.32.

funds, and may result in investor confusion if they believe it does.[42] Additionally, we continue to believe that public dissemination of the aggregate classification information could create perverse incentives to classify investments as more liquid, and may inappropriately highlight liquidity risk compared to other, potentially more salient risks of the fund.[43] Finally, we are concerned that disclosing funds' aggregate liquidity profile may potentially create risks of coordinated investment behavior, if funds were to create more correlated portfolios by purchasing investments that they believed third parties, such as investors or regulators, may view as ''more liquid.'' [44]

Additionally, we do not believe it is appropriate to adapt Form N–PORT to add the level of detail and narrative context that we believe would be necessary for investors to appreciate better the fund's liquidity risk profile and the subjective nature of classification. The commenters who addressed potentially adapting Form N–PORT generally agreed that it may take significant detailed disclosure and nuanced explanation to effectively inform investors about the subjectivity and limitations of aggregate liquidity classification information so as to allow them to properly make use of the information.[45] Such a long narrative discussion would not be consistent with the nature of, and could undermine the purpose of, Form N–PORT.[46] Also, to the extent that such disclosure would need to be granular and detailed to effectively explain the process of compiling the liquidity information, it is not consistent with the careful balancing of investor interests that the Commission performed in determining to require disclosure of sensitive granular information, including position-level data, only on a non-public basis.

For these reasons, and in light of the concerns above, it is our judgment that effective disclosure of liquidity risks and their management would be better achieved through prospectus and shareholder report disclosure rather than Form N–PORT. Most commenters agreed, suggesting that shareholder report disclosure would have the benefit of allowing funds to produce tailored disclosure suited to the particular liquidity risks and management practices of the specific fund.[47] This would avoid use of a one-size-fits-all approach when providing liquidity risk information to investors, and would avoid giving investors the ''false impression that they can rely on the sole results of time bucketing for comparing liquidity of different funds in making their investment decisions.'' [48] Accordingly, we are adopting the amendments to Form N–PORT eliminating public disclosure of aggregate liquidity classification information as proposed.

2. Shareholder Report Liquidity Risk Disclosure

We also are adopting, largely as proposed, a new requirement for funds to discuss briefly the operation and effectiveness of a fund's liquidity risk management program in the fund's report to shareholders. In response to commenters, we are moving this discussion of the operation and effectiveness of a fund's liquidity risk management program from the MDFP section of the annual report to a new section of the shareholder report (annual or semi-annual) following the discussion of board approval of advisory contracts.[49] As proposed, this subsection will require funds to discuss the operation and effectiveness of their liquidity risk management program over the period covered. However, funds will have flexibility to cover an annual period that does not coincide with the fund's most recently completed fiscal year.[50]

The majority of commenters generally agreed with our proposed requirement that funds provide a narrative discussion of the operation and effectiveness of a fund's liquidity risk management program, noting that such disclosure is a better way to provide investors with useful and accessible liquidity information and reduces the risk of investor confusion.[51] However, some commenters suggested certain modifications to our proposed disclosure, largely focused on its placement.[52] These commenters objected to including the narrative disclosure in the MDFP, arguing that, in many cases, the required liquidity disclosures would not concern primary drivers of fund performance. Commenters had a variety of ideas on where disclosure on the operation and effectiveness of the liquidity risk management program should be placed, with some suggesting that it be in its own subsection within the annual report,[53] in the fund's Statement of Additional Information (''SAI''),[54] or in the section of the shareholder report discussing the bases for the board's approval of the advisory contract.[55] Several commenters also suggested that allowing funds to include the new disclosure in either the fund's annual or

[42] *See* Proposing Release, *supra* footnote 10, at text following n.13.

[43] *See* Proposing Release, *supra* footnote 10.

[44] *See* ICI Pre-proposal Letter I. These risks may both increase the possibility of correlated market movements in times of stress and may potentially reduce the utility of the classification data reported to us.

[45] *See, e.g.,* MSCI Comment Letter (''While we are generally in favor of promoting public transparency about fund liquidity, we agree with [the proposal]. The classification involves a high level of model risk . . . which does not allow a direct comparison of results obtained from different funds unless more and more technical information is provided on the nature of the models and the parameters used to generate the result.'').

[46] *See* Proposing Release, *supra* footnote 10, at n.33 (noting that ''due to the variability and subjective inputs required to engage in liquidity classification under rule 22e–4, providing effective information about liquidity classifications under that rule to investors poses more difficult and different challenges than the other data that is publicly disclosed on Form N–PORT, which is more objective and less likely to vary between funds based on their particular facts and circumstances''). *See also* Comment Letter of J.P. Morgan Asset Management (May 18, 2018) (''J.P. Morgan Comment Letter'') (''It would not be practical to provide an investor-friendly explanation of each input, and associated effect on the classification output. Absent this information, however, investors may reasonably believe that they are looking at an objective assessment of a fund's liquidity profile.'').

[47] *See, e.g.,* SIFMA AMG Comment Letter (''AMG believes the proposal strikes the right balance and appropriately provides funds the flexibility to tailor their disclosure in the most meaningful way for their investors.''); IDC Comment Letter.

[48] *See* MSCI Comment Letter.

[49] New Item 27(d)(7)(b) of Form N–1A.

[50] The item will require a discussion of the operation and effectiveness of the fund's liquidity risk management program during the period covered as part of the board's annual review of the funds' liquidity risk management program. Rule 22e–4(b)(2)(iii) requires a fund board to review, no less frequently than annually, a report prepared by the program administrator that addresses the operation of the program and its adequacy and effectiveness.

[51] *See e.g.,* SIFMA AMG Comment Letter; Comment Letter of Wellington Management Company LLP (May 18, 2018) (''Wellington Comment Letter''); Fidelity Comment Letter; State Street Comment Letter.

[52] One commenter suggested that the new narrative disclosure included in the shareholder report be reported in a structured format. *See* Comment Letter of XBRL US, Inc. (May 18, 2018) (''XBRL US Comment Letter''). We are not creating an obligation to use a structured format at this time, but will consider the issue in connection with other Commission initiatives. *See* Fund Retail Investor Experience and Disclosure Request for Comment, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891 (June 11, 2018)].

[53] *See e.g.,* J.P. Morgan Comment Letter; BlackRock Comment Letter.

[54] *See* Comment Letter of T. Rowe Price Associates, Inc. (May 18, 2018) (''T. Rowe Comment Letter'').

[55] *See e.g.,* IAA Comment Letter (stating that, because a fund's liquidity risk management program is within the purview of the fund's board, the new disclosure should ''recognize the board's governance function and such disclosure should be included in the section of the form that covers the process of fund operations and factors considered by the board in its review of the liquidity risk management program'').

semiannual report would ease some of the cost burdens of compliance with the new requirement by allowing funds to synchronize the new shareholder report disclosure with liquidity reporting to the board.[56]

We believe the approach to shareholder report liquidity disclosure that we are adopting addresses commenters' concerns. Funds are required to discuss in their MDFP factors that materially affected performance of the fund during the most recently completed fiscal year.[57] Liquidity events are factors that may materially affect a fund's performance. Accordingly, to the extent a liquidity event has such an effect, this event must be discussed in the MDFP.[58] This discussion of liquidity events in the MDFP should include sufficient specificity that investors can understand the liquidity event, how it affected performance, and any other relevant market conditions. This is consistent with the views of the commenters who asked that we clarify that factors that affected performance would include liquidity events and that such events should still be discussed in the MDFP section, even if we were to move the required new disclosure to a new section.[59]

At the same time, we agree with those commenters who argued for moving the more operational disclosure outside of the MDFP because this information does not directly relate to performance results. Moving disclosure about the operation and effectiveness of the liquidity risk management program to a new subsection would be more effective and would avoid concerns about unduly focusing investors on liquidity risk and diluting the MDFP. Moving this disclosure to Item 27(d)(7) of Form N–1A may have several other benefits. The MDFP is included only in annual reports, not semi-annual reports. By moving this disclosure to a new subsection that may be included in either a fund's annual or semi-annual report,[60] it will allow funds to synchronize the required annual board review of liquidity risk management programs with the production of this discussion in the shareholder report, reducing costs and allowing funds to provide more effective disclosure.[61] We believe that this new narrative disclosure will complement existing liquidity risk disclosure that funds already provide in their prospectus (if it is a principal investment risk of the fund) and as part of their discussion of the factors that materially affected performance in the MDFP. It also should keep more operational disclosure separate from the performance-related disclosure required in the MDFP section.

Several commenters suggested that we exempt funds that primarily hold assets that are highly liquid investments (''highly liquid funds'') and In-Kind ETFs from including this new narrative disclosure about liquidity risk management programs in their shareholder reports.[62] They explained that because such funds face significantly lower liquidity risks, and are already treated differently and subject to less stringent requirements under rule 22e–4, it would be appropriate to exempt them from the requirement.[63] We are not providing such an exemption. Highly liquid funds and In-Kind ETFs are exempt from certain requirements under the liquidity rule, but both still must have a liquidity risk management program. We believe that investors would benefit from a discussion of the operation and effectiveness of the liquidity risk management program of these funds, much like any other fund.[64] However, we note that all funds may include tailored and proportionate discussion appropriate to the liquidity risks they face and the scale of their program. Highly liquid funds or In-Kind ETFs may face fewer, or different, liquidity risks than other funds, and thus the discussion in their shareholder reports may be proportionate or different than for other funds.

To satisfy this new disclosure requirement, a fund generally may provide information that was provided to the board about the operation and effectiveness of the program, and insight into how the program functioned over the past year.[65] This discussion should

[56] *See, e.g.,* ICI Comment Letter (arguing that, if the required liquidity risk management disclosure must be included in the annual report, fund complexes offering multiple funds with fiscal year-ends spread throughout the year will be frustrated in their ability to leverage their board reporting for this new shareholder report requirement); Capital Group Comment Letter (noting that many fund families are expected to provide the annual liquidity risk management report to the board of all their funds at the same time once a year without regard to fiscal year ends).

[57] *See* Disclosure of Mutual Fund Performance and Portfolio Managers, Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 21927 (Apr. 26, 1993)] (noting that the MDFP requires funds to ''explain what happened during the previous fiscal year and why it happened'').

[58] *See* Item 27(b)(7)(i) of Form N–1A. *See also* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Aug. 9, 2004) [69 FR 49805 (Aug. 12, 2004)] (noting that ''investors rely on MDFP to explain the investment operations and performance of a mutual fund''). We understand that because liquidity events can materially affect fund performance during a fiscal year, funds currently discuss such events in their MDFP.

[59] *See, e.g.,* T. Rowe Comment Letter (suggesting that discussion of the overall structure and operations of the liquidity risk management program should be in the fund's SAI, but that the MDFP section could still contain disclosure of liquidity events and the use of liquidity risk management tools that had a material effect on the investment operations and performance of a fund); Vanguard Comment Letter (suggesting that focusing the MDFP narrative disclosure on material liquidity risks faced during the relevant period would help ensure that this disclosure does not become boilerplate).

[60] *See* new Item 27(d)(7)(b) of Form N–1A. The discussion required by Item 27(d)(7)(b) will be included in the shareholder report following the board's review of the fund's liquidity risk management program. Thus, for example, if the board reviews the operation of the fund's liquidity risk management program during the first half of a fund's fiscal year, the disclosure will be required in the semi-annual report for that period. However, if a board reviews the liquidity program more frequently than annually, the disclosure need only be included in the annual or semi-annual report, not both. *See* new Instruction to Item 27(d)(7)(b) of Form N–1A (clarifying that ''[i]f the board reviews the liquidity risk management program more frequently than annually, a fund may choose to include the discussion of the program's operation and effectiveness over the past year in one of either the fund's annual or semi-annual reports, but does not need to include it in both reports).

[61] Allowing this flexibility may result in the narrative disclosure potentially not consistently being in a single document (the annual report), but instead being in either the annual or semi-annual report. This may lead to the risk that some investors may not review this data if they read only one of these shareholder reports and the narrative disclosure is in the other. Nonetheless, we believe that the benefits of the flexibility we are providing today (both in cost savings and potentially in better disclosure) justify this risk.

[62] *See e.g.,* IDC Comment Letter; Vanguard Comment Letter; ICI Comment Letter; Capital Group Comment Letter. Rule 22e–4, in relevant part, defines a ''highly liquid investment'' as any cash held by a fund and any investment that the fund reasonably expects to be convertible to cash in current market conditions in three business days or less without the conversion to cash significantly changing the market value of the investment. Rule 22e–4(a)(6). The rule defines an ''In-Kind ETF'' as an ETF that meets redemptions through in-kind transfers of securities, positions and assets other than a *de minimis* amount of cash and that publishes its portfolio holdings daily. Rule 22e–4(a)(9).

[63] For example, highly liquid funds and In-Kind ETFs are not required to determine an HLIM. *See* rule 22e–4(b)(1)(iii).

[64] Highly liquid funds and In-Kind ETFs must consider a variety of factors specific to their operations as part of their liquidity risk management program, which may be relevant to investors. For example, both types of funds must analyze issues such as shareholder or portfolio concentration, holdings of cash and cash equivalents, and other factors. In-Kind ETFs must consider factors specific to ETFs, such as the operation of the arbitrage function and the level of active participation by market participants. *See* rule 22e–4(b)(1).

[65] The disclosure included in new Item 27(d)(7)(b) of Form N–1A generally should provide a high level summary of the report that must be provided to the fund's board under rule 22e–4(b)(2)(iii) addressing the operation of the fund's liquidity risk management program and the adequacy and effectiveness of its implementation.

Continued

provide investors with enough detail to appreciate the manner in which a fund manages its liquidity risk, and could, but is not required to, include discussion of the role of the classification process, the 15% illiquid investment limit, and the HLIM in the fund's liquidity risk management process.

As part of this new disclosure, a fund might opt to discuss the particular liquidity risks that it faced over the past year, such as significant redemptions, changes in the overall market liquidity of the investments the fund holds, or other liquidity risks, and explain how those risks were managed and addressed. If the fund faced any significant liquidity challenges in the past year, it would discuss how those challenges affected the fund and how they were addressed (recognizing that this discussion may occur in the new sub-section or the MDFP, as appropriate). In the new sub-section, funds also may wish to provide context and other supplemental information about how liquidity risk is managed in relation to other investment risks of the fund. Additionally, one commenter suggested that funds can provide investors with useful empirical data metrics that would be informative of the fund's liquidity profile.[66] We agree and believe that funds may include, as part of this new sub-section, a discussion of other empirical data metrics such as the fund's bid-ask spreads, portfolio turnover, or shareholder concentration issues (if any) and their effect on the fund's liquidity risk management.[67] Overall, we believe that this disclosure will provide context and an accessible and useful explanation of the fund's liquidity risk in relation to its management practices and other investment risks as appropriate.

We continue to believe, and commenters generally agreed, that this new disclosure will better inform investors about the fund's liquidity risk management practices than aggregate liquidity classification data on Form N–PORT.[68] The shareholder report disclosure provides funds the opportunity to tailor the disclosure to their specific liquidity risks, explain the level of subjectivity involved in liquidity assessment, and give a narrative description of these risks and how they are managed within the context of the fund's investment strategy. Accordingly, we are adopting these changes substantially as proposed with the modifications discussed above.

B. Amendments to Liquidity Reporting Requirements

We also are adopting certain changes to Form N–PORT related to liquidity data. As discussed in the Proposing Release, we believe these changes may enhance the liquidity data reported to us.[69] In addition, for some funds, these changes also may reduce cost burdens as they comply with the rule.

1. Multiple Classification Categories

We are adopting as proposed amendments to Form N–PORT to allow funds the option of splitting a fund's holding into more than one classification category in certain specified circumstances.[70] The requirement to classify each entire position into a single classification category poses difficulties for certain holdings and may not accurately reflect the liquidity of that holding, or be reflective of the liquidity risk management practices of the fund. Commenters generally supported these proposed amendments to Form N–PORT, noting that they appreciated the flexibility and better accuracy that may result.[71] However, as discussed below, three commenters raised questions or suggested amendments related to the third circumstance (''full liquidation'') [72] and one questioned the utility of the first two circumstances (''differences in liquidity characteristics'' and ''differences in sub-adviser classifications'').[73]

Other commenters suggested that we not allow funds to classify portions of a portfolio holding separately because it would ''reduce the utility of the entire bucketing exercise.'' [74] Similarly, a few commenters suggested that allowing funds to classify portions of a portfolio holding for some of their holdings could lead to inconsistent interpretations of the fund's classifications, and that we should instead require a fund to apply a uniform approach across all of its holdings.[75] We believe that allowing funds to split classification in these circumstances will actually enhance, rather than reduce the utility of the process. Because funds will be required to indicate which circumstance led to their choice to split a classification, we will be able to identify which positions are split and why. This will allow us a more fine-grained understanding of funds' views of a position's liquidity. We also do not believe that we should require a fund to consistently use a single classification splitting approach for all its positions, as different positions may have different but equally valid circumstances justifying a split classification.[76]

In the first circumstance, even though a holding may nominally be a single security, different liquidity-affecting features may justify treating the holding as two or more separate investments for liquidity classification purposes. For example, a fund might hold an asset that includes a put option on a percentage (but not all) of the fund's holding of the asset.[77] Such a feature may significantly affect the liquidity characteristics of the portion of the asset subject to the feature, such that the fund believes that the two portions of the asset should be classified into different buckets.[78]

As discussed above, commenters generally agreed that such an amendment would allow funds to more accurately reflect their liquidity profile and report their holdings in a manner more consistent with internal liquidity risk management programs.[79] However,

We believe that the conclusions in this report may be largely consistent with the overall conclusions disclosed to investors in the shareholder report. Therefore, because funds will already need to prepare a report on the program for purposes of board reporting, we believe that the disclosure requirement we are adopting today would be unlikely to create significant additional burdens.

[66] *See* MSCI Comment Letter.

[67] *Id.*

[68] *See e.g.,* SIFMA AMG Comment Letter; Wellington Comment Letter; Fidelity Comment Letter; State Street Comment Letter.

[69] *See* Proposing Release, *supra* footnote 10, at text accompanying n.50.

[70] *See* new Item C.7.b of Form N–PORT and Instructions to Item C.7 of Form N–PORT. As discussed above, Form N–PORT required a fund to classify each holding into a single liquidity bucket.

[71] *See* IDC Comment Letter; Fidelity Comment Letter; IAA Comment Letter.

[72] SIFMA AMG Comment Letter; ICI Comment Letter; J.P Morgan Comment Letter.

[73] MSCI Comment Letter.

[74] *See* MSCI Comment Letter.

[75] *See* State Street Comment Letter; MSCI Comment Letter.

[76] For example, a fund may have multiple sub-advisers that differ on position A's classification, and also have a different position that has differential liquidity characteristics for part of the position. We believe that requiring a fund to only use one of the circumstances in such a situation could result in worse, not better, data reported to us.

[77] For example, if 30% of a holding is subject to a liquidity feature such as a put, and the other 70% is not, pursuant to the new Instructions to Item C.7 of Form N–PORT, a fund may split the position, evaluate the sizes it reasonably anticipates trading for each portion of the holding that is subject to the different liquidity characteristics, and classify each separate portion differently, as appropriate. The fund in such a case would use the classification process laid out in rule 22e–4, but would apply it separately to each portion of the holding that exhibits different liquidity characteristics.

[78] As another example, a fund might have purchased a portion of an equity position through a private placement that makes those shares restricted (and therefore illiquid) while also purchasing additional shares of the same security on the open market. In that case, certain shares of the same holding may have very different liquidity characteristics.

[79] *See, e.g.,* Comment Letter of ICE Data Services (May 18, 2018) (''ICE Comment Letter''); Fidelity Comment Letter; ICI Comment Letter.

one commenter suggested that this amendment would not be necessary, as such differences in liquidity characteristics should already result in the position being labeled as separate positions on Form N–PORT.[80] Form N–PORT requires positions to be categorized based on CUSIP or other identifier, and in many circumstances, positions with differences in liquidity characteristics may have identical identifiers. Accordingly, we continue to believe that offering this flexibility is appropriate and providing clarity that a position can be split in such a circumstance would be useful. Therefore, we are adopting this amendment as proposed.

Second, it is our understanding that when sub-advisers manage different portions or ''sleeves'' of a fund's portfolio, sub-advisers may have different views of the liquidity classification of a single holding that is held in multiple sleeves.[81] We believe that allowing a fund to report each sub-adviser's classification of the proportional holding it manages, instead of putting the entire holding into a single category, will avoid the need for costly reconciliation and may provide useful information to the Commission on each sub-adviser's determination about the investment's liquidity.[82]

Commenters generally agreed that this flexibility would allow for these benefits.[83] However, one commenter suggested that splitting positions in this circumstance would merely signal an inconsistency between sub-adviser models and would not provide useful information.[84] We disagree, and believe that getting more granular insight into sub-advisers' views on liquidity positions may be informative in some circumstances. We also believe it is appropriate to allow this flexibility to avoid unnecessary costs associated with the reconciliation process. Therefore, we are adopting this amendment as proposed.[85]

Third, it is our understanding that for internal risk management purposes some funds may currently classify their holdings proportionally across buckets, based on an assumed sale of the entire position.[86] In such cases, it is our understanding that allowing a fund to have the option of reporting the position assuming a full liquidation on Form N–PORT would be more efficient and less costly than using a single classification category.[87] We believe that in such cases, this form of reporting will not impair the Commission's monitoring and oversight efforts as compared to our approach of classifying based on ''sizes that the fund would reasonably anticipate trading.'' [88] Further, we believe the approach, which allows, but does not require, funds to use the full liquidation/proportional approach, will maintain the quality of the information reported to us and potentially be less costly than the approach we adopted.[89] Commenters generally agreed that permitting the option to use such a full liquidation approach would be useful,[90] though one cautioned that it would not use such an approach in practice.[91] This approach is optional, and therefore, if it could have negative consequences such as inflating the fund's illiquid investment bucket, a fund could choose not to use it. We are adopting this third circumstance as proposed.

In the proposal, we also requested comment on other circumstances where classification splitting might be appropriate. Commenters suggested that we also allow certain methods of classification splitting when a fund's reasonably anticipated trade size falls across multiple liquidity buckets.[92] As discussed in the Liquidity Adopting Release, the reasonably anticipated trade size method for analyzing positions replaced the full liquidation approach that we originally proposed.[93] Classifying liquidity based on reasonably anticipated trading sizes allows for a simpler analytic process in some respects and avoids certain issues where a full liquidation analysis may create disparate results between funds of different sizes.[94] However, it also is an imperfect proxy for the actual liquidity characteristics of fund investments, potentially skewing classifications to more liquid ''buckets.'' [95]

We believe that allowing funds to split the reasonably anticipated trade size and use such a split in classifying the rest of a fund's position could further exacerbate these imperfections, leading to more distorted liquidity profiles for funds. The staff will continue to evaluate potential other approaches to liquidity risk management, including other approaches to classifying fund liquidity. Interested parties may provide feedback on the use of reasonably anticipated trade size as part of classification, and whether we should consider any further modifications.

Two commenters asked us to clarify that funds may use these classification-splitting approaches not just for Form N–PORT reporting, but for all classification purposes under rule 22e–

[80] MSCI Comment Letter.

[81] *See* Proposing Release, *supra* footnote 10, at text preceding n.53.

[82] Similar to the ''differences in liquidity characteristics'' examples discussed above, the fund effectively will be treating the portions of the holding managed by different sub-advisers as if they were two separate and distinct investments, and bucketing them accordingly. *See* new Instructions to Item C.7 of Form N–PORT.

[83] *See, e.g.,* J.P. Morgan Comment Letter, ICE Comment Letter.

[84] MSCI Comment Letter.

[85] These amendments also would have the effect of making inapplicable staff FAQ 8 on the liquidity rule for funds that choose to rely on this option. *See* Liquidity Staff FAQs, a*vailable at https://www.sec.gov/investment/investment-company-liquidity-risk-management-programs-faq.* FAQ 8 provides guidance for funds on the process of reconciling classifications for sub-advisers when reporting on Form N–PORT. As this is an option, not a requirement, the FAQ would still be relevant for those funds that choose not to rely on the optional reporting method. The staff will amend the FAQ accordingly.

[86] *See* Proposing Release, *supra* footnote 10, at n.54.

[87] *See id.,* at n.55.

[88] For example, a fund using the full liquidation approach and holding $100 million in Asset A could determine that it would be able to convert to cash $30 million of it in 1–3 days, but could only convert the remaining $70 million to cash in 3–7 days. This fund could choose to split the liquidity classification of the holding on Form N–PORT and report an allocation of 30% of Asset A in the Highly Liquid category and 70% of Asset A in the Moderately Liquid category. Such a fund would not use sizes that it reasonably anticipates trading when engaging in this analysis, but instead would assume liquidation of the whole position. *See* Proposing Release, *supra* footnote 10, at n.56.

[89] As discussed in the economic analysis below, allowing classification in multiple categories may be less costly if it better aligns with current fund systems or allows funds to avoid incurring costs related to the need to develop systems and processes to allocate each holding to exactly one classification bucket.

[90] ICI Comment Letter; State Street Comment Letter; MSCI Comment Letter.

[91] J.P. Morgan Comment Letter (explaining that a full liquidation approach may result in negative consequences, by for example, inflating the amount of illiquid assets in a fund based solely on the calculation method used).

[92] SIFMA Comment Letter; ICI Comment Letter. For example, if a fund had a $100 million position, and a reasonably anticipated trade size of $10 million, the fund might determine that $4 million of that trade size would fall in the highly liquid asset bucket, and $6 million would fall in the moderately liquid asset bucket. Commenters differed on how funds should classify the remainder of the position ($90 million) in this circumstance.

[93] Liquidity Adopting Release, *supra* footnote 2.

[94] *Id.* (discussing commenters' concerns that the full liquidation method ''could result in large funds' portfolio liquidity appearing artificially low compared to smaller funds because large funds are more likely to hold larger positions and determine that they could not quickly liquidate these positions entirely without a value impact'').

[95] For example, a fund with a $100 million position might determine that it could sell $10 million in 1–3 days and the rest in 4–7 days using the full liquidation approach. However, using the reasonably anticipated trade size proxy, it might determine $10 million was a reasonable trade size, and because it could sell that in 1–3 days, the fund would be permitted to bucket the entire position in the highly liquid category potentially skewing the classification to a more liquid bucket.

4.[96] The requirement to assign a position into a single bucket is specific to Form N–PORT.[97] Rule 22e–4(b)(ii) requires funds to classify their positions among four categories for liquidity risk management purposes, but does not require positions to be put into a *single* category. Accordingly, we clarify that funds following the classification splitting approaches delineated on Form N–PORT may apply such splitting more generally in their classification processes under rule 22e–4.

While we believe that we should permit funds to report liquidity classifications in the three ways discussed above, we also continue to believe it is necessary to limit split reporting to these circumstances in order to maintain the effectiveness of our monitoring efforts. As we stated in the Proposing Release, we believe that allowing funds to engage in such split reporting under these circumstances will allow for a more precise view of the liquidity of these securities.[98] Because funds that choose to classify across multiple categories under this approach will be required to indicate which of the circumstances led to the split classification, we will be able to monitor more effectively the liquidity of a fund's portfolio and determine the circumstances leading to the classification. Therefore, we are amending Item C.7 of Form N–PORT to provide funds the option of splitting the classification categories reported for their investments on a percentage basis in these specified circumstances.[99] We are also adopting new Instructions to Item C.7 that explain the specified circumstances where a fund may split classification categories.[100] In addition, we are adopting new Item C.7.b, which will require funds taking advantage of the option to attribute multiple classifications to a holding to note which of the circumstances led the fund to split the classifications of the holdings.[101]

[96] SIFMA Comment Letter; ICI Comment Letter.

[97] *See* Item C.7 of Form N–PORT.

[98] *See* Proposing Release, *supra* footnote 10, at text accompanying n.58.

[99] Revised Item C.7 of Form N–PORT and new Instructions to Item C.7 of Form N–PORT. Funds that choose not to take advantage of these options may continue to use the approach laid out in the final rule of bucketing an entire position based on the liquidity of the sizes the fund would reasonably anticipate trading.

[100] Revised Item C.7 of Form N–PORT and new Instructions to Item C.7 of Form N–PORT. These instructions provide an explanation for how funds that choose to take advantage of split reporting should implement it.

[101] New Item C.7.b of Form N–PORT. A fund may also choose to provide (but is not required to) additional context on its process for classifying portions of the same holding differently in the explanatory notes section of Form N–PORT. *See* Part E of Form N–PORT.

2. Disclosure of Cash and Cash Equivalents

We also are adopting as proposed amendments to Form N–PORT to require additional disclosure relating to a registrant's holdings of cash and cash equivalents not reported in Parts C and D of the Form.[102] This disclosure will be made publicly available each quarter.[103] Form N–PORT currently does not require registrants to specifically report the amount of cash and cash equivalents held by the registrant. As we noted in the Reporting Modernization Adopting Release, Part C of Form N–PORT was designed to require registrants to report certain information on an investment-by-investment basis about each investment held by the registrant.[104] However, cash and certain cash equivalents are not considered an investment on Form N–PORT, and therefore registrants are not required to report them in Part C of the Form as an investment. Similarly, Part B.1 of Form N–PORT (assets and liabilities) will require information about a registrant's assets and liabilities, but does not require specific disclosure of a registrant's holdings of cash and cash equivalents.[105]

Cash held by a fund is a highly liquid investment under rule 22e–4 and would have been included in the aggregate liquidity profile that we are eliminating. Without the aggregate liquidity profile, we may not be able to effectively monitor whether a fund is compliant with its HLIM unless we know the amount of cash held by the fund. The additional disclosure of cash and certain cash equivalents by funds also will provide more complete information to be used in analyzing a fund's HLIM, as well as trends regarding the amount of cash being held, which also correlates to other activities the fund is experiencing, including net inflows and outflows.

Most commenters who discussed this addition supported it. They agreed that providing this information is necessary for the Commission's monitoring of a fund's HLIM, and that this information would help provide a more complete picture of a fund's holdings.[106] However, two commenters were concerned about potential investor confusion if they interpreted this item as the totality of a fund's highly liquid investments.[107] They were concerned that investors could mistakenly believe that a fund's ability to meet redemption requests depended only on these cash holdings.[108] One such commenter asked that the Commission make this item non-public to avoid these concerns,[109] while another suggested changing the title of the item to further clarify that a fund may report cash equivalents in response to other items on the form.[110]

While we appreciate the concerns for investor confusion, we believe that the title of the item makes clear that it covers only cash and cash equivalents not reported in other parts of the form, and therefore investors would be on notice that this item does not necessarily include all cash or cash equivalents held by the fund. We also note that funds may provide further public explanations about their cash holdings as part of the explanatory notes associated with the item.

We are therefore adopting as proposed amendments to Item B.2 of Form N–PORT (certain assets and liabilities) to include a new Item B.2.f, which will require registrants to report ''cash and cash equivalents not reported in Parts C and D.'' Current U.S. Generally Accepted Accounting Principles (''GAAP'') define cash equivalents as ''short-term, highly liquid investments that . . . are . . . [r]eadily convertible to known amounts of cash . . . [and that are] [s]o near their maturity that they present insignificant risk of changes in value because of changes in interest rates.'' [111] However, we understand that certain categories of investments currently reported on Part C of Form N–PORT (schedule of portfolio investments) could be reasonably considered by some registrants as cash equivalents. For example, Item C.4 of Form N–PORT requires registrants to identify asset type, including ''short-term investment vehicle (*e.g.,* money market fund, liquidity pool, or other cash management vehicle),'' which could reasonably be categorized by some registrants as a cash equivalent. In order to ensure the amount reported under Item B.2.f is accurate and does

[102] *See supra* footnote 21.

[103] *See* new Item B.2.f of Form N–PORT.

[104] *See* Reporting Modernization Adopting Release, *supra* footnote 2. Part D of Form N–PORT requires the disclosure of miscellaneous securities.

[105] In addition to cash, a registrant's disclosure of total assets on Part B.1.a. also could include certain non-cash assets that are not investments of the registrant, such as receivables for portfolio investments sold, interest receivable on portfolio investments, and receivables for shares of the registrant.

[106] ICI Comment Letter; State Street Comment Letter; IDC Comment Letter.

[107] *See, e.g.,* Fidelity Comment Letter.

[108] SIFMA AMG Comment Letter; Fidelity Comment Letter.

[109] SIFMA AMG Comment Letter.

[110] Fidelity Comment Letter.

[111] *See* FASB Accounting Standards Codification Master Glossary.

not double count items that are more appropriately reported in Parts C (Schedule of portfolio investments) and D (Miscellaneous securities) of Form N–PORT, we are requiring registrants to only include the cash and cash equivalents not reported in those sections.[112]

C. Treasury Asset Management Report and Evaluation of Other Approaches

In its 2017 Asset Management and Insurance Report, the Department of Treasury highlighted the importance of robust liquidity risk management programs, but recommended that the Commission embrace a ''principles-based approach to liquidity risk management rulemaking and any associated bucketing requirements.'' [113] The proposal requested comment on whether there were advantages to the Treasury report's suggested approach and, if so, what additional steps should be taken to shift towards a more principles-based approach.[114]

We received many comments that suggested alternative approaches to liquidity risk management regulation.[115] Most of these commenters saw little benefit in the classification provisions of rule 22e–4, and associated requirements such as the HLIM.[116] Some stated that if requirements related to classification were removed or if we allowed funds to design their own classification systems, the funds could define what qualifies as a highly liquid asset and an illiquid asset.[117] Several of these commenters noted that they already have liquidity risk management practices in place that differ from the specific classification requirements of rule 22e–4, and that they expected to maintain their own processes alongside those required by the rule.[118] They stated that this results in duplication of effort and wasted resources, and suggested that replacing the classification provisions with a principles-based approach would reduce burdens on funds and investors while still ensuring effective liquidity risk management practices by funds.[119] We note that funds that believe they would have to maintain dual liquidity classification programs as part of their liquidity risk management may choose to seek an exemption from the Commission from the classification requirements of rule 22e–4 if they believe that their existing systems would effectively accomplish the Commission's stated goals.[120]

One commenter acknowledged that moving to a principles based approach would come at a cost, for example, because it would limit the Commission's ability to compare fund reporting in an ''apples-to-apples'' manner.[121] However, that commenter stated that such a cost would be worthwhile in light of the benefits and cost savings associated with allowing funds to continue to manage liquidity in the way they believed was most appropriate for their funds.[122] Another commenter disagreed that moving to a principles-based approach was appropriate.[123] One commenter also pointed to additional costs associated with moving to such a principles based approach in light of the expense and effort incurred already to comply with the rule.[124]

Today, we are modifying certain aspects of our liquidity framework, largely as proposed. However, we recognize that a broad range of commenters continue to believe that alternative approaches to classification would better achieve the Commission's goals. Accordingly, during and following the implementation of the rule and reporting requirements, the staff will continue its efforts to monitor and solicit feedback on implementation. As part of this monitoring, the staff will analyze the extent to which the liquidity classification process and data are achieving the Commission's goals and any other feedback provided from interested parties to the Commission.[125] The staff will then inform the Commission what steps, if any, the staff recommends in light of this monitoring.

We expect that this evaluation will include, at a minimum: (i) The costs and benefits of rule 22e–4 and its associated classification requirements; (ii) whether there should be public dissemination of fund-specific liquidity classification information; (iii) whether the Commission should propose amendments to rule 22e–4 to move to a more principles-based approach in light of this evaluation; (iv) and whether the Commission should propose to require certain empirical data metrics be disclosed.[126]

To properly engage in such an evaluation and to ground it on an empirical basis, we believe it is important for funds and the Commission to gain experience with the classification process, to allow analysis of its benefits and costs based on actual practice.[127] Accordingly, we expect that this staff evaluation will take into account at least one full year's worth of liquidity classification data from large and small entities.[128]

We welcome public feedback as part of this evaluation, and have set up an email inbox where funds, investors, or other interested parties may submit

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[112] We also are adopting other amendments to Form N–PORT as proposed. In particular, we are amending General Instruction F (Public Availability) to remove the phrase ''of this form'' from parenthetical references to Item B.7 and Part D for consistency with other parenthetical cross references in the Form. We also are amending Part F (Exhibits) to fix a typographical error in the citation to Regulation S–X. In addition, for consistency with the amendments we are adopting, we are adding Item B.8 (Derivative Transactions) to General Instruction F.

[113] *See* A financial System That Creates Economic Opportunities; Asset Management and Insurance, U.S. Department of the Treasury (Oct. 2017) *available at https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf*.

[114] *See* Proposing Release, *supra* footnote 10, at n.49.

[115] *See, e.g.,* Federated Comment Letter; Fidelity Comment Letter; Vanguard Comment Letter.

[116] *See, e.g.,* Fidelity Comment Letter; Vanguard Comment Letter.

[117] *See, e.g.,* J.P. Morgan Comment Letter; Vanguard Comment Letter.

[118] *See, e.g.,* T. Rowe Comment Letter; Vanguard Comment Letter.

[119] *See, e.g.,* T. Rowe Comment Letter (''We believe that the bucketing requirement goes beyond what is necessary for a robust risk management regime, and will ultimately prove to be of limited additional utility to fund managers, fund boards, and fund shareholders.'').

[120] The Commission would evaluate appropriate terms and conditions for any exemption under the standard set forth in Section 6(c) of the Investment Company Act.

[121] *See* ICI Comment Letter.

[122] *Id.*

[123] AFR Comment Letter (''[W]e continue to believe the Commission should require granular information about the liquidity classifications of individual assets; provide strong oversight of fund liquidity classifications; or strengthen and enforce the 15 percent illiquid investments limit.'').

[124] *See* BlackRock Comment Letter (''Any material changes to the requirements of fund managers under rule 22e–4 at this point in time would have a cost of its own that would need to be factored in. We believe the proposed refinements to the disclosure associated with rule 22e–4 would be sufficient to address the material concerns raised by the industry, which were reflected in the Treasury report recommendation, without materially altering the rule at this late stage (a development that would be counterproductive at this time.'')). Conversely, one commenter cautioned the Commission from falling victim to the ''sunk cost fallacy'' arguing that the costs incurred already in complying with rule 22e–4 should not deter the Commission from moving to a principles-based approach. *See* Vanguard Comment Letter.

[125] *See infra* footnote 129 and accompanying text.

[126] *See supra* section II.A.2.

[127] Retrospective review of regulations is often viewed as a best practice in federal agency rulemaking. *See e.g.,* Government Accountability Office, Opportunities remain for OMB to improve the transparency of rulemaking processes (Mar. 2016), *available at https://www.gao.gov/assets/680/675810.pdf* (''We have long advocated the potential usefulness to Congress, agencies, and the public of conducting retrospective regulatory analyses.'').

[128] One commenter argued that any such review of liquidity data should take into account a full year's worth of data at a minimum, and preferably more, to ensure that the data includes stressed periods and other fund outflows. *See* ICI Comment Letter.

information, now and during the first year of reporting, to help assist the staff and the Commission.[129] In particular, we would appreciate information about the following subjects.

- To what extent will funds continue to maintain separate liquidity risk management processes and practices alongside those required by the classification provisions of rule 22e–4? What costs are associated with maintaining such dual systems? Are there synergies or other benefits that would result? Do funds expect to eventually combine existing systems and rule 22e–4 classification programs over time, or do they expect to keep them separate?
- Were the implementation and ongoing cost estimates and assumptions made in adopting rule 22e–4 and rule and form amendments accurate? In particular, were the assumptions made about vendor usage and associated costs correct considering the widespread use of vendors (as opposed to in-house systems) that we understand has taken place?
- What benefits have investors, funds, and the markets gained from liquidity classification, including matters associated with classification such as the HLIM and the illiquid investment limit? Is there a way to retain these benefits while moving to a more principles-based system? Do certain aspects of the classification process, such as the classification of illiquid investments and/or the classification of highly liquid investments, generate greater benefits than others?
- To what extent would investors and others benefit from public liquidity classification information? Are there other types of information that may allow investors to better understand the liquidity of their funds? For example, instead of classification information, would investors (or the Commission) be better able to evaluate fund liquidity through public disclosure of empirical data such as bid-ask spreads of portfolio securities, portfolio turnover, or shareholder concentration measures?
- If we were to propose amendments to rule 22e–4 to move to a more principles-based approach, would the benefits of such a new approach outweigh the costs of implementation? On what principles should we base such an approach?

Finally, as we discussed in the proposal, our staff anticipates publishing a periodic report containing aggregated and anonymized information about the fund industry's liquidity may be beneficial. One commenter objected, arguing that even aggregated and anonymized classification data would still be derived from the same disparate and subjective inputs, and accordingly may be of limited value to the Commission or the public.[130] As part of the staff evaluation noted in the proposal and discussed above, we expect that our staff will consider whether publishing such aggregated and anonymized classification data would be useful, and include a recommendation as part of that evaluation as to whether the staff should publish such a periodic report.[131]

D. Compliance Dates

As proposed, we are providing a tiered set of compliance dates based on asset size.[132] However, in a change from the proposal, we are not aligning the compliance date for the amendments to Form N–1A we are adopting today with the revised compliance dates we previously adopted for the liquidity-related portions of Form N–PORT.[133] Instead, we are providing additional time so that funds have at least a full year's experience with the liquidity risk management program before including the new narrative disclosure in their shareholder report.

A number of commenters argued that the first time a fund includes the new narrative disclosure on the operation of a fund's liquidity risk management program, it should have at least a year's experience operating a liquidity risk management program under the rule.[134] We agree. Therefore, we are providing additional time so that funds would not need to comply with the new shareholder report amendments to Form N–1A until they have had their liquidity risk management programs in effect for a full year. We have provided additional time for funds to comply with certain aspects of the liquidity risk management program (classification and related elements).[135] As result, we expect that only the aspects of the liquidity risk management program operation and effectiveness that are legally required to be in place need be discussed during the first reporting cycle.

However, we are not changing the compliance date for the Form N–PORT amendments from the proposal. Most commenters did not object to the proposed Form N–PORT compliance dates, although a few asked that funds be provided at least one year from adoption to implement the changes to Form N–PORT.[136] We believe that we are adopting this change sufficiently in advance that funds should be able to implement this change without difficulty, and accordingly are not amending the proposed compliance dates for Form N–PORT.

Below is a chart that describes the compliance dates for the Form N–PORT and Form N–1A amendments that we are adopting today.

	Compliance Date	First N–PORT filing date
Form N–PORT:		
Large Entities	June 1, 2019	July 30, 2019.
Small Entities	March 1, 2020	April 30, 2020.
Form N:[137]		
Large Entities	Dec. 1, 2019.	
Small Entities	June 1, 2020.	

[137] Funds that distribute annual or semi-annual shareholder reports after the compliance dates discussed above would be subject to the new requirement.

[129] Email: *IM-Liquidity@sec.gov.*

[130] ICI Comment Letter.

[131] Staff from the Division of Investment Management as well as staff from the Division of Economic and Risk Analysis also may publish ad hoc papers on fund liquidity based on Form N–PORT liquidity data.

[132] ''Larger entities'' are defined as funds that, together with other investment companies in the same ''group of related investment companies,'' have net assets of $1 billion or more as of the end of the most recent fiscal year of the fund. ''Smaller entities'' are defined as funds that, together with other investment companies in the same group of related investment companies, have net assets of less than $1 billion as of the end of its most recent fiscal year. *See* Liquidity Adopting Release, *supra* footnote 2, at n.997.

[133] *See* Liquidity Extension Release, *supra* footnote 8.

[134] *See, e.g.,* ICI Comment Letter.

[135] Liquidity Extension Release, *supra* footnote 8.

[136] ICI Comment Letter; State Street Comment Letter.

III. Economic Analysis

A. Introduction

The Commission is sensitive to the potential economic effects of the amendments to Form N–PORT and Form N–1A that we are adopting. These effects include the benefits and costs to funds, their investors and investment advisers, issuers of the portfolio securities in which funds invest, and other market participants potentially affected by fund and investor behavior as well as any effects on efficiency, competition, and capital formation.

B. Economic Baseline

The costs and benefits of the amendments as well as any impact on efficiency, competition, and capital formation are considered relative to an economic baseline. For the purposes of this economic analysis, the baseline is the regulatory framework and liquidity risk management practices currently in effect, and any expected changes to liquidity risk management practices, including any systems and processes that funds have already implemented in order to comply with the liquidity rule and related requirements as anticipated in the Liquidity Adopting Release and the Liquidity Extension Release.[138]

The economic baseline's regulatory framework consists of the rule requirements adopted by the Commission on October 13, 2016 in the Liquidity Adopting Release. Under the baseline, larger entities must comply with some of the liquidity rule's requirements, such as the establishment of a liquidity risk management program, by December 1, 2018 and must comply with other requirements, such as the classification of portfolio holdings, by June 1, 2019.[139] Smaller entities must comply with some of the liquidity rule's requirements by June 1, 2019 and other requirements by December 1, 2019.[140] Because these compliance dates have not yet occurred, the Commission has not yet received portfolio classification data and investors have not yet received aggregate portfolio classification disclosures from funds. Accordingly, the baseline does not include experience on the part of the Commission or investors with interpreting or analyzing the quantitative data that will be reported on Form N–PORT.

The primary SEC-regulated entities affected by these amendments are mutual funds and ETFs. As of the end of 2017, there were 9,154 mutual funds managing assets of approximately $19 trillion,[141] and there were 1,832 ETFs managing assets of approximately $3.4 trillion.[142] Other potentially affected parties include investors, investment advisers that advise funds, issuers of the securities in which these funds invest, and other market participants that could be affected by fund and investor behavior.

C. Economic Impacts

We are mindful of the costs and benefits of the amendments to Form N–PORT and Form N–1A we are adopting. The Commission, where possible, has sought to quantify the benefits and costs, and effects on efficiency, competition and capital formation expected to result from these amendments. However, as discussed below, the Commission is unable to quantify certain of the economic effects because it lacks information necessary to provide reasonable estimates. The economic effects of the amendments fall into two categories: (1) Effects stemming from changes to public disclosure on Form N–PORT and Form N–1A; (2) effects stemming from changes to non-public disclosure on Form N–PORT.

Changes to Public Disclosure

The amendments to Form N–PORT and Form N–1A we are adopting alter the public disclosure of information about fund liquidity in three ways. First, the amendments rescind the requirement that funds publicly disclose their aggregate liquidity profile on a quarterly basis with a 60-day delay in structured format on Form N–PORT.[143] Second, the amendments require funds and other registrants to report to the Commission, on a non-public basis, the amount of cash and cash equivalents in their portfolio on Form N–PORT on a monthly basis and to publicly disclose this amount on a quarterly basis with a 60-day delay through EDGAR. Finally, the amendments require a fund to provide a narrative description of the fund's liquidity risk management program's operation and effectiveness in an unstructured format in the fund's shareholder report.[144] Most commenters generally supported rescinding the requirement for quarterly public disclosure of aggregate liquidity classification information on Form N–PORT, adopting the requirement for funds to disclose their cash and cash equivalents on Form N–PORT, and requiring funds to provide a narrative discussion in the shareholder report.[145]

Funds and other registrants will experience benefits and costs associated with the amendments to public disclosure requirements on Form N–PORT. Funds will no longer incur the one-time and ongoing costs associated with preparing the portion of Form N–PORT associated with the aggregate liquidity profile. These costs likely would have constituted a small portion of the aggregate one-time costs of $158 million and the ongoing costs of $3.9 million for Form N–PORT that we estimated in the Liquidity Adopting Release.[146] At the same time, funds and other registrants will also incur additional costs, relative to the baseline, associated with the adoption of the requirement that they report their holdings of cash and cash equivalents on Form N–PORT. Because funds and other registrants are already preparing Form N–PORT and already need to keep track of their cash and cash equivalents

[138] *See supra* footnotes 2 and 8.

[139] *See supra* footnote 136 for a detailed description of larger and smaller entities. The compliance date for some of the requirements related to portfolio holding classification was delayed. *See* the Liquidity Extension Release, *supra* footnote 8, for a more detailed discussion of the requirements that were delayed.

[140] In a change from the proposal, we are not aligning the compliance dates for the amendments to Form N–1A with those for Form N–PORT, as discussed above in section II.D. As a result, funds would not need to comply with the new Form N–1A amendments until they have had their liquidity risk management program in effect for a full year. Moving the compliance date could provide benefits to funds relative to the proposal as they should be able to implement changes to shareholder reports with less difficulty.

[141] *See* ICI, 2018 ICI Fact Book (58th ed., 2018) (''2018 ICI Fact Book''), *available at https://www.ici.org/pdf/2018_factbook.pdf*, at nn.52, 208, 212. The number of mutual funds includes funds that primarily invest in other mutual funds but excludes 382 money-market funds.

[142] *See* 2018 ICI Fact Book, *supra* footnote 145, at nn.218, 219.

[143] *See supra* footnote 1 for a definition of ''funds.'' The requirement to publicly disclose aggregate liquidity profiles does not apply to funds that are In-Kind ETFs under the baseline, so it is only rescinded for funds that are not In-Kind ETFs. In-Kind ETFs are included as funds that provide a narrative description of their liquidity risk management program pursuant to Form N–1A.

[144] The Commission will continue to receive non-public position level liquidity information on Form N–PORT.

[145] *See* Fidelity Comment Letter; J.P. Morgan Comment Letter; State Street Comment Letter; ICI Comment Letter; SIFMA Comment Letter; Vanguard Comment Letter. One commenter recommended a delay in compliance to any changes to Form N–PORT or the reporting requirement of cash and cash equivalents. *See* State Street Comment Letter. The Commission changed the compliance dates for the Form N–1A requirements from what it proposed, as discussed above in section II.D above.

[146] *See* Liquidity Adopting Release, *supra* footnote 2, at nn.1188–1191. We estimated the total one-time costs associated with the rule's disclosure and reporting requirements on Form N–PORT as being approximately $55 million for funds that will file reports on Form N–PORT in house and approximately $103 million for funds that will use a third-party service provider. Similarly, we estimated the total ongoing annual costs as being approximately $1.6 million for funds filing reports in house and $2.3 million for funds that will use a third-party service provider.

for valuation purposes, we expect that these additional costs will not be significant.

In aggregate, we expect any additional costs associated with the requirement that funds and other registrants disclose their holdings of cash and cash equivalents to be offset by the savings associated with funds no longer having to report an aggregate liquidity profile. Therefore, we expect that funds and other registrants will not experience a significant net economic effect associated with the direct costs of filing Form N–PORT.[147] Additionally, to the extent that any risk of herding or correlated trading would exist if funds executed trades in order to make their aggregate liquidity profiles appear more liquid to investors, rescinding the requirement that funds publicly disclose an aggregate liquidity profile will mitigate such risk.[148]

Relative to the baseline, funds will incur costs associated with preparing an annual narrative discussion of their liquidity risk management programs in the fund's shareholder report. We estimate that funds will incur aggregate one-time costs of approximately $18 million and aggregate ongoing costs of approximately $9 million in preparing this narrative discussion.[149] Several commenters suggested excluding funds that primarily hold highly liquid investments from providing the narrative discussion,[150] and that the benefits of the narrative disclosure to investors that hold these funds would be outweighed by the costs of including the narrative in the shareholder report.[151] We disagree because, even for funds that predominantly hold highly liquid investments, such discussion can benefit investors to the extent that such disclosures may enhance their understanding of liquidity risk management for individual funds and when comparing funds.

As discussed above, and in response to comments, the Commission is not adopting the requirement that the narrative disclosure be part of the MDFP and instead is requiring that the narrative disclosure of the operation and effectiveness of a fund's liquidity management programs be part of the fund's shareholder report (annual or semi-annual) in the section following the discussion of board approval of advisory contracts.[152] Moving the narrative disclosure from the MDFP to this section of the shareholder report will allow funds to align the production of the narrative disclosure with the review of the liquidity risk management practices by the fund's board of directors, which may reduce costs to funds relative to the proposal by allowing funds to avail themselves of any efficiencies from the overlap between these requirements.[153]

Investors will also experience costs and benefits as a result of the changes to public disclosure requirements on Form N–PORT and Form N–1A that we are adopting.[154] To the extent that aggregate liquidity profiles within the structured format of Form N–PORT could have helped certain investors make more informed investment choices that match their liquidity risk preferences, rescinding the aggregate liquidity profile requirement will reduce those investors' ability to make more informed investment choices.[155] However, to the extent that portfolio holding classifications incorporate subjective factors that may be interpreted differently by different funds, aggregate liquidity profiles may not have been comparable across funds. Therefore, rescinding the aggregate liquidity profile requirement may reduce the likelihood that investors make investment choices based on any confusion about how the fund's liquidity risk profile should be interpreted.[156] Further, the narrative discussion in shareholder reports may mitigate any reduction in investors' ability to make more informed investment choices, though this disclosure will be less frequent than the quarterly public disclosure of aggregate liquidity profiles that was previously adopted and will provide information about a fund's liquidity risk management rather than the aggregate liquidity profile of the fund's investments.[157]

As discussed above, the compliance date for rule 22e–4 and related reporting on Form N–PORT has not yet occurred and the Commission has not yet received portfolio classification data from funds, nor is aggregated liquidity classification information currently being made public. As a result, the Commission's assessment of the costs and benefits of these changes is, necessarily, informed by qualitative concerns, together with what we know about the subjectivity of inputs, assumptions, and methods that funds are likely to utilize in classifying portfolio assets and the nature of the information to be reported. The liquidity classifications that funds would have used to construct an aggregate liquidity profile are based on several factors that are subjective and fund specific. Such factors include a fund's determination of the reasonably anticipated trade size for a given holding and its determination of what constitutes significant market impact.[158] As a result of these subjective factors, aggregate liquidity profiles are likely to vary across otherwise similar funds, diminishing their comparability.[159] However, without yet receiving and evaluating liquidity classification data,

[147] *See infra* paragraph following footnote 190.

[148] *See supra* footnote 43.

[149] We estimate funds will incur an additional aggregate one-time burden of 54,890 hours and an additional aggregate annual burden of 27,445 hours. *See infra* footnotes 194 and 197. Assuming a blended hourly rate of $329 for a compliance attorney ($345) and a senior officer ($313), that translates to an additional aggregate one-time burden of $18,058,810 = 54,890 × $329 and an additional aggregate annual burden of $9,029,405 = 27,445 × $329.

[150] *See* ICI Comment Letter; Capital Group Comment Letter.

[151] *See* Capital Group Comment Letter.

[152] However, as discussed in section II.A.2 above, funds should include in the MDFP a discussion of any events relating to a fund's liquidity that materially affected the fund's performance during the most recently completed fiscal year. One commenter stated that although such a disclosure would increase ''administrative and compliance burden on funds that face material liquidity risks, it may be eased by relevant disclosure that may already be included in the management discussion as a material factor that impacts fund performance. In order to ensure that investors receive proportionate liquidity risk disclosure relative to the risks within a particular fund, we believe the modest additional expense would be warranted.'' *See* Vanguard Comment Letter. Because we understand that funds often already discuss such events in their MDFP today, we agree with the commenter that increases in costs would be limited and that the disclosure would benefit investors in promoting informed decision-making.

[153] *See* ICI Comment Letter. *See also* Capital Group Comment Letter. Further, another commenter suggested that moving the narrative disclosure from the MDFP would also benefit investors by reducing confusion for investors. *See* Blackrock Comment Letter.

[154] *See* ICE Comment Letter (discussing the benefits to the ''investing public'' by ''injecting additional rigor and discipline into funds' liquidity assessment procedures.'').

[155] *See* Better Markets Comment Letter (stating that the aggregated public reports in N–PORT would have benefited investors by empowering them to make more informed investment decisions through the analysis provided by third-party analysts). Another commenter stated that the removal of the aggregate liquidity profiles will reduce the information offered to the public and opposed the elimination of the public disclosure of funds' aggregate liquidity profiles. AFR Comment Letter.

[156] Even if aggregate liquidity profiles are not comparable across funds, they might be comparable across time for a given fund, which might provide useful information to investors. This would be the case if a fund maintains a consistent position classification process over time. Funds, however, may change their classification processes over time.

[157] *See* Comment Letter of Mutual Fund Directors Forum (May 18, 2018) (''MFDF Comment Letter'') (discussing that the narrative disclosure will benefit investors by providing ''information on a fund's management of liquidity risk . . . in a format that will allow those investors to assess the importance of the information'').

[158] *See* Liquidity Adopting Release, *supra* footnote 2, at section III.C.3.

[159] *See supra* footnotes 41 and 42.

we cannot anticipate with any quantitative precision the extent to which they will vary across otherwise similar funds as a result of the above factors.[160] As a result, the adopted approach will enable the Commission to evaluate and consider how the quantitative data from funds' N–PORT filings might be fashioned into common quantitative metrics. This approach will also enable the Commission to assess the potential costs and benefits of future public dissemination of quantitative metrics derived from data contained in N–PORT filings and whether such metrics would be comparable across funds.

The overall impact of the amendments on an investor's use of data for informing investment choices will likely depend on how the investor accesses and processes information about fund liquidity. If certain investors prefer to base their investment decisions on information that is accessible to them in an unstructured document, those investors will be more likely to use the narrative discussion of a fund's liquidity risk management program in shareholder reports than they would have been to use the aggregate liquidity profile within the structured format of Form N–PORT to inform their investment decisions. However, certain other investors may prefer to access, reuse, and compare the information about a fund's liquidity risk if included within a structured format on Form N–PORT. These investors will have a reduced ability to make as timely and accurate an analysis within an entity's filings, perform text analysis of an entity's narrative disclosures, and potentially combine narrative and numeric information when the narrative disclosures related to their liquidity risk management programs are provided to them in the unstructured format of an annual report. Further, there may be an increased burden on these third-party providers to search, parse, and assess the quality of the unstructured information in funds' annual reports. To the extent that certain investors rely on third parties to provide them with information for analysis, this increased burden may be partially or fully passed on to these investors in the form of higher costs.

One commenter recommended that narrative disclosures, as well as all financial data, be reported in a consistent, structured format to promote comparison across filings and filers.[161] While for some retail investors, an unstructured narrative disclosure will be useful and accessible, standardized, structured, machine-readable disclosures facilitate timely access and accurate identification and parsing of information for other investors and market participants relative to unstructured disclosures. As discussed in the Proposing Release, while we acknowledge that there are costs to our amendments for investors, filers, and third party platforms that prefer to access and use financial information in a structured format, we believe there are also benefits to investors that prefer the narrative discussion of a fund's liquidity risk management program accessible to them in an unstructured shareholder report.[162] We are currently soliciting feedback on the use of structured data in fund investor disclosure generally.[163]

Finally, the amendment to Form N–PORT that requires funds and other registrants to publicly disclose their holdings of cash and cash equivalents that are not reported in Parts C and D of the Form on a quarterly basis with a 60-day delay will give investors some potentially useful information about the most liquid assets that a fund previously had available to, for example, meet its redemption obligations.[164]

Changes to Non-Public Disclosure

In addition to the amendments to public disclosures of liquidity information discussed above, the amendments to Form N–PORT give funds the option to split a given holding into portions that may have different liquidity classifications on their non-public reports on Form N–PORT. Funds may benefit from the amendment because it gives them the option to either include an entire holding within a classification bucket or to allocate portions of the holding across classification buckets. This could benefit a fund and the fund's investors if a more granular approach to classification that assigns portions of a portfolio holding to separate classification buckets is more consistent with the fund's preferred approach to liquidity risk management. This approach also reduces the need for funds to develop systems and processes to allocate each holding to exactly one classification bucket for the purposes of regulatory compliance.[165] In addition, to the extent that providing the option to choose the position classification method most suitable to a given fund results in disclosures on Form N–PORT that more accurately reflect the fund's liquidity profile, the amendments may improve the Commission's ability to monitor liquidity risks in markets and protect investors from liquidity-related developments. However, we acknowledge that providing funds with this option does add an additional subjective decision to the portfolio holding classification process. Thus, the amendments could result in classifications that are less comparable across funds relative to the baseline.[166]

Several commenters supported the amendments to Form N–PORT that will give funds the option to split a given holding into portions that may have different liquidity classifications on their non-public reports on Form N–PORT, noting that this option will allow funds increased flexibility and higher precision when classifying the liquidity of an investment.[167] One commenter, however, stated that this option is unlikely to reduce burdens or costs to funds, and is likely to be incompatible with the 15% illiquid asset restriction.[168] We note that this approach is optional, and therefore funds could choose not to use it if it had negative consequences, such as inflating the fund's illiquid investment bucket. Several commenters recommended that the proportionality option be revised to include categories based on reasonably anticipated trade size, which would allow increased flexibility and potential increased efficiency for funds that choose to implement this classification option.[169] We note that, while in some circumstances classifying liquidity based on reasonably anticipated trade size may be a simpler analytic approach

[160] A few commenters objected to the proposed changes, arguing that the Commission should err on the side of providing more information and that investors would understand and use the aggregated liquidity information. *See supra* footnote 33 and accompanying text.

[161] *See* XBRL US Comment Letter.

[162] *See* Proposing Release, *supra* footnote 10, at section III.C.

[163] *See supra* footnote 52.

[164] *See supra* section II.B.2.

[165] For example, funds that use multiple sub-advisers to manage different sleeves of a portfolio might have had to establish more complex systems and processes for combining the classifications of individual sub-advisers into a single classification for the portfolio's aggregate holding of a given security under the rule as originally adopted. The ability to split a portfolio holding across multiple classification buckets provides funds with a straightforward way of combining the classifications of different sub-advisers.

[166] Portfolio classifications on Form N–PORT will include CUSIPs or other identifiers that allow Commission staff to identify when different funds classify the same investment using different classification methods. However, comparing such classifications will require some method of adjustment between classifications based on, for example, reasonably anticipated trade size and those based on splitting a position into proportions that are assigned to different classification buckets.

[167] *See* Fidelity Comment Letter; IAA Comment Letter; State Street Comment Letter; ICE Comment Letter; and J.P. Morgan Comment Letter.

[168] *See* J.P. Morgan Comment Letter.

[169] *See* SIFMA Comment Letter and ICI Comment Letter.

and avoids certain issues related to full liquidation, as discussed above in section II.B.1, it also is an imperfect proxy for the actual liquidity characteristics of fund investments, potentially skewing classifications to more liquid ''buckets.'' [170]

Other commenters suggested that we should not allow funds to classify portions of a portfolio holding separately because it would reduce the value of the information and would ''reduce the utility of the entire bucketing exercise.'' [171] However, the Commission does not consider allowing portfolio splitting to affect its ability to monitor liquidity risks, an ability that ultimately benefits investors. The Commission is adopting amendments to Form N–PORT to allow funds the option of splitting a fund's holding into more than one classification category in certain specified circumstances as proposed.

Efficiency, Competition, and Capital Formation

The amendments we are adopting have several potential effects on efficiency, competition, and capital formation. First, if publicly disclosed aggregate liquidity profiles may have created an incentive for a fund to classify its holdings in a manner that led to a relatively more liquid aggregate liquidity profile in order to attract investors, the amendments remove any such incentive and potentially reduce the likelihood that funds compete based on their aggregate liquidity profiles. To the extent that a fund or other registrant's cash and cash equivalent holdings are interpreted by investors as being associated with lower liquidity risk, funds and other registrants may still have some incentive to compete based on their holdings of cash and cash equivalents as a result of the amendments.[172] We do not expect the proposed amendments to require narrative discussions in shareholder reports to have a significant competitive effect.

Second, to the extent that those publicly disclosed aggregate liquidity profiles would have helped investors more accurately evaluate fund liquidity risk and make more informed investment decisions, the amendments could reduce allocative efficiency. The annual discussion of a fund's liquidity risk management program in shareholder reports and the requirement that funds and other registrants publicly disclose their holdings of cash and cash equivalents on Form N–PORT could mitigate this reduction in allocative efficiency if these requirements provide information that helps investors evaluate fund liquidity risk. Furthermore, to the extent that aggregate liquidity profiles on Form N–PORT would have increased the likelihood of investors making investment choices based on any confusion about a fund's liquidity risk profile, which would have harmed the efficient allocation of capital, the amendments could increase allocative efficiency.

Lastly, to the extent that the information provided by aggregate liquidity profiles would have promoted increased investment in certain funds, and the assets those funds invest in, rescinding the aggregate liquidity profile requirement could reduce capital formation. At the same time, we note that the new public disclosure requirements we are adopting could offset any reduction in capital formation.

In summary, we note that all of the effects described above are conditioned upon the usefulness to investors of information that we will no longer require relative to the usefulness of additional disclosure requirements we are adopting. We cannot estimate the aggregate effect on efficiency, competition, or capital formation that will result from the new amendments because we do not know the extent to which aggregate liquidity risk profiles, narrative discussion of a fund's liquidity risk management program, or the amount of cash and cash equivalents held by a fund and other registrants are useful to investors in making more informed investment choices.[173]

D. Reasonable Alternatives

The Commission considered several alternatives to the amendments to funds public and non-public disclosure requirements that we are adopting.[174]

First, in order to address any potential issues with the interpretation of a fund's aggregate liquidity profile by investors, we could have maintained the public disclosure of this profile on Form N–PORT and added a requirement that funds publicly disclose on Form N–PORT additional information providing context and clarification regarding how their aggregate liquidity profiles were generated and should be interpreted. This alternative would have provided investors with some of the benefits of the additional context provided by the narrative discussion on Form N–1A that we are adopting, and, to the extent that it increased investors' understanding of a fund's aggregate liquidity profile, could have allowed them to make more informed investment choices relative to the baseline. However, some investors may believe that they can more easily obtain information in a fund's annual report compared to information in the fund's Form N–PORT filings if they are not as interested in being able to access, reuse, and compare the information if included in a structured format on Form N–PORT. This alternative would have required these investors to seek out this additional information on EDGAR.

Second, instead of requiring a fund to briefly discuss the operation and effectiveness of its liquidity risk management program in a shareholder report, we could have required a more specific discussion of the fund's exposure to liquidity risk over the preceding year, how the fund managed that risk, and how the fund's returns were affected over the preceding year. This alternative could have helped investors understand both a fund's liquidity risk and the fund's approach to managing that risk, which might lead to more informed investment decisions than a discussion of the fund's liquidity risk management program. However, this alternative could have been more costly for some funds to implement than the proposed narrative discussion in the shareholder report, and funds still have the flexibility to provide this information in the course of complying with the final rule if they think it will benefit their investors.[175] Further, as discussed above, a fund should discuss, with specificity, as part of its MDFP, any factor such as liquidity events that the fund experienced that materially affected the fund's performance during the past fiscal year.[176]

Third, we could have required funds to disclose an aggregate liquidity profile in their annual report along with additional information providing context and clarification regarding how its aggregate liquidity profile was generated and should be interpreted. If such disclosure increased investors'

[170] *See supra* footnote 95.

[171] *See* MSCI Comment Letter. Several commenters stated that allowing funds to classify portions of a portfolio holding for some of their holdings could lead to inconsistent interpretations of the funds classifications, and that we should instead require a fund to apply a uniform approach across all of its holdings. *See* State Street Comment Letter and MSCI Comment Letter.

[172] However, because cash and cash equivalent holdings do not generate significant returns relative to other holdings, funds and other registrants may have an incentive to shift to non-cash or cash equivalent holdings that generate higher returns.

[173] *See supra* paragraph following footnote 157.

[174] Several commenters also addressed potential costs associated with modifying the bucketing requirements of rule 22e–4. As discussed above, in section II.C, we are not adopting modifications to the rule 22e–4 bucketing requirements today.

[175] *See supra* paragraph following footnote 65.

[176] *See supra* section II.A.2.

understanding of a fund's aggregate liquidity profile, this would have allowed them to make more informed investment choices relative to the baseline, though they would have received this information at an annual rather than quarterly frequency. However, such disclosures still may not be able to fully explain how the subjective factors inherent in the classification process affect aggregate fund liquidity profiles, so they still may not be comparable across funds. Therefore, investors' ability to make more informed investment choices based on the inclusion of this information may be limited.

Fourth, we could have amended both Form N–PORT and rule 22e–4 to prescribe an objective approach to classification in which the Commission would specify more precise criteria and guidance regarding how funds should classify different categories of investments. Such an approach could permit consistent comparisons of different funds' aggregate liquidity profiles, allowing investors to make more informed investment decisions without requiring funds to provide additional contextual discussion of their liquidity risk management programs. However, as discussed in the Liquidity Adopting Release, the Commission may not be able to respond as quickly as market participants to dynamic market conditions that might necessitate changes to such criteria and guidance.

Fifth, we could have required that if funds chose to split the classification of any of their portfolio holdings across liquidity buckets when reporting them on the non-public portion of Form N–PORT, they do so for all of their portfolio holdings. This would have ensured that all of the portfolio holdings within a given fund could be interpreted more consistently for any monitoring purposes by the Commission. However, to the extent that being able to choose the classification approach appropriate to each portfolio holding more accurately reflects a manager's judgment of that portfolio holding's liquidity, any reduction in the consistency of portfolio classifications under the amendments we are adopting could be offset by a more accurate description of the manager's assessment of fund liquidity risk.

IV. Paperwork Reduction Act

A. Introduction

The amendments to Form N–PORT and Form N–1A contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[177]

The title for the existing collections of information are: ''Rule 30b1–9 and Form N–PORT'' (OMB Control No. 3235–0730); and ''Form N–1A under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration Statement of Open-End Management Investment Companies'' (OMB Control No. 3235–0307). The Commission is submitting these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Commission is amending Form N–PORT and Form N–1A. The amendments are designed to improve the reporting and disclosure of liquidity information by funds. We discuss below the collection of information burdens associated with these amendments. In the Proposing Release, the Commission solicited comment on the collection of information requirements and the accuracy of the Commission's statements in the Proposing Release.

B. Form N–PORT

As discussed above, on October 13, 2016, the Commission adopted new Form N–PORT, which requires mutual funds and ETFs [178] to report monthly portfolio investment information to the Commission in a structured data format.[179] The Commission also adopted amendments to Form N–PORT requiring a fund to publicly report on Form N–PORT the aggregate percentage of its portfolio investments that falls into each of the four liquidity classification categories noted above.[180] Today, the Commission is rescinding the requirement that funds publicly disclose their aggregate liquidity profile on a quarterly basis with a 60-day delay. The Commission also is amending Form N–PORT to require funds and other registrants to report to the Commission on a non-public basis the amount of cash and cash equivalents in their portfolio on Form N–PORT on a monthly basis and to publicly disclose this amount on a quarterly basis with a 60 day delay.[181] Finally, the Commission is amending Form N–PORT to allow funds the option of splitting a fund's holding into more than one liquidity classification category in certain specified circumstances.[182] As of the end of 2017, there were 9,154 mutual funds managing assets of approximately $19 trillion, and there were 1,832 ETFs managing assets of approximately $3.4 trillion.[183] Preparing a report on Form N–PORT is mandatory and is a collection of information under the PRA, and the information required by Form N–PORT will be data-tagged in XML format. Except for certain reporting items specified in the form,[184] responses to the reporting requirements will be kept confidential for reports filed with respect to the first two months of each quarter; the third month of the quarter will not be kept confidential, but made public sixty days after the quarter end.

In the Liquidity Adopting Release, we estimate that, for the 35% of funds that would file reports on Form N–PORT in house, the per fund average aggregate annual hour burden will be 144 hours per fund, and the average cost to license a third-party software solution will be $4,805 per fund per year.[185] For the remaining 65% of funds that would retain the services of a third party to prepare and file reports on Form N–PORT on the fund's behalf, we estimate that the average aggregate annual hour burden will be 125 hours per fund, and each fund will pay an average fee of $11,440 per fund per year for the services of third-party service provider. In sum, we estimate that filing liquidity-related information on Form N–PORT will impose an average total annual hour burden of 144 hours on applicable

[177] 44 U.S.C. 3501 through 3521.

[178] Registered money market funds and small business investment companies are exempt from Form N–PORT reporting requirements.

[179] Reporting Modernization Adopting Release, *supra* footnote 2.

[180] Item B.8.a of Form N–PORT. Form N–PORT also requires public reporting of the percentage of a fund's highly liquid investments that it has segregated to cover, or pledged to satisfy margin requirements in connection with, derivatives transactions that are classified as moderately liquid, less liquid, or illiquid investments. Item B.8.b of Form N–PORT.

[181] *See supra* footnote 21 (noting that the term ''registrant'' refers to entities required to file Form N–PORT, including all registered management investment companies, other than money market funds and small business investment companies, and all ETFs (regardless of whether they operate as UITs or management investment companies)).

[182] *See* new Item C.7.b of Form N–PORT and Instructions to Item C.7 of Form N–PORT.

[183] *See supra* footnote 142 and accompanying text.

[184] These items include information reported with respect to a fund's Highly Liquid Investment Minimum (Item B.7), derivatives transactions (Item B.8), country of risk and economic exposure (Item C.5.b), delta (Items C.9.f.v, C.11.c.vii, or C.11.g.iv), liquidity classification for portfolio investments (Item C.7), or miscellaneous securities (Part D), or explanatory notes related to any of those topics (Part E) that is identifiable to any particular fund or adviser. *See* new General Instruction F of Form N–PORT.

[185] *See* Liquidity Adopting Release, *supra* footnote 2, at n.1237 and accompanying text.

funds, and all applicable funds will incur on average, in the aggregate, external annual costs of $103,787,680, or $9,118 per fund.[186]

We are adopting, substantially as proposed, amendments to Form N–PORT to rescind the requirement that a fund report the aggregate percentage of the fund's portfolio representing each of the four liquidity categories. As discussed above, we are rescinding this requirement because we believe, and commenters generally agree,[187] that Form N–PORT may not be the most accessible and useful way to convey to the public information about a fund's liquidity risks and the fund's approach to liquidity risk management. Because there would no longer be public disclosure of a fund's aggregate liquidity classification information, we also will re-designate reporting about the amount of a fund's highly liquid investments that are segregated or pledged to cover less liquid derivatives transactions to the non-public portion of the form. Finally, we are adopting amendments to Form N–PORT to add an additional disclosure requirement relating to a fund's or other registrant's holdings of cash and cash equivalents not reported in Parts C and D of the Form [188] and to allow funds the option of splitting a fund's holding into more than one classification category in three specified circumstances.[189] We believe these additional amendments enhance the liquidity data reported to the Commission.[190] In addition, for some funds, these changes may also reduce cost burdens as they comply with the rule.

Based on Commission staff experience, we believe that rescinding the requirement that funds publicly report the aggregate classification information on Form N–PORT will reduce the estimated burden hours and costs associated with Form N–PORT by approximately one hour. We believe, however, that this reduction in cost will be offset by the increase in cost associated with the other amendments to Form N–PORT, which we also estimate to be one hour. Therefore, we believe that there will be no substantive modification to the existing collection of information for Form N–PORT.

[186] *See* Liquidity Adopting Release, *supra* footnote 2, at n.1238 and accompanying text.

[187] *See, e.g.,* IDC Comment Letter; BlackRock Comment Letter; SIFMA AMG Comment Letter.

[188] *See* new Item B.2.f. of Form N–PORT.

[189] *See* new Instructions to Item C.7 of Form N–PORT.

[190] *See* Liquidity Adopting Release, *supra* footnote 2, at n.293 and accompanying text (discussing the Commission's need for the information reported on Form N–PORT).

Commenters did not provide comment on our estimated reduction in burden hours and costs associated with Form N–PORT. As a result, the Commission believes that the current PRA burden estimates for the existing collection of information requirements remain appropriate.

C. Form N–1A

Form N–1A is the registration form used by open-end investment companies. The respondents to the amendments to Form N–1A adopted today are open-end management investment companies registered or registering with the Commission. Compliance with the disclosure requirements of Form N–1A is mandatory, and the responses to the disclosure requirements are not confidential. In our most recent Paperwork Reduction Act submission for Form N–1A, we estimated for Form N–1A a total hour burden of 1,602,751 hours, and the total annual external cost burden is $131,139,208.[191]

We are adopting, largely as proposed, amendments to Form N–1A to require funds disclose information about the operation and effectiveness of their liquidity risk management program in their reports to shareholders. Specifically, in response to commenters, we are moving the discussion of the operation and effectiveness of a fund's liquidity risk management program to the section of the shareholder report (annual or semi-annual) following the discussion of board approval of advisory contracts.[192] As proposed, this subsection will require funds to discuss the operation and effectiveness of their liquidity risk management program over the period covered. However, funds will have flexibility to cover either the most recently completed fiscal year or the most recently completed calendar year.

Form N–1A generally imposes two types of reporting burdens on investment companies: (i) The burden of preparing and filing the initial registration statement; and (ii) the burden of preparing and filing post-effective amendments to a previously effective registration statement (including post-effective amendments filed pursuant to 17 CFR 230.485(a) or (b) (''rule 230.485(a) or (b)'') under the Securities Act, as applicable). As in the proposal, we estimate that each fund will incur a one–time burden of an additional five hours [193] to draft and finalize the required disclosure. In aggregate, we estimate that funds will incur a one–time burden of an additional 54,890 hours,[194] to comply with the new Form N–1A disclosure requirements. Amortizing the one–time burden over a three–year period results in an average annual burden of an additional 18,296.7 hours.[195]

Based on Commission staff expertise and experience, we estimate that each fund will incur an ongoing burden of an additional 2.5 hours each year to review and update the required disclosure.[196] In aggregate, we estimate that funds will incur an annual burden of an additional 27,445 hours,[197] to comply with the new shareholder report disclosure requirements in Form N–1A.[198] Amortizing these one–time and ongoing hour and cost burdens over three years results in an average annual increased burden of approximately 3.3 hours per fund, as in the proposal.[199] In total, we estimate that funds will incur an average annual increased burden of approximately 45,741.7 hours,[200] to comply with the shareholder report disclosure requirements.

[191] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2018.

[192] New Item 27(d)(7)(b) of Form N–1A.

[193] This estimate is based on the following calculation: 5 Hours (3 hours for the compliance attorney to consult with the liquidity risk management program administrator and other investment personnel in order to produce an initial draft of the shareholder report disclosure + 2 hours for senior officers to familiarize themselves with the new disclosure and review the report). These calculations stem from the Commission's understanding of the time it takes to draft and review shareholder report disclosure.

[194] This estimate is based on the following calculations: 5 hours × 10,978 open-end funds (excluding money market funds and ETFs organized as UITs, and including ETFs that are management investment companies) = 54,890 hours. We estimate that there are 8 ETFs organized as UITs as of December 31, 2017.

[195] This estimate is based on the following calculation: 54,890 hours ÷ 3 = 18,296.7 average annual burden hours.

[196] This estimate is based on the following calculation: 2.5 hours (2 hours for the compliance attorney to consult with the liquidity risk management program administrator and other investment personnel in order to produce an initial draft of the shareholder report disclosure + .5 hours for senior officers to review the shareholder report).

[197] This estimate is based on the following calculation: 2.5 hours × 10,978 open-end funds (excluding money market funds and ETFs organized as UITs, and including ETFs that are management investment companies) = 27,445 hours.

[198] The calculations included in this PRA have been modified from the Proposing Release to reflect updated estimates for the number of entities that the Commission believes will be required to comply with the new shareholder report amendments on Form N–1A. The estimated cost burdens per fund remain the same.

[199] This estimate is based on the following calculation: (5 burden hours (year 1) + 2.5 burden hours (year 2) + 2.5 burden hours (year 3)) ÷ 3 = 3.3

[200] This estimate is based on the following calculation: 18,296.7 hours + 27,445 hours = 45,741.7 hours.

V. Final Regulatory Flexibility Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[201] It relates to new amendments to Form N–PORT and new amendments to Form N–1A. We prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in conjunction with the Proposing Release in March 2018.[202] The Proposing Release included, and solicited comment, on the IRFA.

A. Need for the Amendments

The Commission adopted rule 22e–4 and related rule and form amendments to enhance the regulatory framework for liquidity risk management of funds.[203] In connection with rule 22e–4, a fund is required to publicly report on Form N–PORT the aggregate percentage of its portfolio investments that falls into each of the liquidity categories enumerated in rule 22e–4. This requirement was designed to enhance public disclosure regarding fund liquidity and redemption practices. However, since we adopted these requirements, we have received letters raising concerns that the public disclosure of a fund's aggregate liquidity classification information on Form N–PORT may not achieve our intended purpose and may confuse and mislead investors. As we discuss further in section II.A above, these letters have led us to believe that the approach of disclosing liquidity information to the public through Form N–PORT may not be the most accessible and useful way to convey fund liquidity information to the public, given that only the Commission, and not the public, would have access to the more granular information and can request information regarding the fund's methodologies and assumptions that would provide needed context to understand this reporting.[204]

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on the IRFA, requesting in particular comment on the number of small entities that would be subject to the proposed amendments to Form N–1A and Form N–PORT and whether these proposed amendments would have any effects that have not been discussed. We requested that commenters describe the nature of any effects on small entities subject to the proposed amendments to Form N–1A and Form N–PORT and provide empirical data to support the nature and extent of such effects. We also requested comment on the estimated compliance burdens of the proposed amendments to Form N–1A and Form N–PORT and how they would affect small entities. We did not receive comments regarding the impact of our proposal on small entities.

C. Small Entities Subject to the Amendments

An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[205] Commission staff estimates that, as of December 31, 2017, there were 54 open-end investment companies that would be considered small entities. This number includes open-end ETFs.[206]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

We are adopting amendments to Form N–1A and Form N–PORT to enhance fund disclosure regarding a fund's liquidity risk management practices. Specifically, the amendments to Form N–PORT [207] will rescind the requirement that funds publicly disclose aggregate liquidity classification information about their portfolios and amendments to Form N–1A will require funds to discuss certain aspects of their liquidity risk management program as part of their reports to shareholders.[208] In addition, we are adopting amendments to Form N–PORT to allow funds to report multiple classification categories for a single position in certain cases [209] and require funds and other registrants to report their holdings of cash and cash equivalents.[210]

All funds will be subject to the new disclosure and reporting requirements, including funds that are small entities. We estimate that 54 funds are small entities that will be required to comply with the disclosure and reporting requirements. As discussed above, we do not believe that our amendments will change Form N–PORT's estimated burden hours and costs.[211] We estimate that each fund will incur a one-time burden of an additional five hours,[212] at a time cost of $1,645 [213] each year to draft and finalize the required shareholder report disclosure required in Form N–1A. For purposes of this analysis, Commission staff estimates, based on outreach conducted with a variety of funds, that small fund groups will incur approximately the same initial and ongoing costs as large fund groups. Therefore, in the aggregate, we estimate that funds that are small entities will incur a one-time burden of an additional 270 hours,[214] at a time cost of $88,830,[215] to comply with the new Form N–1A disclosure requirements. Amortizing the one-time burden over a three-year period results in an average annual burden of an additional 90 hours,[216] at a time cost of $29,610.[217] We estimate that each fund will incur an ongoing burden of an additional 2.5 hours,[218] at a time cost of $822.50,[219] each year to review and update the required Form N–1A disclosure. Therefore, we estimate that funds that are small entities will incur an ongoing burden of an additional 135

[201] 5 U.S.C. 603(a).

[202] *See* Proposing Release, *supra* footnote 10, at section V.

[203] *See supra* section I.

[204] *See supra* section II.A.1 at text accompanying footnote 27.

[205] *See* 17 CFR 270.0–10(a) (''rule 270.0–10(a)'') under the Investment Company Act.

[206] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data reported on Form N–SAR filed with the Commission for the period ending December 31, 2017. This estimate has been modified from the Proposing Release to reflect updated estimates for the number of small entities that the Commission believes will be required to comply with the new shareholder report amendments on Form N–1A.

[207] *See* revised Item B.8 of Form N–PORT.

[208] *See* new Item 27(d)(7)(b) of Form N–1A.

[209] *See* new Item C.7.b of Form N–PORT and Instructions to Item C.7 of Form N–PORT.

[210] *See* new Item B.2.f. of Form N–PORT.

[211] *See supra* text accompanying footnote 152.

[212] *See supra* footnote 197 (noting that this estimate is based on the Commission staff's understanding of the time it takes it takes to draft and review shareholder report disclosure, including the time it takes for the compliance attorney to consult with the liquidity risk management program administrator and other investment personnel in order to produce an initial draft of the shareholder report disclosure as well as the time it takes for senior officers to familiarize themselves with the new disclosure and review the report).

[213] This estimate is based on the following calculations: 5 hours × $329 (blended rate for a compliance attorney ($345) and a senior officer ($313)) = $1,645.

[214] This estimate is based on the following calculations: 5 hours × 54 = 270 hours.

[215] This estimate is based on the following calculations: $1,645 × 54 = $88,830.

[216] This estimate is based on the following calculations: 270 hours ÷ 3 = 90 average annual burden hours.

[217] This estimate is based on the following calculations: $88,830 ÷ 3 = $29,610.

[218] *See supra* footnote 194 and accompanying text (noting that this estimate is based on the Commission staff's understanding of the time it takes it takes to review shareholder report disclosure, including the time it takes for the compliance attorney to consult with the liquidity risk management program administrator and other investment personnel in order to produce an initial draft of the shareholder report disclosure as well as the time it takes for senior officers to review the report).

[219] This estimate is based on the following calculations: 2.5 hours × $329 (blended rate for a compliance attorney ($345) and a senior officer ($313)) = $822.50.

hours,[220] at a time cost of $44,415,[221] to comply with the new Form N–1A disclosure requirements.

Amortizing these one-time and ongoing hour and cost burdens over three years results in an average annual increased burden of approximately 4.2 hours,[222] at a time cost of $1,370.83,[223] per fund. In total, we estimate that funds that are small entities will incur an average annual increased burden of approximately 226.8 hours, at a time cost of $74,617.20,[224] to comply with the new Form N–1A disclosure requirements.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant economic impact on small entities. Alternatives in this category include: (i) Exempting funds that are small entities from the disclosure requirements on Form N–1A, or establishing different disclosure or reporting requirements, or different disclosure frequency, to account for resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements under the amendments for small entities; (iii) using performance rather than design standards; and (iv) exempting funds that are small entities from other amendments to Form N–PORT.

The Commission does not believe that exempting any subset of funds, including funds that are small entities, from the amendments would permit us to achieve our stated objectives. Nor do we believe that clarifying, consolidating, or simplifying the amendments for small entities would satisfy those objectives. In particular, we do not believe that the interest of investors would be served by these alternatives. We believe that all fund investors, including investors in funds that are small entities, would benefit from accessible and useful disclosure about liquidity risk, with appropriate context, so that investors may understand its nature and relevance to their investments.[225] The changes we are making will allow funds of all sizes to more accurately reflect their liquidity.[226] The current disclosure requirements for reports on Forms N–1A and N–PORT do not distinguish between small entities and other funds. Finally, we determined to use performance rather than design standards for all funds, regardless of size, because we believe that providing funds with the flexibility to determine how to design their shareholder report disclosures allows them the opportunity to tailor their disclosure to their specific risk profile. By contrast, we determined to use design standards for our amendments to Form N–PORT because we believe information reported to the Commission on the Form must be uniform to the extent practicable in order for the Commission to carry out its oversight and monitoring responsibilities.

VI. Statutory Authority

The Commission is adopting amendments to Form N–1A and Form N–PORT under the authority set forth in the Securities Act, particularly section 19 thereof [15 U.S.C. 77a *et seq.*], the Exchange Act, particularly sections 10, 13, 15, and 23, and 35A thereof [15 U.S.C. 78a *et seq.*], and the Investment Company Act, particularly, sections 8, 30 and 38 thereof [15 U.S.C. 80a *et seq.*].

List of Subjects in 17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rules and Forms

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and Pub. L. 111–203, sec 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Amend Form N–1A (referenced in 274.11A) by:
■ a. In Item 27, renumbering paragraph (d)(7) to (d)(7)(a); and
■ b. In Item 27, adding new paragraph (d)(7)(b).

The addition reads as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 27. Financial Statements

(a) * * *

(d) Annual and Semi-Annual Reports.

* * * * *

7. *Board Approvals and Liquidity Reviews.*

(a) *Statement Regarding Basis for Approval of Investment Advisory Contract.*

* * * * *

(b) *Statement Regarding Liquidity Risk Management Program.* If the board of directors reviewed the Fund's liquidity risk management program pursuant to rule 22e–4(b)(2)(iii) of the Act [17 CFR 270.22e–4(b)(2)(iii)] during the Fund's most recent fiscal half-year, briefly discuss the operation and effectiveness of the Fund's liquidity risk management program over the past year.

Instruction

If the board reviews the liquidity risk management program more frequently than annually, a fund may choose to include the discussion of the program's operation and effectiveness over the past year in one of either the fund's annual or semi-annual reports, but does not need to include it in both reports.

* * * * *

■ 3. Amend Form N–PORT (referenced in § 274.150) by:
■ a. In the General Instructions, revising the second paragraph of F. Public Availability;
■ b. In Part B, amending Item B.2 by adding Item B.2.f;
■ c. In Part B, revising Item B.8;
■ d. In Part C, revising Item C.7; and
■ e. Revising Part F.

The revisions read as follows:

Note: The text of Form N–PORT does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–PORT

MONTHLY PORTFOLIO INVESTMENTS REPORT

* * * * *

F. Public Availability

* * * * *

The SEC does not intend to make public the information reported on Form N–PORT for the first and second months of each Fund's fiscal quarter that is identifiable to any particular fund or adviser, or any information

[220] This estimate is based on the following calculations: 2.5 hours × 54 = 135 hours.

[221] This estimate is based on the following calculations: $822.50 × 54 = $44,415.

[222] This estimate is based on the following calculations: (135 hours + 90 hours) ÷ 54 funds = 4.2 hours.

[223] This estimate is based on the following calculations: ($44,415 + $29,610) ÷ 54 funds = $1,370.83.

[224] This estimate is based on the following calculations: 226.8 hours × $329 (blended rate for a compliance attorney ($345) and a senior officer ($313)) = $74,617.20.

[225] *See supra* text accompanying footnote 192.

[226] *See supra* section IV.B at text accompanying footnote 188.

reported with respect to a Fund's Highly Liquid Investment Minimum (Item B.7), derivatives transactions (Item B.8), country of risk and economic exposure (Item C.5.b), delta (Items C.9.f.v, C.11.c.vii, or C.11.g.iv), liquidity classification for portfolio investments (Item C.7), or miscellaneous securities (Part D), or explanatory notes related to any of those topics (Part E) that is identifiable to any particular fund or adviser. However, the SEC may use information reported on this Form in its regulatory programs, including examinations, investigations, and enforcement actions.

* * * * *

Part B: Information About the Fund

* * * * *

Item B.2.f. Cash and cash equivalents not reported in Parts C and D.

* * * * *

Item B.8 Derivatives Transactions. For portfolio investments of open-end management investment companies, provide the percentage of the Fund's Highly Liquid Investments that it has segregated to cover or pledged to satisfy margin requirements in connection with derivatives transactions that are classified among the following categories as specified in rule 22e–4 [17 CFR 270.22e–4]:

1. Moderately Liquid Investments
2. Less Liquid Investments
3. Illiquid Investments

* * * * *

Part C: Schedule of Portfolio Investments

* * * * *

Item C.7.a Liquidity classification information.

For portfolio investments of open-end management investment companies, provide the liquidity classification(s) for each portfolio investment among the following categories as specified in rule 22e–4 [17 CFR 270.22e–4]. For portfolio investments with multiple liquidity classifications, indicate the percentage amount attributable to each classification.

i. Highly Liquid Investments
ii. Moderately Liquid Investments
iii. Less Liquid Investments
iv. Illiquid Investments

Item C.7.b. If attributing multiple classification categories to the holding, indicate which of the three circumstances listed in the Instructions to Item C.7 is applicable.

Instructions to Item C. 7 Funds may choose to indicate the percentage amount of a holding attributable to multiple classification categories only in the following circumstances: (1) If portions of the position have differing liquidity features that justify treating the portions separately; (2) if a fund has multiple sub-advisers with differing liquidity views; or (3) if the fund chooses to classify the position through evaluation of how long it would take to liquidate the entire position (rather than basing it on the sizes it would reasonably anticipated trading). In (1) and (2), a fund would classify using the reasonably anticipated trade size for each portion of the position.

* * * * *

Part F: Exhibits

For reports filed for the end of the first and third quarters of the Fund's fiscal year, attach no later than 60 days after the end of the reporting period the Fund's complete portfolio holdings as of the close of the period covered by the report. These portfolio holdings must be presented in accordance with the schedules set forth in §§ 210.12–12—210.12–14 of Regulation S–X [17 CFR 210.12–12—210.12–14].

* * * * *

By the Commission.

Dated: June 28, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–14366 Filed 7–9–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–479]

Schedules of Controlled Substances: Temporary Placement of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary amendment; temporary scheduling order.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to schedule the synthetic cannabinoids, Naphthalen-1-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (trivial name: NM2201; CBL2201); *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (trivial name: 5F-AB-PINACA); 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (trivial name: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA; SGT-78); methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (trivial names: MMB-CHMICA, AMB-CHMICA); and 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide (trivial name: 5F-CUMYL-P7AICA), and their optical, positional, and geometric isomers, salts, and salts of isomers in schedule I. This action is based on a finding by the Acting Administrator that the placement of these synthetic cannabinoids in schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle, NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA.

DATES: This temporary scheduling order is effective July 10, 2018, until July 10, 2020. If this order is extended or made permanent, the DEA will publish a document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

Section 201 of the Controlled Substances Act (CSA), 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling [1] for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA,

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this document adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA.[2] The Acting Administrator transmitted notice of his intent to place NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA in schedule I on a temporary basis to the Assistant Secretary for Health of HHS by letter dated March 9, 2018. The Assistant Secretary responded to this notice by letter dated March 27, 2018, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no active investigational new drug applications or approved new drug applications for NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA in schedule I of the CSA. The DEA has taken into consideration the Assistant Secretary's comments as required by 21 U.S.C. 811(h)(4). NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA are not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA or 5F-CUMYL-P7AICA under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety, and as required by 21 U.S.C. 811(h)(1)(A), a notice of intent to temporarily schedule NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA was published in the **Federal Register** on May 30, 2018. 83 FR 24696.

To find that placing a substance temporarily in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Available data and information for NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA, summarized below, indicate that these synthetic cannabinoids (SCs) have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis and the Assistant Secretary's March 27, 2018 letter are available in their entirety under the tab ''Supporting Documents'' of the public docket of this action at *www.regulations.gov* under FDMS Docket ID: DEA–2018–0010–0001 (Docket Number DEA–479).

Synthetic Cannabinoids

The illicit use of the synthetic cannabinoids (SCs) has continued throughout the United States, resulting in severe adverse effects, overdoses and deaths. While new SCs continue to emerge on the illicit market, some substances identified at their peak in previous years have continued to be abused by the user population.

SCs are substances synthesized in laboratories that mimic the biological effects of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient in marijuana. SCs were introduced on the designer drug market in several European countries as ''herbal incense'' before the initial encounter in the United States by U.S. Customs and Border Protection (CBP) in November 2008. From 2009 to the present, misuse of SCs has increased in the United States with law enforcement encounters describing SCs applied onto plant material and in other designer drug products intended for human consumption. Hospital reports, scientific publications and/or law enforcement reports demonstrate that NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA and their associated designer drug products are abused for their psychoactive properties. As with many generations of SCs encountered since 2009, the abuse of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA is impacting or will negatively impact communities.

As observed by the DEA and CBP, SCs originate from foreign sources, such as China. Bulk powder substances are smuggled via common carrier into the United States and find their way to clandestine designer drug product manufacturing operations located in residential neighborhoods, garages, warehouses, and other similar destinations throughout the country. According to online discussion boards and law enforcement encounters, spraying or mixing the SCs with plant material provides a vehicle for the most common route of administration—smoking (using a pipe, a water pipe, or rolling the drug-laced plant material in cigarette papers).

NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA have no accepted medical use in the United States. Use of NM2201, 5F-AB-PINACA and 4-CN-CUMYL-BUTINACA has been reported to result in adverse effects in humans in the United States. In addition, within the United States, there have been numerous law enforcement seizures of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, and MMB-CHMICA during 2013 to 2018, as well as one law enforcement seizure of 5F-CUMYL-P7AICA in 2018. There have been multiple international seizures of 5F-CUMYL-P7AICA, and its use has been reported to result in serious adverse events, including death, in other countries. Use of other SCs has resulted in signs of addiction and withdrawal. Based on the pharmacological similarities between NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA and other SCs, they are likely to produce signs of addiction and withdrawal similar to those produced by other SCs.

[2] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA are SCs that have pharmacological effects similar to the schedule I hallucinogen THC and other temporarily and permanently controlled schedule I SCs. In addition, the misuse of NM2201, 5F-AB-PINACA and 4-CN-CUMYL-BUTINACA has been associated with multiple overdoses requiring emergency medical intervention in the United States. With no approved medical use and limited safety or toxicological information, NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA have emerged on the designer drug market, and the abuse or trafficking of these substances for their psychoactive properties is concerning.

Factor 4. History and Current Pattern of Abuse

Synthetic cannabinoids have been developed by researchers over the last 30 years as tools for investigating the endocannabinoid system (*e.g.* determining CB1 and CB2 receptor activity). The first encounter of SCs intended for illicit use within the United States occurred in November 2008 by CBP. Since then, the popularity of SCs as product adulterants and objects of abuse has increased as evidenced by law enforcement seizures, public health information, and media reports.

Numerous SCs have been identified as product adulterants, and law enforcement has seized bulk amounts of these substances. As successive generations of SCs have been identified and included within schedule I, illicit distributors have developed new SC substances that vary only by slight modifications to their chemical structure while retaining pharmacological effects related to their abuse potential. These substances and products laced with these substances are marketed under the guise of ''herbal incense'' and promoted as a ''legal high'' with a disclaimer that they are ''not for human consumption.'' Thus, after section 1152 of the Food and Drug Administration Safety and Innovation Act (FDASIA), Public Law 112–144, placed cannabimimetic agents and 26 specific substances in schedule I, law enforcement documented the emergence of new SCs, including UR-144, XLR11, AKB48, PB-22, 5F-PB-22, AB-FUBINACA, and ADB-PINACA. After these substances were temporarily scheduled (78 FR 28735, 79 FR 7577), another generation of SCs appeared, including AB-CHMINACA, AB-PINACA, and THJ-2201. These substances were also temporarily, and then permanently, scheduled in schedule I (80 FR 5042, 82 FR 8593).

NM2201 was first identified in November 2012 in seized drug evidence, followed by 5F-AB-PINACA (August, 2013), MMB-CHMICA (December, 2015), 4-CN-CUMYL BUTINACA (January, 2016) and most recently 5F-CUMYL-P7AICA (February, 2018). Following their manufacture in China, SCs are often encountered in countries including New Zealand, Australia and Russia before appearing throughout Europe and eventually the US. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) reported that 50 kg's of 4-CN-CUMYL-BUTINACA were seized in Europe in 2016. While the National Forensic Laboratory Information System (NFLIS) (see factor 5) reported the first US encounter of 4-CN-CUMYL-BUTINACA in January 2016, the recent increase in encounters did not occur until later in 2017. Similarly, prior to the first US encounter of 5F-CUMYL-P7AICA in February 2018, the use of this substance has resulted in adverse events that have been documented in Europe (See factor 6). These data further support that based upon trends, SCs originate in China before being abused in countries including those in Europe often before being trafficked in the US. Based upon the similarity between the trafficking patterns, distribution and use of 5F-CUMYL-P7AICA versus other illicit SCs, 5F-CUMYL-P7AICA poses significant risk for continued emergence in illicit drug markets in the United States. Recent law enforcement seizures are demonstrating that some SCs whose popularity peaked in 2014 and 2015 have remained popular within the illicit market (*i.e.* NM2201 and 5F-AB-PINACA). The misuse of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA has been associated with either law enforcement seizures or overdoses requiring emergency medical intervention. Reports of overdoses involving the ingestion of products containing NM2201, 5F-AB-PINACA and 4-CN-CUMYL-BUTINACA, similar to other SCs available on the illicit market, have recently been published in the scientific literature (See factor 4).

The powder form of SCs is typically dissolved in solvents (*e.g.,* acetone) before being applied to plant material or dissolved in a propellant intended for use in electronic cigarette devices. In addition, 4-CN-CUMYL BUTINACA was identified as an adulterant on pieces of paper that were then smuggled into a detention facility and later found partially burned. Law enforcement personnel have encountered various application methods including buckets or cement mixers in which plant material and one or more SCs are mixed together, as well as large areas where the plant material is spread out so that a dissolved SC mixture can be applied directly. Once mixed, the SC plant material is then allowed to dry before manufacturers package the product for distribution, ignoring any control mechanisms to prevent contamination or to ensure a consistent, uniform concentration of the substance in each package. Adverse health consequences may also occur from directly ingesting the drug during the manufacturing process. The failure to adhere to any manufacturing standards with regard to amounts, the substance(s) included, purity, or contamination may increase the risk of adverse events. However, it is important to note that adherence to manufacturing standards would not eliminate their potential to produce adverse effects because the toxicity and safety profile of these SCs have not been studied.

NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA, similar to other SCs, have been found in powder form or mixed with dried leaves or herbal blends that were marketed for human use. Presentations at emergency departments directly linked to the abuse of NM2201, 5F-AB-PINACA or 4-CN-CUMYL-BUTINACA have resulted in adverse symptoms, including diaphoresis, tachycardia, hypertension, seizures, agitation, violence, nausea and memory impairment.

Factor 5. Scope, Duration and Significance of Abuse

SCs continue to be encountered on the illicit market despite scheduling actions that attempt to safeguard the public from the adverse effects and safety issues associated with these substances (see factor 5 in supporting documentation). Novel substances continue to be encountered, differing only by small chemical structural modifications intended to avoid prosecution while maintaining the pharmacological effects. Law enforcement and health care professionals continue to report the abuse of these substances and their associated products.

As described by the National Institute on Drug Abuse (NIDA), many substances being encountered in the illicit market, specifically SCs, have been available for years but have reentered the marketplace due to a renewed popularity. This is especially true for substances like NM2201 and 5F-

AB-PINACA, SCs that were popular in 2014 and have remained popular on the illicit market. The threat of serious injury to the individual and the imminent threat to public safety following the ingestion of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, 5F-CUMYL-P7AICA and other SCs persist.

Full reports of information obtained through STARLiMS,[3] STRIDE,[4] and NFLIS for the past five years are available under Factor 5 of the DEA 3-Factor Analysis. According to NFLIS data, state and local forensic laboratories have detected the following information about the SCs in question:

NM2201: 2,830 NFLIS reports from 30 states since 2012,[5] 282 STRIDE/STARLiMS reports from 21 states plus DC and Puerto Rico since 2014.

5F-AB-PINACA: 1,180 NFLIS reports from 36 states since 2013, 188 STRIDE/STARLiMS reports from 17 states plus DC and Guam since 2013.

4-CN-CUMYL-BUTINACA: 493 NFLIS reports from 3 states since 2016.

MMB-CHMICA: 254 NFLIS reports from 17 states since 2015, 96 STARLiMS reports from 8 states plus DC since 2015.

5F-CUMYL-P7AICA: 1 NFLIS report from 1 state since 2018. As described previously, based on the similarity between trafficking patterns, distribution and the use of 5F-CUMYL-P7AICA versus other illicit SCs, 5F-CUMYL-P7AICA poses significant risk for continued emergence in illicit drug markets in the United States.

Factor 6. What, if Any, Risk There Is to the Public Health

Since first being identified in the U.S. in 2008, the ingestion of SCs continues to result in serious adverse effects and encounters. Details of these events in the U.S. and/or abroad involving NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA and 5F-CUMYL-P7AICA are summarized below and detailed in the DEA 3-Factor Analysis. While no adverse event information is currently available for MMB-CHMICA, increasing law enforcement seizures, scientific publications regarding its abuse and the pharmacological similarity of MMB-CHMICA to other currently controlled schedule I SCs with known risks to public health (*i.e.* AB-CHMINACA, AB-FUBINACA, JWH-018) demonstrate an imminent hazard to public safety (see factor 5 in supporting documentation).

1. A previously well 25-year-old man in the United Kingdom presented with agitation, double incontinence and left-sided incoordination. His symptoms started after smoking a synthetic cannabinoid (black mamba) 5 days earlier. Over 48 hours, he developed aphasia, generalized hypertonia, hyper-reflexia and dense left hemiparesis. This progressed to profuse diaphoresis, fever, tachycardia, hypertension and a possible seizure necessitating admission to the intensive care unit. An electroencephalogram showed widespread brain wave slowing, indicating diffuse cerebral dysfunction. Toxicology analysis of the substance confirmed a potent synthetic cannabinoid NM2201.

2. In December 2015, 25–30 people in Ocala, FL who used a synthetic cannabinoid product were taken to local hospitals following episodes of violence, fighting and experiencing seizures. Local laboratory analysis confirmed drug evidence seized from the overdose cluster as NM2201.

3. In June 2014, a 37 year old male in Japan drove a car from a busy downtown street onto a wide sidewalk for 30 meters and hit many pedestrians one after another until it was stopped by collision with a telephone booth. A woman was killed and seven persons were injured. The driver lost consciousness and was drooling. He had no memory of what occurred after smoking. 5F-AMB and AB-CHMINACA were detected in the herbal mixture. In addition, 5F-AB-PINACA was detected in the urine sample.

4. Between December 2017 and January 2018, at least 37 confirmed or suspected cases of intoxication occurred in Utah following ingestion of products labeled either ''CBD Oil'' or ''YOLO.'' The products were liquids intended to be used in a vaping device or directly ingested sublingually. Further testing of these products determined that they contained the synthetic cannabinoid 4-CN-CUMYL-BUTINACA. As per the Utah Department of Health, adverse reactions included altered mental status, hallucinations, seizures, confusion, loss of consciousness, tachycardia or slurred speech.

5. In January 2018, 13 correctional facility workers were treated for overdose symptoms including diaphoresis, hypertension and tachycardia following ingestion of an airborne substance while conducting cell searches for contraband. In response to the overdose events, evidence retrieved from the searches tested positive for the synthetic cannabinoids 5F-ADB, 5F-EDMB-PINACA and 4-CN-CUMYL-BUTINACA.

6. Eight countries within Europe have reported just over 50 detections of 5F-CUMYL-P7AICA to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). 5F-CUMYL-P7AICA was typically detected in plant material or as a powder. The biggest detections included a 5 kg seizure (December 2014) and 7 kg seizure (January 2015) of white powder believed to originate from China.

7. Two deaths with confirmed exposure to 5F-CUMYL-P7AICA (detected along with other substances) have been reported to the EMCDDA. These occurred in November 2016 and December 2016. In one of the cases, 5F-CUMYL-P7AICA was reported as the cause of death.

8. In February 2018, 5F-CUMYL-P7AICA was confirmed in a seizure of powder-material in Bay County, Florida.

Because they share pharmacological similarities with schedule I substances (Δ^9-THC, JWH-018 and other temporarily and permanently controlled schedule I SCs), NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA pose serious risk to an abuser. Tolerance to SCs may develop fairly rapidly with larger doses being required to achieve the desired effect. Acute and chronic abuse of SCs in general have been linked to adverse health effects including signs of addiction and withdrawal, numerous reports of emergency department admissions resulting from their abuse, overall toxicity and deaths. Psychiatric case reports have been reported in the scientific literature detailing the SC abuse and associated psychoses. As abusers obtain these drugs through unknown sources, the identity and purity of these substances is uncertain and inconsistent, thus posing significant adverse health risks to users.

NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA are being encountered on the illicit drug market in the US and/or Europe and have no accepted medical use in the United States. Regardless, these products continue to be easily available and abused by diverse populations.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data

[3] STARLiMS is a laboratory information management system that systematically collects results from drug chemistry analyses conducted by DEA laboratories. On October 1, 2014, STARLiMS replaced STRIDE as the DEA laboratory drug evidence data system of record.

[4] STRIDE is a database of drug exhibits sent to DEA laboratories for analysis. Exhibits from the database are from the DEA, other federal agencies, and some local law enforcement agencies.

[5] At the time of query, 2018 data were still reporting.

and information summarized above, the continued uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA indicate that these SCs have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Acting Administrator, through a letter dated March 9, 2018, notified the Assistant Secretary of the DEA's intention to temporarily place NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA in schedule I. A notice of intent was subsequently published in the **Federal Register** on May 30, 2018. 83 FR 24696.

Conclusion

In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Acting Administrator considered available data and information, and herein sets forth the grounds for his determination that it is necessary to temporarily schedule Naphthalen-1-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (trivial name: NM2201; CBL2201); *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (trivial name: 5F-AB-PINACA); 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (trivial name: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA; SGT-78); methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (trivial names: MMB-CHMICA, AMB-CHMICA); and 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide (trivial name: 5F-CUMYL-P7AICA) in schedule I of the CSA to avoid an imminent hazard to the public safety.

Because the Acting Administrator hereby finds it necessary to temporarily place NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA in schedule I to avoid an imminent hazard to the public safety, this temporary order scheduling these substances is effective on the date of publication in the **Federal Register**, and is in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

The CSA sets forth specific criteria for scheduling a drug or other substance. Permanent scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The permanent scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the permanent scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Requirements for Handling

Upon the effective date of this temporary order, NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA will be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle, NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312, as of July 10, 2018. Any person who currently handles NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA, and is not registered with the DEA, must submit an application for registration and may not continue to handle NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA as of July 10, 2018, unless the DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of these substances in a manner not authorized by the CSA on or after July 10, 2018 is unlawful and those in possession of any quantity of these substances may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration to handle NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA must surrender all currently held quantities of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA.

3. *Security.* NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in accordance with 21 CFR 1301.71–1301.93, as of July 10, 2018.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA must be in compliance with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302. Current DEA registrants shall have 30 calendar days from July 10, 2018, to comply with all labeling and packaging requirements.

5. *Inventory.* Every DEA registrant who possesses any quantity of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA on the effective date of this order must take an inventory of all stocks of these substances on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements. After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including NM2201, 5F-AB-

PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA) on hand on a biennial basis, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records.* All DEA registrants must maintain records with respect to NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, 1317 and § 1307.11. Current DEA registrants authorized to handle NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA shall have 30 calendar days from the effective date of this order to be in compliance with all recordkeeping requirements.

7. *Reports.* All DEA registrants who manufacture or distribute NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA must submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304 and 1312 as of July 10, 2018.

8. *Order Forms.* All DEA registrants who distribute NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of July 10, 2018.

9. *Importation and Exportation.* All importation and exportation of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA must be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312 as of July 10, 2018.

10. *Quota.* Only DEA registered manufacturers may manufacture NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of July 10, 2018.

11. *Liability.* Any activity involving NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA not authorized by, or in violation of the CSA, occurring as of July 10, 2018, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of the Administrative Procedure Act (APA) at 5 U.S.C. 553, do not apply to this temporary scheduling action. In the alternative, even assuming that this action might be subject to 5 U.S.C. 553, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Further, the DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the CRA, ''any rule for which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines.'' 5 U.S.C. 808(2). It is in the public interest to schedule these substances immediately to avoid an imminent hazard to the public safety. This temporary scheduling action is taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie 21 U.S.C. 811(h), that is, the DEA's need to move quickly to place these substances in schedule I because they pose an imminent hazard to the public safety, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, this order shall take effect immediately upon its publication. The DEA has submitted a copy of this temporary order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (h)(31) to (35) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(31) Naphthalen-1-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: NM2201; CBL2201) ..... (7221)
(32) *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5F-AB-PINACA) ..... (7025)
(33) 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA; SGT-78) ..... (7089)
(34) methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: MMB-CHMICA, AMB-CHMICA) ..... (7044)
(35) 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5F-CUMYL-P7AICA) ..... (7085)

Dated: June 30, 2018.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2018–14718 Filed 7–9–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0178]

RIN 1625–AA08

Special Local Regulation; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations for certain waters of the Choptank River. This action is necessary to provide for the safety of life on the navigable waters located in Cambridge, MD, during a power boat racing event on July 28, 2018, and July 29, 2018. This regulation prohibits persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander.

DATES: This rule is effective from 8:30 a.m. on July 28, 2018 through 6:30 p.m. on July 29, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0178 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@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 Information and Regulatory History

On February 18, 2018, The Kent Narrows Racing Association of Chester, MD, notified the Coast Guard that from 10 a.m. until 6 p.m. on July 28, 2018, and July 29, 2018, it will be conducting power boat races in the Choptank River in a cove located between Hambrooks Bar and the shoreline at Cambridge, MD. Details of the proposed event were provided to the Coast Guard at a meeting on April 10, 2018, where the sponsor changed the start time to 9 a.m. to allow for additional races. In response, on May 21, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulation; Choptank River, Cambridge, MD'' (83 FR 23395). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this high-speed power boat racing event. During the comment period that ended June 20, 2018, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the date of the event, it would be impracticable and contrary to the public interest to make the regulation effective 30 days after publication in the **Federal Register**. The regulation must be in place by June 28th in order to protect the public from the hazards associated with this power boat racing event. Therefore, the Coast Guard is making this rule effective immediately.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the power boat racing event will be a safety concern for anyone intending to participate in this event or for vessels that operate within specified waters of the Choptank River at Cambridge, MD. The purpose of this rule is to protect marine event participants, spectators and transiting vessels on specified waters of the Choptank River before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 21, 2018. There are no substantive changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation to be enforced from 8:30 a.m. until 6:30 p.m. on July 28, 2018 and July 29, 2018. The regulated area covers all navigable waters of the Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34′30″ N, longitude 076°04′16″ W; thence east to latitude 38°34′20″ N, longitude 076°03′46″ W; thence north across the Choptank River along the Senator Frederick C. Malkus, Jr. (US–50) Memorial Bridge, at mile 15.5, to latitude 38°35′30″ N, longitude 076°02′52″ W; thence west along the shoreline to latitude 38°35′38″ N, longitude 076°03′09″ W; thence north and west along the shoreline to latitude 38°36′42″ N, longitude 076°04′15″ W; thence southwest across the Choptank River to latitude 38°35′31″ N, longitude 076°04′57″ W terminating at the Hambrooks Bay breakwall. This rule provides additional information about designated areas within the regulated area, including a ''Race Area,'' ''Spectator Area'' and ''Buffer Zone,'' and the restrictions that apply to mariners. The duration and enforcement of the regulated area is intended to insure the safety of vessels and these navigable waters before, during, and after the scheduled 9 a.m. through 6 p.m. high-speed power boat racing event. Persons and vessels desiring to transit, moor, or anchor within the regulated area must obtain authorization from COTP Maryland-National Capital Region or Coast Guard Patrol

Commander (PATCOM). When authorized to transit the regulated area, all vessels must proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), 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 and duration of the regulated area. Vessel traffic will be able to safely transit through the regulated area, which will impact a small designated area of the Choptank River for 20 hours. The Coast Guard will issue a Broadcast Notice to Mariners via marine band radio VHF–FM channel 16 about the status of the regulated area. Moreover, the rule allows vessel operators to request permission to enter, remain within, or transit through the regulated area for the purpose of either safely entering the ''Spectator Area'' or transiting the regulated area at the minimum speed necessary to maintain a safe course that minimizes wake near the race course, and if deemed safe to do so by the PATCOM.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting for 20 hours. This category of marine event water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Memorandum for Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated under **ADDRESSES**.

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.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.501–T05–0178 to read as follows:

§ 100.501–T05–0178 Special Local Regulation; Choptank River, Cambridge, MD.

(a) *Definitions.* (1) *Captain of the Port Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or a Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

(3) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Spectator* means any person or vessel not registered with the event sponsor as a participant or an official patrol vessel.

(5) *Participant* means all persons and vessels registered with the event sponsor as participating in the Thunder on the Choptank event or otherwise designated by event sponsor as having a function tied to the event.

(b) *Regulated area.* All coordinates reference Datum NAD 1983.

(1) *Coordinates.* The following location is a regulated area: All navigable waters within the Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34′30″ N, longitude 076°04′16″ W; thence east to latitude 38°34′20″ N, longitude 076°03′46″ W; thence north across the Choptank River along the Senator Frederick C. Malkus, Jr. (US–50) Memorial Bridge, at mile 15.5, to latitude 38°35′30″ N, longitude 076°02′52″ W; thence west along the shoreline to latitude 38°35′38″ N, longitude 076°03′09″ W; thence north and west along the shoreline to latitude 38°36′42″ N, longitude 076°04′15″ W; thence southwest across the Choptank River to latitude 38°35′31″ N, longitude 076°04′57″ W terminating at the Hambrooks Bay breakwall.

(2) *Race area.* Located within the waters of Hambrooks Bay and Choptank River, between Hambrooks Bar and Great Marsh Point, MD.

(3) *Buffer zone.* All waters within Hambrooks Bay and Choptank River (with the exception of the Race Area designated by the marine event sponsor) bound to the north by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35′27.6″ N, longitude 076°04′50.1″ W, thence southeast to latitude 38°35′17.7″ N, longitude 076°04′29″ W, thence south to latitude 38°35′01″ N, longitude 076°04′29″ W, thence west to the shoreline at latitude 38°35′01″ N, longitude 076°04′41.3″ W.

(4) *Spectator area.* All waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, bounded by line that commences at latitude 38°35′27.6″ N, longitude 076°04′50.1″ W, thence northeast to latitude 38°35′30″ N, longitude 076°04′47″ W, thence southeast to latitude 38°35′23″ N, longitude 076°04′29″ W, thence southwest to latitude 38°35′19″ N, longitude 076°04′31″ W, thence northwest to and terminating at the point of origin.

(c) *Special local regulations.* (1) The Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(3) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant, at any time it is deemed necessary for the protection of life or property.

(4) The Race Area is an area within the regulated area defined in paragraph (b)(2) of this section. The actual placement of the race course will be determined by the marine event sponsor but must be located within the designated boundaries of the Race Area. Only participants and official patrol vessels are allowed to enter the Race Area.

(5) The Buffer Zone is an area that surrounds the perimeter of the Race Area within the regulated area defined in paragraph (b)(3) of this section. The purpose of a Buffer Zone is to minimize potential collision conflicts with participants and spectators or nearby transiting vessels. This area provides separation between the Race Area and Spectator Area or other vessels that are operating in the vicinity of the regulated area defined in paragraph (b)(1) of this section. Only participants and official patrol vessels are allowed to enter the Buffer Zone.

(6) The Spectator Area is an area described by a line bounded by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined in paragraph (b)(4) of this section. All vessels within the Spectator Area shall be anchored or operate at a no-wake speed while transiting within the Spectator Area.

(7) The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). Persons and vessels desiring to transit, moor, or anchor within the regulated area must obtain authorization from Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. The Captain of the Port Maryland-National Capital Region can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard Patrol Commander can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(8) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio.

(d) *Enforcement.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 8:30 a.m. until 6:30 p.m. on July 28, 2018, and from

8:30 a.m. until 6:30 p.m. on July 29, 2018.

Dated: July 3, 2018.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2018–14707 Filed 7–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0610]

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Atlantic City, NJ

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 US40–322 (Albany Avenue) Bridge across the New Jersey Intracoastal Waterway (NJICW) (Inside Thorofare), mile 70.0, at Atlantic City, NJ. The deviation is necessary to accommodate the free movement of pedestrians and vehicles during the 8th Annual Atlantic City Triathlon. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The deviation is effective from 6 a.m. to 1 p.m. on August 11, 2018.

ADDRESSES: The docket for this deviation, [USCG–2018–0610] 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. Martin Bridges, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6422, email *Martin.A.Bridges@uscg.mil.*

SUPPLMENTARY INFORMATION: The event director, DelMoSports, LLC, with approval from the New Jersey Department of Transportation, who owns and operates the US40–322 (Albany Avenue) Bridge across the NJICW (Inside Thorofare), mile 70.0, at Atlantic City, NJ, has requested a temporary deviation from the current operating regulations. This temporary deviation is necessary to accommodate the free movement of pedestrians and vehicles during the 8th Annual Atlantic City Triathlon. The bridge is a double bascule bridge and has a vertical clearance in the closed position of 10 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.733 (f). Under this temporary deviation, the bridge will be maintained in the closed-to-navigation position from 6 a.m. to 1 p.m. on August 11, 2018. The NJICW (Inside Thorofare) is used by recreational vessels. The Coast Guard has carefully coordinated the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impacts caused by the 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: July 3, 2018.

Hal R. Pittsn,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2018–14699 Filed 7–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0566]

Recurring Safety Zone; Steelers Fireworks, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Pittsburgh Steelers Fireworks to provide for the safety of persons, vessels, and the marine environment on the navigable waters of the Allegheny, Ohio, and Monongahela Rivers during this event. Our regulation for marine events within the Eighth Coast Guard District identifies the regulated area for this event in Pittsburgh, PA. During the enforcement periods, entry into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: The regulations in 33 CFR 165.801, Table 1, Line 57, will be enforced from 7 p.m. through 11 p.m. on August 19, 2018, September 30, 2018, and November 8, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone for the Steelers fireworks in 33 CFR 165.801, Table 1, Line 57, from 7 p.m. through 11 p.m. on each of three evenings on August 19, 2018, September 30, 2018, and November 8, 2018. This action is being taken to provide for the safety of persons, vessels, and the marine environment on the navigable waters of the Allegheny, Ohio, and Monongahela Rivers during this event. Our regulation for marine events within the Eighth Coast Guard District, § 165.801, specifies the location of the safety zone for the Steelers fireworks, which covers a less than one-mile stretch of the Ohio, Allegheny, and Monongahela Rivers. Entry into the safety zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the area must request permission from the COTP or a designated representative. They can be reached on VHF FM channel 16. If permission is granted, all persons and vessel shall comply with the instructions of the COTP or designated representative.

In addition to this notice of enforcement in the **Federal Register**, the COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), Marine Safety Information Bulletins (MSIBs), and/or through other means of public notice as appropriate at least 24 hours in advance of each enforcement.

Dated: July 5, 2018.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2018–14708 Filed 7–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0515]

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone—Chicago Air and Water Show

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Chicago Air and Water Show on a portion of Lake Michigan, from August 16, 2018 through August 19, 2018. This action is intended to ensure the safety of life on the navigable waterway immediately before, during, and after this event. During the enforcement period listed below, no vessel may transit this safety zone without approval from the Captain of the Port Lake Michigan or a designated representative.

DATES: The regulations in 33 CFR 165.929 will be enforced for the location listed in item (f)(9) in Table 165.929 to 33 CFR 165.929 from 11 a.m. until 4 p.m. on August 16, 2018; and from 8 a.m. to 4 p.m. from August 17, 2018 through August 19, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT John Ramos, Waterways Management Division, Marine Safety Unit Chicago, at 630–986–2155, email address *D09-DG-MSUChicago-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Air and Water Show listed as item (f)(9) in Table 165.929 of 33 CFR 165.929. Section 165.929 lists many annual events requiring safety zones in the Captain of the Port Lake Michigan zone. This safety zone encompasses all waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from 41°55.900′ N at the shoreline, then east to 41°55.900′ N, 087°37.200′ W, then southeast to 41°54.000′ N, 087°36.000′ W, then southwestward to the northeast corner of the Jardine Water Filtration Plant, then due west to the shore. This safety zone will be enforced from August 16, 2018 through August 19, 2018, from 11 a.m. until 4 p.m. on August 16, 2018; and from 8 a.m. to 4 p.m. from August 17, 2018 through August 19, 2018.

All vessels must obtain permission from the Captain of the Port Lake Michigan, or his or her designated on-scene representative to enter, move within, or exit this safety zone during the enforcement times listed in this notice of enforcement. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case-by-case basis. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Lake Michigan, or his or her on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.929, Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone, and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via VHF Channel 16 or (414) 747–7182.

Dated: June 13, 2018.

Thomas J. Stuhlreyer,

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

[FR Doc. 2018–14758 Filed 7–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0464]

Safety Zone; Ohio Street Beach Swim Course, Chicago Harbor, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone on Lake Michigan in Chicago Harbor, near the Ohio Street Beach in Chicago, IL on July 21, 2018. This action is necessary and intended to ensure the safety of life and property on navigable waters prior to, during, and immediately after this annual swim event. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: The regulation in 33 CFR 165.932 will be enforced from 6 a.m. through 11 a.m. on July 21, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT John Ramos, Waterways Management Division, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986–2155, email *D09-DG-MSUChicago-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Safety Zone; Ohio Street Beach Swim Course, Chicago Harbor, Chicago, IL listed in 33 CFR 165.932 from 6 a.m. through 11 a.m. on July 21, 2018 for an annual swim event. This safety zone encompasses all waters bound by a line drawn from 41°53.7767′ N, 087°36.48′ W then North to 41°53.9517′ N, 087°36.505′ W then Northwest to 41°54.1533′ N, 087°36.6933′ W then Southwest to 41°54.065′ N, 087°37.1517′ W then Southeast to 41°53.6033′ N, 087°36.8333′ W then East to 41°53.6317′ N, 087°36.7017′ W and then along the shoreline back to the point of origin (NAD83). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.931 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this safety zone via Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via Channel 16, VHF–FM or at (414) 747–7182.

Dated: June 20, 2018.

Thomas J. Stuhlreyer,

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

[FR Doc. 2018–14759 Filed 7–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0504]

RIN 1625–AA00

Safety Zone; Lake Michigan, North Avenue Beach, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Michigan near North Avenue Beach in Chicago, IL. This temporary safety zone is necessary to protect spectators, participants, and vessels from potential hazards associated with a jetpack demonstration. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: This rule is effective from 5 p.m. on July 19, 2018 through 12:50 p.m. on July 20, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0504 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT John Ramos, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986–2155, or email *D09-DG-MSUChicago-Waterways@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 Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this jetpack demonstration in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. A jetpack demonstration will be conducted at North Avenue Beach in Chicago, IL on July 19 from 5 p.m. through 6:15 p.m. on July 19, 2018; with a rain date of July 20, 2018 from 11:45 a.m. to 12:50 p.m. The COTP has determined that the potential hazards associated with the jetpack demonstration pose a significant risk to public safety and property. Specifically, hazards include potential for collision with spectators, fires and/or explosions from mechanical malfunctions. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the jetpack demonstration takes place.

IV. Discussion of the Rule

This rule establishes a safety zone from 5 p.m. through 6:15 p.m. on July 19, 2018; with a rain date of July 20, 2018 from 11:45 a.m. through 12:50 p.m. The safety zone will encompass all navigable waters of Lake Michigan near North Avenue Beach, bounded by a line drawn from the shore at 41°55.008 N, 087°37.564 W, then northeast to 41°55.068 N, 087°37.480 W, then southeast to 41°54.899 N, 087°37.151 W, then southwest back to the shore at 41°54.826 N, 087°37.214 W. The duration of the zone is intended to protect personnel and vessels in these navigable waters during the jet pack demonstration. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16 or at (414) 747–7182.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced on one day from 5 p.m. through 6:15 p.m. on July 19, 2018; with a rain date of July 20, 2018 from 11:45 a.m. through 12:50 p.m. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port Lake Michigan.

B. Impact on Small Entities

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

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we will issue local Broadcast Notice to Mariners and Local Notice to Mariners so vessel owners and operators can plan accordingly.

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

compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone on Lake Michigan near North Avenue Beach in Chicago, IL that will last between one and two hours and will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T09–0504 to read as follows:

§ 165.T09–0504 Safety Zone; Lake Michigan, North Avenue Beach, Chicago, IL.

(a) *Location.* All navigable waters of Lake Michigan near North Avenue Beach, bounded by a line drawn from the shore at 41°55.008 N, 087°37.564 W, then northeast to 41°55.068 N, 087°37.480 W, then southeast to 41°54.899 N, 087°37.151 W, then southwest back to the shore at 41°54.826 N, 087°37.214 W.

(b) *Enforcement period.* This regulation will be enforced from 5 p.m. through 6:15 p.m. on July 19, 2018; with a rain date of July 20, 2018 from 11:45 a.m. through 12:50 p.m.

(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 Lake Michigan or a 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 Lake Michigan or a designated on-scene representative.

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

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16 or at (414) 747–7182. 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 Lake Michigan, or an on-scene representative.

Dated: June 18, 2018.

Thomas J. Stuhlreyer,

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

[FR Doc. 2018–14760 Filed 7–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0634]

RIN 1625–AA00

Safety Zone; Barge PFE–LB444, San Joaquin River, Blackslough Landing, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the San Joaquin River due to an unstable, partially submerged barge with hull number PFE–LB444. The temporary safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the barge and associated recovery efforts. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Francisco.

DATES: This rule is effective without actual notice from July 10, 2018 until July 31, 2018. For the purposes of enforcement, actual notice will be used from the July 3, 2018 until July 10, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0634 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Emily K. Rowan, U.S. Coast Guard Sector San Francisco; telephone 415–399–7443, email *emily.k.rowan@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 Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because of the emergent nature of the situation. Notice and comment procedures would be impracticable because immediate action is needed protect personnel, vessels, and the marine environment from potential hazards associated with the barge and associated recovery efforts.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the reasons stated above, delaying the effective date of the rule would be impracticable.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones. The Captain of the Port San Francisco (COTP) has determined that potential hazards associated with the barge and associated recovery efforts will be a safety concern for anyone within a 90-yard radius of the barge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from July 3, 2018 through July 31, 2018. The safety zone will cover all navigable waters within 90 yards of the unstable barge and associated recovery efforts centered in approximate position 37° 59′41.88″ N, 121° 25′8.88″ W (NAD 83). The effect of the temporary safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters from potential hazards associated with the barge and associated recovery efforts. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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 rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of these safety zones via Broadcast Notice to Mariners.

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zone of limited size and duration. It is categorically excluded from further review under Categorical Exclusion L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T11–936 to read as follows:

§ 165.T11–936 Safety Zone; Barge PFE–LB444, San Joaquin River, Blackslough Landing, CA.

(a) *Location.* The following area is a safety zone: all navigable waters within 90 yards of the unstable, partially submerged barge and associated recovery efforts centered in approximate position 37°59′ 41.88″ N, 121°25′8.88″ W (NAD 83).

(b) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced from July 3, 2018 through July 31, 2018. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which these zones will be enforced via Broadcast Notice to Mariners in accordance with § 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in subpart C of this part, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

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

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zones on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: July 3, 2018.

Anthony J. Ceraolo,

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

[FR Doc. 2018–14739 Filed 7–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0630]

RIN 1625–AA00

Safety Zone; Hamburg Beach Blast Fireworks Display; Lake Erie, Hamburg, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 280-foot radius of the launch site located at Hamburg Beach, Hamburg, NY. This safety zone is intended to restrict vessels from portions of Lake Erie

during the Hamburg Beach Blast fireworks display. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo.

DATES: This rule is effective from 9:45 p.m. until 10:45 p.m. on July 28, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0630 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Michael Collet, Chief Waterways Management Division, U.S. Coast Guard; 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
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NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor did not submit notice to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels form the hazards associated with a fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the rule's objectives of enhancing safety of life on the navigable waters and protection of persons and vessels in vicinity of the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Buffalo (COTP) has determined that a fireworks display presents significant risks to the public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display takes place.

IV. Discussion of the Rule

This rule establishes a safety zone on July 28, 2018, from 9:45 p.m. until 10:45 p.m. The safety zone will encompass all waters of Lake Erie; Hamburg, NY contained within 280-foot radius of: 42°45′59.21″ N, 078°52′41.51″ W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the conclusion that this rule is not a significant regulatory action. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 rule will not have a significant economic impact on a substantial number of small entities.

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–

888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule establishes a temporary safety zone. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T09–0630 to read as follows:

§ 165.T09–0630 Safety Zone; Hamburg Beach Blast Fireworks Display; Lake Erie, Hamburg, NY.

(a) *Location.* The safety zone will encompass all waters of Lake Erie; Hamburg, NY contained within a 280-foot radius of: 42°45′59.21″ N, 078°52′41.51″ W.

(b) *Enforcement period.* This regulation will be enforced from 9:45 p.m. until 10:45 p.m. on July 28, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, 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: July 5, 2018.

Joseph S. Dufresne,

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

[FR Doc. 2018–14740 Filed 7–9–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0227; FRL–9978–15]

Pyroxsulam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends existing tolerances for residues of pyroxsulam in or on teff forage, teff grain, teff hay, and teff straw. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 10, 2018. Objections and requests for hearings must be received on or before September 10, 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–2017–0227, 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–2017–0227 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 September 10, 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–2017–0227, 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 October 23, 2017 (82 FR 49020) (FRL–9967–37), 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 7E8551) by IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide pyroxsulam, N-(5,7-dimethoxy[1,2,4]triazolo[1,5-a]pyrimidin-2-yl)-2-methoxy-4-(trifluoromethyl)-3-pyridinesulfonamide in or on the raw agricultural commodities teff, forage at 0.06 ppm; teff, grain at 0.01 ppm; teff, straw at 0.03 ppm; and teff, hay at 0.01 ppm. That document referenced a summary of the petition prepared by Dow Agrosciences, the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing but was related to the impact of wind turbines on bats and therefore not relevant to this action.

In between the submission of the petition and the publication of this document, tolerances were established in the **Federal Register** of July 5, 2017 (82 FR 30987) (FRL–9962–60) for residues in teff forage, teff grain, teff hay, and teff straw at the levels requested in this petition to cover residues of pyroxsulam in or on imports of those commodities since there was no domestic registration for that use at the time.

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 consistent with FFDCA section 408(b)(2).

In the **Federal Register** of July 5, 2017 (82 FR 30987), EPA established tolerances for residues of pyroxsulam in or on teff forage, teff grain, teff hay, and teff straw at the same levels as those requested in this action. Because there was no domestic use of pyroxsulam registered on those commodities at the time, the tolerances included a footnote noting the lack of U.S. registrations for use of pyroxsulam on teff. Due to changes in the status of domestic registrations for use of pyroxsulam in or on teff, this footnote is no longer accurate and needs to be removed.

The U.S. registration of teff on pyroxsulam does not change the Agency's previous conclusions about drinking water exposure or residential exposure; therefore, the previous aggregate risk assessment supports the amendment of the teff tolerances. Based on this assessment of potential exposure

from use of pyroxsulam on teff and the findings supporting the July 5, 2017 tolerances established for teff commodities, 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 pyroxsulam residues.

For a detailed discussion of the aggregate risk assessments and determination of safety for the proposed tolerances, please refer to the July 5, 2017 **Federal Register** document and its supporting documents available at *http://www.regulations.gov* in docket ID numbers EPA–HQ–OPP–2006–0785 and EPA–HQ–OPP–2017–0227.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology, Method GRM 04.17, a liquid chromatography with tandem mass spectrometry (LC/MS/MS) method, is available to enforce the tolerance expression.

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 not established a MRL for pyroxsulam.

V. Conclusion

Therefore, the tolerances for teff commodities in 40 CFR 180.638 are amended by removing the footnote stating ''There are no U.S. registrations on teff as of May 8, 2017''.

VI. Statutory and Executive Order Reviews

This action modifies 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 tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 15, 2018.

Michael 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. In § 180.638, revise the table in paragraph (a) to read as follows:

§ 180.638 Pyroxsulam; tolerances for residues.

(a) * * *

Commodity	Parts per million
Teff, forage	0.06
Teff, grain	0.01
Teff, hay	0.01
Teff, straw	0.03
Wheat, forage	0.06
Wheat, grain	0.01
Wheat, hay	0.01
Wheat, straw	0.03

* * * * *

[FR Doc. 2018–14735 Filed 7–9–18; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 83, No. 132
Tuesday, July 10, 2018

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

DEPARTMENT OF THE TREASURY

Office of Financial Research

12 CFR Part 1610

RIN 1505–AC58

Ongoing Data Collection of Centrally Cleared Transactions in the U.S. Repurchase Agreement Market

AGENCY: Office of Financial Research, Treasury.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of the Treasury's Office of Financial Research (the ''Office'') is requesting comment on a proposed rule establishing a data collection covering centrally cleared transactions in the U.S. repurchase agreement market. This proposed collection will require daily reporting to the Office by covered central counterparties. The Office expects that the Board of Governors of the Federal Reserve System will act as the Office's collection agent, with required data to be submitted directly to the Federal Reserve Bank of New York. The collected data will be used to support the Financial Stability Oversight Council and as inputs to reference rates.

DATES: Comments must be received by September 10, 2018.

ADDRESSES: You may submit comments, identified by [RIN 1505–AC58], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Matthew Reed, Chief Counsel, or Patrick Bittner, Senior Counsel, Office of the Chief Counsel, Office of Financial Research, 717 14th Street NW, Washington, DC 20220.

Instructions: All submissions received must include the agency name and RIN 1505–AC58 for this rulemaking. Because paper mail in the Washington, DC, area may be subject to delay, it is recommended that comments be submitted electronically. In general, all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Patrick Bittner, Senior Counsel, (202) 927–0035, *patrick.bittner@ofr.treasury.gov;* Matthew McCormick, Research Economist, (202) 927–8215, *matthew.mccormick@ofr.treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Repurchase Agreement Market Background
  a. Importance of Repurchase Agreement Markets and Associated Vulnerabilities
  i. Low-Risk Option for Cash Investment/Deposit Substitute
  ii. Monetizing Liquid Assets
  iii. Transformation of Collateral
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  c. Data Available on U.S. Repurchase Agreement Activity
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IV. Justification for Proposed Collection
  a. Collection of Centrally Cleared Repurchase Agreement Data
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  b. Uses of the Data Collection
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V. Collection Design
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  c. Submission Process and Implementation
VI. Administrative Law Matters
  a. Paperwork Reduction Act
  b. Regulatory Flexibility Act
  c. Plain Language

I. Executive Summary

The Office of Financial Research (''Office'') is requesting comment on a proposed rule establishing a data collection covering centrally cleared transactions in the U.S. repurchase agreement market (''proposed collection''). This proposed collection will require reporting by certain U.S. central counterparties (''CCPs'') for repurchase agreement (''repo'') transactions. This proposed collection will serve two primary purposes: (1) Enhance the ability of the Financial Stability Oversight Council (''Council'') and the Office to identify and monitor risks to financial stability; and (2) support the calculation of certain reference rates. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), the Office is authorized to issue rules and regulations in order to collect and standardize data to support the Council in fulfilling its duties and purposes, such as identifying risks to U.S. financial stability. The Council recommended a permanent collection of repo data in its 2016 annual report to Congress and, as required by law, the Office consulted with the Council on the schedule of collection in September 2016.[1] The Council maintained this recommendation in its 2017 annual report. This proposed collection will require reporting on centrally cleared repo transactions, which comprise approximately one-quarter of all repo market transactions, marking an important step toward fully addressing the Council recommendation.

The expanded monitoring of the repo market made possible by this proposed collection appropriately helps fulfill the Council's duties and purposes because of this market's crucial role in providing short-term funding and performing other functions for U.S. markets, making it important for financial stability monitoring. The data will also support the calculation of the Secured Overnight Funding Rate (''SOFR''), which was selected by the Alternative Reference Rates Committee (''ARRC'') as its preferred alternative rate to U.S. dollar London Interbank Offered Rate (''LIBOR''), as well as the Broad General Collateral Rate (''BGCR''), helping fulfill

[1] *See* Minutes of the Financial Stability Oversight Council (September 22, 2016), *https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/September222016_minutes.pdf* and 12 U.S.C. § 5344(b)(1)(B)(iii).

another Council recommendation on the creation of alternative reference rates.[2]

II. Repurchase Agreement Market Background

A repo transaction is the sale of assets, combined with an agreement to repurchase the assets on a specified future date at a prearranged price. Repos are commonly used as a form of secured borrowing. The assets underlying the repo are used as collateral to protect the cash provider against the risk that the securities provider fails to repurchase the assets underlying the repurchase agreement. Market participants use repos for many reasons, such as using cash as collateral to borrow securities and to finance securities holdings. Central banks also use repos as an important monetary policy tool.[3] The interest rate on repo borrowing is calculated from the difference between the sale price and the repurchase price of the assets underlying the repo.

To protect the cash provider against a decline in the value of the securities subject to repurchase, cash providers typically require over-collateralization from borrowers. In an uncleared bilateral repo, the value of the securities pledged as collateral is discounted, which is referred to as a haircut. In a centrally cleared repo, overcollateralization is accomplished via initial margin. If the market value of the collateral falls during the life of the repo, the cash provider or, if cleared, the clearing firm, has the right to call on its counterparty to deliver additional collateral, known as variation margin, so that the loan remains over-collateralized against future adverse price movements.

Repo transaction documentation specifies the terms, including the types of securities that are acceptable to the cash provider as collateral, and the associated haircuts or initial margin requirements. Repos can be entered into with a range of fixed maturities, though repos are often overnight transactions. For term repos, repo rates can be negotiated on either a fixed or on a floating basis. There are also open tenor repos that do not have a fixed maturity and are instead renewed by mutual agreement.

a. Importance of Repurchase Agreement Markets and Associated Vulnerabilities

A stable and well-functioning repo market is critical to U.S. financial markets and the U.S. economy, and thus U.S. financial stability. The repo market is the largest short-term wholesale funding market in the United States. In 2008–09, runs on repos contributed to the financial crisis and helped lead to official sector intervention.[4] The repo market is important to facilitating the flow of cash and securities through the financial system. There are four functions that repo transactions can serve for individual participants: Low-risk cash investment, monetization of assets, transformation of collateral, and facilitation of hedging.[5] Repos also benefit financial markets broadly by supporting secondary market efficiency and liquidity.[6] These functions are described in the following paragraphs to provide a framework for understanding activity in the repo market and the associated vulnerabilities, and the need for the information this proposed collection will provide. Understanding the benefits and vulnerabilities of the repo market as a whole is important both in demonstrating the need for this proposed collection and determining which data elements are appropriate for inclusion.

i. Low-Risk Option for Cash Investment; Deposit Substitute

One of the functions repos offer is an alternative to insured deposits that provides similar, though less, liquidity and security. Financial market participants desire low-risk, money-like claims in order to meet demand for access to cash. Money and money-like claims can take a number of forms, including deposits and money market mutual fund investments. Because deposit insurance is capped in the United States, institutions seek repos backed by high-quality assets to place excess cash over the deposit insurance limit. The securities provided in the trade protect the cash provider against counterparty credit risk, while use of overcollateralization provides protection against market risk.[7] In general, higher-quality collateral and larger haircuts reduce the risk to the cash provider.

Repo markets can become less effective in providing deposit substitutes in times of market stress.[8] In certain circumstances, although repo claims are secured, they may still lose favor as collateral values drop or counterparty risk increases. This risk was realized for Bear Stearns in 2008, when a run on Bear Stearns' funding spread to its repo borrowing against high-quality collateral.[9] This example demonstrates that even repos backed by high-quality collateral can become sensitive to counterparty risk, potentially resulting in a run on the institution's funding.

ii. Monetizing Liquid Assets

Just as repos offer cash providers a deposit substitute, they allow cash borrowers to obtain funding in a cost-efficient manner. The monetization of assets achieved via repos offers a source of liquidity to firms that hold securities in inventory. For this reason, repos play an important role in the government securities market, as dealers often use repos to fund their purchases of Treasury securities at auction.

The ability to monetize assets enables firms to engage in maturity transformation, in which a firm funds long-term assets using short-term liabilities. For example, a firm can borrow cash in the repo market with overnight maturity, using the cash

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[2] *See* Financial Stability Oversight Council, *2014 Annual Report,* p. 10; *2015 Annual Report,* p. 17; *2016 Annual Report,* pp. 14–15; and *2017 Annual Report,* pp. 12–13, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Pages/2017-Annual-Report.aspx.*

[3] *See* Lorie K. Logan, Federal Reserve Bank of New York, ''Operational Perspectives on Monetary Policy Implementation: Panel Remarks on 'The Future of the Central Bank Balance Sheet' '' (2018), *https://www.newyorkfed.org/newsevents/speeches/2018/log180504.*

[4] *See* Gary Gorton and Andrew Metrick, ''Securitized Banking and the Run on Repo,'' *Journal of Financial Economics* (June 2012), pp, p. 425–451.

[5] *See* Bank for International Settlements, study group report, Repo Market Functioning (April 2017), *https://www.bis.org/publ/cgfs59.htm.*

[6] *See* Bank for International Settlements (April 2017).

[7] Repos are generally subject to an exemption from the automatic stay in bankruptcy, meaning that if a cash provider's counterparty were to default, the cash provider could liquidate the collateral, recovering its value. 11 U.S.C. 559. In 2017, the Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation adopted a final rule requiring U.S. global systemically important banks (G–SIBs) and their subsidiaries to amend their repo contracts to temporarily stay the exercise of default rights caused by the bankruptcy of an affiliate. *See* 82 FR 42882 (September 12, 2017).

[8] For example, greater demand for high-quality assets makes them more difficult to procure, which can lead to failures to return the repo collateral. This phenomenon can become self-perpetuating, as when failures rise, market participants become less likely to lend securities to avoid the possibility that they may not get them back. This further reduces the supply of securities, exacerbating the situation. As a result, an initial shock to asset markets that reduces the supply of acceptable alternatives to cash providers can be amplified through repo market dynamics, further reducing firms' options for deposit substitutes due to rising transaction fails.

[9] The maturity of Bear Stearns' repo funding deteriorated over several months before the firm experienced a run that first occurred on its bilateral repos secured by lower-quality assets, and then spread to its repos backed by U.S. Treasury securities. A similar dynamic occurred at a major European bank during the crisis, where the institution's bilateral repos backed by government securities dried up and only repos that were centrally cleared remained available to the firm. *See* Bank for International Settlements, Liqudity Stress Testing: A Survey of Theory, Empirics and Current Industry and Supervisory Practices (October 2013), *https://www.bis.org/publ/bcbs_wp24.htm.*

received to fund its holdings of long-term assets, which it provides as collateral. While maturity transformation is an essential function of the financial system, the asset-liability maturity mismatch gives rise to rollover risk.

As a result of the maturity mismatch that can arise from the monetization of liquid assets, this function, while a benefit of repos, is also a potential source of fragility. When the repo market is impaired, the ability of securities providers to borrow against their portfolios can be reduced.[10] An example of this dynamic occurred in 2007, when haircuts on repos backed by private-label mortgage-backed securities (''MBS'') began to rise as a result of doubts about the value of the underlying collateral. As haircuts rose, leveraged firms were forced to sell difficult-to-value assets, often to buyers that were even less able to value the assets. Those buyers required steeper discounts as a result, creating strong fire sale dynamics that further undermined the value of private-label MBS.[11] These runs passed through from dealers to leveraged funds, increasing the likelihood that those funds would be forced to dispose of assets in a fire sale, further reinforcing the fire sale dynamics.[12]

iii. Transformation of Collateral

Another function of repos is to exchange securities currently held for other securities. This type of transaction allows firms to exchange one asset for another asset, effecting a form of collateral transformation. For example, a firm may want to temporarily exchange lower-quality equity collateral for higher-quality Treasury securities that can be posted as margin. This goal can be accomplished through a pair of repo transactions in which the firm lends the equities in one repo transaction and uses the cash proceeds to borrow Treasury securities in a second repo transaction, effectively transforming the quality of its assets.[13]

Because high-quality collateral can become scarce in times of stress, risks can increase for leveraged firms that rely on repos to obtain margin-eligible securities. Potential difficulties in obtaining high-quality collateral during large market movements that trigger margin increases illustrate how collateral transformation transactions can compound risks. For leveraged firms that engage in strategies in both cash and derivatives markets, the inability to obtain collateral to post margin could undermine their ability to maintain a hedged position, and could force a disorderly unwind. This use of repos can therefore create linkages that can enable the propagation of shocks through securities financing, derivatives, and securities markets.

iv. Facilitating Hedging

Repos can be used as a lower-cost way to hedge specific risks than individually buying and selling assets. For example, by allowing underwriters to borrow and short an issuer's outstanding securities, repo markets let underwriters hedge the risk associated with holding newly issued securities that they have underwritten but not yet placed. This decreases the risk to underwriters and may reduce the cost to issuers. The reduced capacity of the repo market to facilitate hedging during periods of market stress can therefore make it more difficult for firms to manage exposures and engage in financial intermediation.

v. Supporting Secondary Market Efficiency and Liquidity

This final function of repos refers to their potential benefits for financial markets as a whole. Repo markets support secondary market efficiency and liquidity in securities markets both by funding dealer inventories and by helping dealers to source securities. Both allow dealers to quote prices on a broader range of securities more readily, thereby increasing asset market liquidity. Additionally, the ability of market participants to use repos to obtain securities for short sales improves pricing efficiency.

Repos allow dealers to quote prices more readily, improving market liquidity in two ways. First, because the repo market helps dealers to more effectively monetize assets on their balance sheet,[14] dealers are able to maintain larger inventories at a lower cost, which may allow them to quote prices on (*i.e.,* offer to sell) a larger volume or wider array of securities. Second, by enabling dealers to borrow securities on a short-term basis, repo markets allow dealers to quote prices for securities they do not currently hold in inventory but know they can access—a virtual inventory. Without repos, a dealer would have to maintain larger inventories at increased capital costs to make markets, adding to costs for the dealer and, by extension, issuers and investors. Thus, repo markets are critical to dealer trading and supporting market efficiency and liquidity.

The secondary market efficiency and liquidity provided by repos depend on a funding market with relatively stable collateral values. Repos create a tight coupling between funding liquidity and market liquidity. This can create a situation where a negative shock to the value of assets in dealers' portfolios reduces their ability to fund those portfolios. That reduces market liquidity, which can further reduce dealers' ability to fund their portfolios. Market liquidity provided by repos reinforces and is reinforced by the funding liquidity available to traders. Shocks to either market liquidity or funding liquidity can negatively affect both, potentially leading to liquidity spirals.[15] In extreme scenarios, liquidity spirals can manifest as fire sales in which firms are forced to deleverage with no ready buyers. That may cause prices to plummet below assets' fundamental value, which, in turn, may force further deleveraging.

b. Structure of the U.S. Repurchase Agreement Market

In the United States, repos are often described as occurring in either the tri-party or bilateral market. However, a more precise way of describing the segments of the U.S. repo market is to distinguish between transactions that are settled on the books of tri-party custodian banks, and repos that are settled on a delivery-versus-payment (''DVP'') basis. There are two market segments that rely on tri-party custodian banks for settlement. First, there is a non-centrally cleared segment, traditionally referred to as ''tri-party repo.'' Second, there is a centrally cleared segment, consisting of the

[10] This can occur when some securities become information-sensitive. Because cash providers seek to avoid gathering costly information about the quality of individual securities, increases in uncertainty as to the value of securities cause them to increase asset class-level haircuts in an attempt to recover their information-insensitivity. This reduces the ability of securities providers to borrow in repo against their portfolios. *See* Gary Gorton and Guillermo Ordoñez, ''Collateral Crises,'' *American Economic Review,* Vol. 104, no. 2 (February 2014), *https://www.aeaweb.org/articles?id=10.1257/aer.104.2.343.*

[11] *See* Gary B. Gorton, ''Information, Liquidity, and the (Ongoing) Panic of 2007,'' NBER Working Paper no. 14649 (January 2009), *http://www.nber.org/papers/w14649.*

[12] *See* Rajkamal Iyer and Marco Macchiavelli, ''Primary Dealers' Behavior During the 2007–08 Crisis: Part II, Intermediation and Deleveraging,'' *FEDS Notes* (June 28, 2017), *https://www.federalreserve.gov/econres/notes/feds-notes/primary-dealers-behavior-during-the-2007-08-crisis-part-II-intermediation-and-deleveraging-20170628.htm.*

[13] This approach is of particular importance to firms that hold lower-quality assets and engage in trades in, for example, derivatives, where higher-quality assets are required for margining.

[14] *See* Section II.A.ii, Repurchase Agreement Background, Monetizing Liquid Assets.

[15] *See* Markus K. Brunnermeier and Lasse Heje Pedersen, ''Market Liquidity and Funding Liquidity,'' *The Review of Financial Studies,* Vol. 22, no. 6 (June 2009), *https://doi.org/10.1093/rfs/hhn098.*

General Collateral Financial Repurchase Agreement service (''GCF Repo''), that provides trade matching and netting services on general collateral repos. DVP transactions also occur in two segments: Centrally cleared DVP repos; and uncleared DVP repos, typically referred to as bilateral repos, which involve two parties contracting directly without a central counterparty.

In tri-party repo, settlement occurs through a bank that provides collateral valuation, margining, and management services. The settlement bank provides back-office support to both parties in the trade by settling the repo on its books and confirming the terms of the repo, such as eligible collateral and haircuts, are met.[16] Agreements in tri-party repo are between specified counterparties and are made on a general collateral basis. In general collateral transactions, cash providers accept classes of securities at set haircuts rather than specific securities.

In GCF Repo, qualified members of the Fixed Income Clearing Corporation (''FICC'') Government Securities Division can trade repos on a general collateral basis without revealing their identities to counterparties. FICC, a subsidiary of the Depository Trust & Clearing Corporation (''DTCC''), provides the GCF Repo service. GCF Repo-eligible collateral consists of government and agency securities eligible for settlement via Fedwire, the Federal Reserve's payment and settlement system.[17] FICC acts as a CCP for participating members. Interposing a common counterparty for all transactions allows broker-dealers to limit counterparty risk and provides netting benefits. Transacting in GCF Repo is efficient because participants do not have to assign collateral for each specific trade; instead, collateral held at a tri-party clearing bank is allocated to net positions at the end of the day. The elimination of trade-by-trade DVP delivery requirements reduces participants' operational costs. The GCF Repo service recently was expanded to include Centrally Cleared Institutional Triparty (''CCIT''), a channel through which institutional counterparties (other than investment companies registered under the Investment Company Act of 1940, as amended [18]) can participate as cash providers in GCF Repo on a specified counterparty basis. This new service may lead to a tighter coupling between the GCF Repo and tri-party repo market segments, because it enables tri-party lenders that previously could not participate in the GCF repo market to lend directly to a cash borrower in the GCF repo market.

Outside the tri-party custodian banks, FICC operates the DVP Service as an additional repo platform for qualified members of its Government Securities Division.[19] Through this platform, bilateral repo transactions are novated to FICC, which then acts as a central counterparty to the transactions.[20] This platform provides settlement netting for legs of repo transactions occurring after the initial date of the agreement. Participants execute bilateral repos with other FICC members and submit security-specific trades for matching, comparison, and settlement. While some of these trades are negotiated on a general collateral basis, their settlement occurs on a specific-security basis.

Finally, there are uncleared bilateral repos, in which counterparties negotiate repo transactions directly with one another. A firm engaging in uncleared bilateral repos must manage the collateral flow, processing, settlement, valuation, and margining itself.

Analysis of data on primary dealer positions suggests that dealers act as cash providers in $3.0 trillion of bilateral repos, including those conducted through the DVP Service.[21]

c. Data Available on U.S. Repurchase Agreement Activity

While some members of the Council have access to certain data about the repo market, the data are insufficient to draw a complete picture of U.S. repo market activity and the associated vulnerabilities. As the financial crisis demonstrated, high-quality information is one of the best tools for identifying the build-up of risk. While improvements have been made, a full picture of all segments of the U.S. repo market is still largely unavailable. This proposed collection will cover certain centrally cleared repo transactions, allowing the Office to gather data on a mandatory basis on what it estimates to be approximately one-quarter of the U.S. repo market.[22] While this proposed collection will not yet provide a full picture of the entire U.S. repo market, when taken together with information collected about other types of repos by other regulators, discussed below, this proposed collection will enable access to transactional data on approximately half of U.S. repo market activity.

i. Tri-Party Repurchase Agreements

The Board of Governors of the Federal Reserve System (''Federal Reserve Board''), through the Federal Reserve Bank of New York (''FRBNY''), supervises the two tri-party custodian banks and, on a mandatory basis pursuant to its supervisory authority, collects daily data on transactions in these markets.[23] The data include information on: The interest rate; the counterparties; the collateral pledged; the type of transaction; the transaction initiation date; the transaction effective date; the transaction maturity date; whether the transaction is open-ended; the value of the funds borrowed; whether the transaction includes an option; and, if the transaction includes an option (*e.g.,* the ability to extend or terminate early), the minimum notice period required to exercise it.[24] Additionally, the FRBNY makes some aggregated data on tri-party repo publicly available. As of April 2018, daily tri-party repo volumes totaled about $1.8 trillion.[25]

ii. Centrally Cleared General Collateral Repurchase Agreements

A centrally cleared general collateral repo is a transaction that is cleared by

[16] Additionally, the settlement bank acts as custodian for the securities held as collateral and allocates collateral to trades at the close of the business day. This ensures that the party receiving securities receives the correct asset class, value, and haircut, while confirming that any newly posted collateral substituted during the life of the transaction meets the cash provider's collateral requirements.

[17] *See* Paul Agueci, Leyla Alkan, Adam Copeland, Isaac Davis, Antoine Martin, Kate Pingitore, Caroline Prugar, and Tyisha Rivas, ''A Primer on the GCF Repo® Service,'' *Federal Reserve Bank of New York Staff Reports* no. 671 (2014), *https://www.newyorkfed.org/research/staff_reports/sr671.html.*

[18] 15 U.S.C. 80a–1 *et seq.*

[19] *See* David Bowman, Joshua Louria, Matthew McCormick, and Mary-Frances Styczynski, ''The Cleared Bilateral Repo Market and Proposed Repo Benchmark Rates,'' *FEDS Notes* (February 27, 2017), *https://doi.org/10.17016/2380-7172.1940.*

[20] Novation in this context refers to the process by which the clearinghouse becomes the counterparty to both of the participants to the transaction. Novation is the substitution or swap of two parties in a contractual agreement., according to Black's Law Dictionary (10th ed., 2014).

[21] *See* Viktoria Baklanova, Cecilia Caglio, Marco Cipriani, and Adam Copeland, ''The U.S. Bilateral Repo Market: Lessons from a New Survey,'' OFR Brief Series no. 16–01 (January 13, 2016), *https://www.financialresearch.gov/briefs/files/OFRbr-2016-01_US-Bilateral-Repo-Market-Lessons-from-Survey.pdf.*

[22] As measured by U.S. dollar volume.

[23] Bank of New York Mellon (''BNYM'') and JPMorgan Chase (''JPMC'') currently serve as the two clearing banks in the tri-party repo market. JPMC announced in July 2016 that it plans to exit government securities settlement for broker-dealers by the end of 2018. After 2018, BNYM may become the sole clearing bank in the tri-party repo market for Treasury securities. *See* Federal Reserve Board, Request for Information Relating to Production of Rates, 82 FR 41259, 41260 (August 30, 2017).

[24] *See* 82 FR 41259, 41260 (August 30, 2017).

[25] *See* Federal Reserve Bank of New York, ''Tri-Party-GCF Repo,'' undated online content, *https://www.newyorkfed.org/data-and-statistics/data-visualization/tri-party-repo#interactive/volume/collateral_value.*

a CCP where the settlement obligation is for an acceptable asset class as opposed to a specific security. Currently, only FICC offers this type of centrally cleared U.S. service, through its GCF Repo service. While the FRBNY has entered into a voluntary agreement with an affiliate of FICC, DTCC Solutions LLC (''DTCC Solutions''), to obtain limited daily data regarding GCF Repo transactions,[26] there is no mandatory collection of detailed transaction data from GCF Repo. The data set provided under the voluntary agreement includes: The interest rate of the transaction; information on the collateral that may be pledged in the transaction; the date the transaction is initiated; the date the transaction becomes effective; the date the transaction matures; the value of funds borrowed in the transaction; and an indicator differentiating between repos and reverse repos in relation to the CCP.[27] Notably, the data submission to the FRBNY does not include the identities of counterparties, although the FICC platform collects this information as a consequence of its trade processing. As of September 2017, daily GCF Repo volumes totaled about $400 billion on a gross basis.[28]

iii. Centrally Cleared Specific-Security Repurchase Agreements

A centrally cleared specific-security repo is a transaction that is cleared by a CCP where the settlement obligation is for a mutually agreed upon specific security, such as a security identified by a particular CUSIP or ISIN.[29] In the United States, currently only FICC offers this type of centrally cleared repo service through its DVP Service, through which bilateral repo transactions become centrally cleared. As is the case with existing centrally cleared general collateral repo, there is no mandatory regulatory collection of data on centrally cleared specific-security repo. Like GCF Repo, DTCC Solutions also provides limited daily data on transactions under FICC's DVP Service to the FRBNY under a voluntary agreement. The data include information only on repos backed by U.S. Treasury securities. For each trade, information is provided on the interest rate of the transaction; the specific collateral that is pledged in the transaction; the date the transaction is initiated; the value of funds borrowed in the transaction; and a field indicating whether the CCP is lending cash or securities.[30] As with the GCF Repo service, FICC's DVP Service data submission does not include counterparty information. FICC's DVP Service is estimated to clear about $400 billion in same-day-start overnight repos collateralized by Treasury securities alone.[31]

iv. Uncleared Bilateral Repurchase Agreements

Unlike the other three repo market segments, the wholly bilateral nature of uncleared repo means there is no central source for comprehensive data. To better understand the bilateral repo market, determine the value of a potential data collection, and gain insights into the design of such a collection, the Office and the Federal Reserve, with input from the Securities and Exchange Commission (''SEC''), conducted a pilot program collecting information on both centrally cleared and uncleared bilateral repo transactions. The pilot collection took place in 2015 and gathered data from a subset of U.S.-based broker dealers. The results and lessons learned were published in January 2016.[32] While the pilot did not survey all market participants, the paper summarizing the results of the pilot used data from the Federal Reserve's FR 2004 report, which collects information on market activity from primary dealers in U.S. government securities, to estimate that dealers provide on a daily basis about $3.0 trillion in cash in cleared and uncleared bilateral repo combined.[33] Significant lessons were learned about the uncleared bilateral repo market from the pilot. The Office is considering a separate rulemaking in the future to collect data on an ongoing basis about the uncleared bilateral segment of the U.S. repo market.

III. Alternative Reference Rate Background

LIBOR is a set of widely-used reference rates for different currencies and maturities that is intended to represent the cost of unsecured borrowing in the interbank market. The sustainability of U.S. dollar LIBOR is uncertain. In the wake of scandals arising from misconduct related to LIBOR submissions, banks have become increasingly reluctant to participate in the U.S. dollar LIBOR panel, and market participants generally have trended away from unsecured funding and toward secured funding transactions.[34] Only about one-quarter of current benchmark 3-month U.S. dollar LIBOR submissions are based on actual transactions because of the low volume of unsecured funding transactions.[35] With fewer transactions, panel members are less able to rely on arm's-length transactions as the basis for their submissions, which subjects participating firms to possible criticism or litigation risk. For these reasons, some U.S. dollar LIBOR participants have questioned their continued involvement. Recognizing the need to continue LIBOR publication while alternatives are identified and operationalized, the U.K. Financial Conduct Authority (''FCA'') released a consultation paper discussing its ability to compel banks to continue providing submissions to the LIBOR panel.[36] The paper concluded that the FCA's powers are time-limited and cannot guarantee the ongoing viability of LIBOR. Subsequently, the FCA secured a voluntary agreement with the LIBOR panel banks for their continued participation in LIBOR panels through 2021.[37]

For several years, the Council has recommended the identification of alternative reference rates.[38] Most recently, in its 2017 annual report, the Council encouraged the completion of work to develop a credible

[26] *See* 82 FR 41259, 41260 (August 30, 2017).

[27] *Id.*

[28] *See* Federal Reserve Bank of New York, ''Tri-Party-GCF Repo,'' undated online content, *https://www.newyorkfed.org/data-and-statistics/data-visualization/tri-party-repo#interactive/tripartygcf.*

[29] CUSIP is a nine-character alphanumeric code that identifies a North American financial security for the purposes of facilitating clearing and settlement of trades. The CUSIP system is owned by the American Bankers Association and is operated by S&P Global Market Intelligence. The International Securities Identification Number (ISIN) is a 12-character alphanumeric code that serves for uniform identification of a security through normalization of the assigned National Number. CUSIP serves as the National Securities Identification Number for products issued in the United States and Canada.

[30] *See* 82 FR 41259, 41261 (August 30, 2017).

[31] *See* Bowman, Louria, McCormick, and Styczynski (February 27, 2017).

[32] *See* Office, Bilateral Repo Data Collection Pilot Project, undated online content, *https://www.financialresearch.gov/data/repo-data-project/.* Nine bank holding companies voluntarily provided data on their outstanding bilateral repo and equivalent securities lending trades for three days.

[33] *See* Baklanova, Caglio, Cipriani, and Copeland (January 13, 2016).

[34] *See* Office's *2017 Financial Stability Report,* pp. 27–28.

[35] *See* ICE Benchmark Administration's ICE LIBOR Quarterly Volume Report, Q1 2018, *https://www.theice.com/publicdocs/ICE_Libor_Quarterly_Volume_Report_Q1_2018.pdf.*

[36] *See* Financial Conduct Authority, ''Powers in Relation to LIBOR Contributions'' (June 2017), pp. 15–16, *https://www.fca.org.uk/publication/consultation/cp17-15.pdf.*

[37] *See* Financial Conduct Authority, ''FCA Statement on LIBOR Panels'' (November 24, 2017), *https://www.fca.org.uk/news/statements/fca-statement-libor-panels.*

[38] *See* Financial Stability Oversight Council, recommendations in 2014, 2015, 2016, and 2017 annual reports, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Pages/2017-Annual-Report.aspx.*

implementation plan to achieve a smooth transition to the new rate.[39]

Following a report by the Financial Stability Board, the U.S. effort to identify alternative interest rate benchmarks to U.S. dollar LIBOR was coordinated by the Federal Reserve and supported by the Council.[40] The Federal Reserve convened the ARRC in November 2014, with representation from many of the largest dealers.[41] This body, a voluntary, industry-led effort, worked to identify a preferred alternative reference rate and lay out a roadmap for a transition to that rate.

In December 2017, the Federal Reserve Board announced that the FRBNY, in cooperation with the Office, would begin producing three new reference rates based on repo transaction data during the second quarter of 2018.[42] These three rates are the tri-party general collateral rate, the BGCR, and the SOFR. Publication of these rates began on April 3, 2018.[43] The BGCR consists of overnight repos backed by Treasury securities that occur in tri-party repo and the GCF Repo service. The SOFR consists of overnight repos backed by Treasury securities that occur in the tri-party repo market, the GCF Repo service, and the DVP Service.[44] The ARRC selected the SOFR as its preferred alternative to U.S. dollar LIBOR.[45] The FRBNY is currently producing the SOFR and BGCR using the tri-party repo data it collects from BNYM through the Federal Reserve Board's supervisory authority and the data it obtains through the voluntary agreement with DTCC Solutions, discussed above. This proposed collection is expected to provide an ongoing and expanded source of data to support rates such as the SOFR and BGCR, helping to fulfill the Council's recommendation for the identification of alternative reference rates.

IV. Justification for Proposed Collection

a. Collection of Centrally Cleared Repurchase Agreement Data

i. Importance of Centrally Cleared Repurchase Agreement Data for Monitoring Financial Stability Risks

The collection of data on the centrally cleared segments of the repo market marks an important step in carrying out the Council's recommendation to expand and make permanent the collection of data on the U.S. repo market. The Council recommended a permanent collection of repo data in its 2016 annual report to improve transparency and risk monitoring which was reiterated in the 2017 annual report.[46] The Office believes that the proposed approach of collecting certain cleared repo data from CCPs, which already collect most or all of the requested data during trade processing, will result in lower aggregate costs to market participants than a collection from individual participants. FICC has indicated that on average, it matches, nets, settles, and risk-manages centrally cleared repo transactions valued at more than $1.7 trillion per day.[47] This proposed collection is expected to result initially in reporting only from two FICC services: The GCF Repo Service (a general collateral repo service), including CCIT; and the DVP Service (a specific-security repo service). This proposed collection, together with existing data collected on tri-party repos, will allow about half of the estimated activity in the U.S. repo market by volume to be analyzed and monitored.[48]

The collection of transactional data on centrally cleared repos is key to the Council's effective identification and monitoring of emerging threats to the stability of the U.S. financial system. The repo market plays a number of critical functions which have associated vulnerabilities that could give rise to conditions that impair the ability of repo markets to perform. These functions also create linkages between different financial markets and institutions, and therefore potential channels for the propagation of shocks. These vulnerabilities have developed in the past into threats to U.S. financial stability, most notably during the 2007–09 financial crisis.[49]

Despite the vulnerabilities, only one of the four segments of the U.S. repo market, the tri-party repo segment, is currently subject to a mandatory regulatory data collection. Data gaps and the absence of mandatory collections are a significant impediment to the Council's and its member agencies' ongoing ability to monitor developments in the repo market and potential emerging threats to financial stability. The lack of comprehensive data on repos creates material blind spots with regard to the most active short-term funding market in the U.S. financial system. This proposed collection is an important step in eliminating these blind spots.

From a financial stability perspective, it is important to monitor transactions in centrally cleared repo for three reasons. First, repos that are transacted through a CCP on a blind-brokered basis can act as a critical market for repo borrowers that are under stress. Even uncleared repos backed by high-quality collateral can become sensitive to counterparty risk, potentially resulting in a run on the institution's funding.[50] Shifts in activity from specific-counterparty repos to blind-brokered

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[39] *See* Financial Stability Oversight Council, *2017 Annual Report,* p. 13, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC_2017_Annual_Report.pdf.*

[40] *See* Financial Stability Board report, Reforming Major Interest Rate Benchmarks (July 22, 2014), *http://www.fsb.org/2014/07/r_140722/. See* Financial Stability Oversight Council, 2014, 2015, 2016, and 2017 annual reports, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC%202016%20Annual%20Report.pdf.*

[41] *See* Alternative Reference Rates Committee, minutes for December 2014 meeting, and list of initial ARRC representatives (December 12, 2014), *https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2015/Dec-12-2014-ARRC-Minutes.pdf.* The committee's current membership is available at *https://www.newyorkfed.org/arrc/governance.html.*

[42] *See* Federal Reserve Board, Production of Rates Based on Data for Repurchase Agreements, 82 FR 58397 (December 12, 2017).

[43] *See* Federal Reserve Bank of New York, Statement Introducing the Treasury Repo Reference Rates (April 3, 2018), *https://www.newyorkfed.org/markets/opolicy/operating_policy_180403.*

[44] Production of this new rate, in addition to addressing a financial stability issue, may improve market liquidity, as benchmark regulation has been found to do. *See* Matteo Aquilina, Gbenga Ibikunle, Vito Mollica, and Tom Steffen, ''Benchmark Regulation and Market Quality,'' U.K. Financial Conduct Authority Occasional Paper no. 27 (July 3, 2017), *https://www.fca.org.uk/publication/occasional-papers/op17-27.pdf.*

[45] *See* Alternative Reference Rates Committee, The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate, (June 22, 2017), *http://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-Jun-22-2017.pdf.*

[46] *See* Financial Stability Oversight Council, *2017 Annual Report,* p. 14, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC_2017_Annual_Report.pdf* and *2016 Annual Report,* p. 14, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC%202016%20Annual%20Report.pdf.*

[47] *See* Depository Trust & Clearing Corporation, DVP Repo Transactions, undated online content, *https://www.dtcclearning.com/products-and-services/fixed-income-clearing/government-securities-division-gsd/dvp-service/dvp-repo-transactions.html.*

[48] *See* Baklanova, Caglio, Cipriani, and Copeland (January 13, 2016), using a method first outlined in Copeland, et al., ''Lifting the Veil on the U.S. Bilateral Repo Market.'' Liberty Street Economics: *http://libertystreeteconomics.newyorkfed.org/2014/07/lifting-the-veil-on-the-us-bilateral-repo-market.html.*

[49] During the financial crisis, the repo market first began to show stress in the summer of 2007, and runs on repos played a central role in the failures of Bear Stearns and Lehman Brothers. These threats can manifest quickly; the run on Bear Stearns took place over less than a week. *See* Financial Crisis Inquiry Commission, ''Conclusions of the Financial Crisis Inquiry Commission,'' (January 2011) pp. 286–290.

[50] *See* Adam Copeland, Antoine Martin, and Martin Walker, ''Repo Runs: Evidence from the Tri-Party Repo Market'' (2011), *Federal Reserve Bank of New York Staff Reports.*

transactions can therefore indicate market perceptions that a firm may be under stress.

Second, while counterparty risk is mitigated by the use of CCPs, adverse changes in the value of collateral can propagate shocks arising elsewhere in the financial system to CCP members by impacting their ability to borrow in centrally cleared repo.[51] Further, collateral held at tri-party custodian banks that is used in centrally cleared repos within the tri-party system is not available for delivery outside of the tri-party system, making information on the collateral used in this venue important for understanding broader market dynamics.

Third, while CCPs offer benefits in terms of settlement and risk management, they may also propagate shocks to their members. If a repo CCP were to fail, the repo intermediation capacity of the financial system would be limited during a period of market stress. Even if this risk were judged to be remote, in a circumstance where, as here, there may be only one CCP, disruption of such a critical service could have severe implications. For these reasons, and as noted by the Council in its 2017 annual report, further analysis of risks related to CCPs is appropriate.[52]

Questions:

1. Is a data collection on centrally cleared repo transactions as proposed appropriate? Does a centrally cleared repo collection support the Council's recommendations?

2. To what extent may collecting counterparty information improve financial stability monitoring?

ii. Importance of Centrally Cleared Repurchase Agreement Data to Alternative Reference Rates

This proposed collection is expected to support the calculation of the SOFR, the ARRC's preferred alternative reference rate. The SOFR relies on Treasury repo data from three of the four segments of the U.S. repo market. The Federal Reserve collects data for the tri-party portion through its supervisory authority over the clearing banks. While data on some GCF Repo and DVP Service transactions are available to the FRBNY through a voluntary agreement with DTCC Solutions, a permanent collection of these data will increase confidence that the alternative reference rate's inputs will continue to be available. This viability is important because the long-term success of any alternative reference rate relies on the confidence market participants place in it.

Another benefit of this proposed collection is the ability to require specific data fields from centrally cleared general collateral repo and centrally cleared specific-security repo services for use in reference rate calculation.[53] The Office has reviewed these data fields with the FRBNY and believes the information would help to improve and ensure the ongoing quality of the SOFR and BCGR. From an early stage, the Office has contributed to the development of alternative reference rates and has designed this proposed collection to maximize its compatibility with alternative reference rates. Some of the data fields in this proposed collection that are not currently received under the voluntary agreement between the FRBNY and DTCC Solutions would help ensure the continued quality of the rates. Most notably, the identity of transaction counterparties is important for rate calculation as it allows the calculation agent to identify and, as appropriate, exclude, transactions (*e.g.,* affiliate transactions) that may not be representative of market activity. Further, by making available data on trades that are outside the current scope of the voluntary data collection that supports the rates, this proposed collection would allow the Federal Reserve and the Office to better monitor the evolution of markets and ensure that the rates continue to target their intended underlying interests.

Finally, this proposed collection would help ensure the long-term viability of the SOFR and BGCR by including within its scope reporting from certain central counterparties that meet the $50 billion activity-based materiality threshold. This assures rate production will be able to include new comparable transactions in the calculation of the rate as U.S. repo markets evolve in the future. This is of particular importance given that trading in products tied to the new rate might eventually subsume most volume that is currently tied to U.S. dollar LIBOR. This proposed collection will help ensure a continued source of standardized data on centrally cleared repos regardless of potential changes in market structure.

Questions:

3. Would establishing a regulatory reporting requirement to collect data on centrally cleared repos help ensure the continued availability and quality of the ARRC's selected alternative reference rate?

b. Uses of the Data Collection

This proposed collection will be used by the Office to improve the Council's and member agencies' monitoring of the U.S. repo market and identifying and assessing potential financial stability risks. The additional daily transaction data this proposed collection will provide will facilitate identification of potential repo market vulnerabilities and will also help identify shifting repo market trends that could be destabilizing or indicate stresses elsewhere in the financial system. Such trends might be reflected in indicators of the volume and price of funding in the repo market at different tenors, differentiated by the type and credit quality of participants and the quality of underlying collateral. Further, analyzing the collateral data from this collection together with other data available to the Office, the Council, and member agencies will enable a clearer understanding of collateral flows in securities markets and potential financial stability risks.

The Office expects, consistent with the Dodd-Frank Act, to share data and information with the Council and member agencies, and such data and information must be maintained with at least the same level of security as used by the Office and may not be shared with any individual or entity without the permission of the Council.[54] Consistent with this authority, the Office expects to make available the data from this proposed collection to the Federal Reserve Board and the FRBNY for purposes of meeting the above alternative reference rate and monitoring objectives as well as other market analysis and research. The Office will also make data collected and maintained under this proposed collection available to the Council and member agencies, as necessary to support their regulatory responsibilities.[55] The sharing of any data from this proposed collection will be subject to the confidentiality and

[51] The linkages between funding and asset markets creates risk of spillovers from one market to another because of the shared use of collateral. Price impacts on collateral arising from the forced sale of collateral due to the lack of confidence in the collateral or a particular counterparty can have widespread effects beyond the original transactions, leading to contagion that can culminate in fire sales and potential threats to financial stability. The shared use of collateral between different segments of the repo market therefore creates a channel through which centrally cleared repo transactions can be impacted by activity in other portions of the repo market.

[52] *See* Financial Stability Oversight Council, *2017 Annual Report,* pp. 123–4, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC_2017_Annual_Report.pdf.*

[53] *See infra* Section V(b), information required, for a discussion of individual data fields.

[54] 12 U.S.C. 5343(b).

[55] 12 U.S.C. 5344(b)(5).

security requirements of applicable laws, including the Dodd-Frank Act.[56] Pursuant to the Dodd-Frank Act, the submission of any non-publicly available data to the Office under this proposed collection will not constitute a waiver of, or otherwise affect, any privilege arising under federal or state law to which the data or information is otherwise subject.[57]

Aggregate or summary data from this proposed collection might be provided to the public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, business confidential information is properly protected, and the sharing of such information poses no significant threats to the U.S. financial system. The potential sharing of aggregate or summary data collected under this proposed collection would help fulfill a recommendation of the Council to make appropriately aggregated securities financing data available to the public.[58]

The Office may also use the data to sponsor and conduct additional research.[59] This research may include the use of these data to help fulfill the duties and purposes under the Dodd-Frank Act relating to the responsibility of the Office's Research and Analysis Center to develop and maintain independent analytical capabilities to support the Council and relating to the programmatic functions of the Office's Data Center.[60] For example, access to data on centrally cleared repos will allow the Office to conduct research related to the Council's analysis of potential risks arising from securities financing activities.

c. Legal Authority

The ability of the Office to collect centrally cleared repo data in this proposed collection derives in part from the authority to promulgate regulations regarding the type and scope of financial transaction and position data from financial companies on a schedule determined by the Director in consultation with the Council.[61] The Office consulted with the Council on the proposed permanent collection of repo data at the Council's September 22, 2016, meeting.[62] The Office also provided a public update to the Council on November 16, 2017.[63]

The Office also has authority to promulgate regulations pursuant to the Office's general rulemaking authority under Dodd-Frank Act section 153, which authorizes the Office to issue rules, regulations, and orders to the extent necessary to carry out certain purposes and duties of the Office.[64] In particular, the purposes and duties of the Office include supporting the Council in fulfilling its duties and purposes, and supporting member agencies, by collecting data on behalf of the Council and providing such data to the Council and member agencies, and standardizing the types and formats of data reported and collected.[65] The Office must consult with the Chairperson of the Council prior to the promulgation of any rules under section 153 [66]—this consultation occurred prior to the publication of this proposed collection.

This proposed collection will support the Council and member agencies by addressing the Council's recommendation to expand and make permanent the collection of data on the U.S. repo market; helping the Council and member agencies identify, monitor, and respond to risks to financial stability; identifying gaps in regulation that could pose risks to U.S. financial stability; and assisting in the production of alternative reference rates.[67] The Office understands that the full scope of transaction information on the centrally cleared repo market required to fulfill the purposes of this proposed collection is not currently available to the Council or member agencies, including the primary financial regulatory agency for clearing agencies. The Council has recognized in its annual reports that weaknesses in LIBOR raised financial stability concerns and recommended the identification of alternative reference rates such as the secured, transactions-based rates this proposed collection will bolster. Thus, by supporting the production of alternative reference rates, this proposed collection will support the Council in fulfilling its duties and purposes.

The Office's statutory authority allows for the collection of transaction or position data from financial companies.[68] ''Financial company,'' for purposes of Office authority, has the same meaning as in Title II of the Dodd-Frank Act.[69] For this proposed collection, the Office expects that CCPs for repos, as defined in this proposed collection, will typically be ''financial companies'' as defined in Title II because they are incorporated or organized under federal or state law and are companies ''predominantly engaged'' in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 [70] (or they are a subsidiary thereof).[71] For a company to be ''predominantly engaged'' in activities that are financial in nature or incidental thereto, either (1) at least 85 percent of the total consolidated revenues of the company for either of its two most recently completed fiscal years must be derived, directly or indirectly, from financial activities; or (2) based upon all the relevant facts and circumstances, the consolidated revenues of the company from financial activities must constitute 85 percent or more of the total consolidated revenues of the company.[72]

Dodd-Frank Act section 201(b) required the Federal Deposit Insurance Corporation (''FDIC'') to issue a rule establishing the criteria for determining whether a company is predominantly engaged in activities that are financial in nature or incidental thereto for purposes of Title II. The final rule adopted by the FDIC indicates that the determination of whether an activity is financial in nature is based upon Section 4(k) of the Bank Holding Company Act of 1956,

[56] *E.g.,* 12 U.S.C. 5343(b), 5344(b)(3).

[57] 12 U.S.C. 5343(b), 5322(d)(5).

[58] *See* Financial Stability Oversight Council, Council's *2017 Annual Report,* p. 16, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC%202016%20Annual%20Report.pdf.*

[59] 12 U.S.C. 5343(b)(2).

[60] 12 U.S.C. 5344(b) discusses the Office's Data Center, and 12 U.S.C. 5344(c) discusses the various uses of data by the Office's Research and Analysis Center to support the Council.

[61] 12 U.S.C. 5344(b)(1)(B)(iii).

[62] *See* Financial Stability Oversight Council, meeting minutes (September 22, 2016), *https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/September222016_minutes.pdf.*

[63] *See* Financial Stability Oversight Council, meeting minutes (November 16, 2017), *https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/November162017_minutes.pdf,* and Office, OFR Update on Bilateral Repo Collection (November 22, 2017), *https://www.financialresearch.gov/from-the-management-team/2017/11/22/ofr-update-on-bilateral-repo-collection/.*

[64] 12 U.S.C. 5343(a), (c)(1).

[65] 12 U.S.C. 5343(a). The Council's purposes and duties include identifying risks to U.S. financial stability; responding to emerging threats to the stability of the U.S. financial system; monitoring the financial services marketplace in order to identify potential threats to U.S. financial stability; making recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets; and identifying gaps in regulation that could pose risks to the financial stability of the United States. 12 U.S.C. 5322(a).

[66] 12 U.S.C. 5343(c)(1).

[67] *See supra,* discussion in Section IV(a) about the importance of collecting repo data.

[68] 12 U.S.C. 5344(b)(1)(B)(iii).

[69] 12 U.S.C. 5341(2).

[70] 12 U.S.C. 1843(k).

[71] A ''financial company'' also includes a bank holding company or a nonbank financial company supervised by the Federal Reserve Board. 12 U.S.C. 5381(a)(11).

[72] 12 CFR 380.8(a).

and that since the Federal Reserve Board is the agency with primary responsibility for interpreting and applying Section 4(k), the FDIC coordinated its rulemaking pursuant to § 201(b) of the Dodd-Frank Act with the Federal Reserve Board's rulemaking defining the term ''predominantly engaged in financial activities'' for purposes of Title I of the Dodd-Frank Act.[73] Consistent with the Federal Reserve Board's final rule, the FDIC's final rule interpreting how to evaluate whether an entity is a ''financial company'' for purposes of Title II of the Dodd-Frank Act includes the activities of repo clearing including transferring money or securities; providing any device or other instrumentality for transferring money or other financial assets; providing financial data processing, storage and transmission services; arranging, effecting, or facilitating financial transactions for the account of third parties; and providing to customers as agent transactional services with respect to government obligations.[74] Given the necessary experience, expertise and market credibility, entities that clear repos will typically be predominantly engaged in these or related financial activities, and therefore will be financial companies and potentially covered reporters under this proposal. The one expected covered reporter appears to be predominately engaged in these financial activities, making it a financial company.[75]

V. Collection Design

This proposed collection will be the first recurring and mandatory data collection from the Office. The proposed regulatory text includes two sub-parts: the first sets out general requirements for data collection necessary for this proposal and any future Office proposed collections, and the second lists the requirements specifically relevant to this proposed collection. The first regulatory text sub-part cites the statutory authority of the Office to require the submission of information. The second regulatory text sub-part is designed to describe individual collections by the Office. This proposed collection will be the first section under this sub-part. The section includes three tables that describe the data elements that covered reporters will be required to submit. The Office expects to publish filing instructions regarding matters such as data submission mechanics and formatting in connection with any final rule on the Office's website.

a. Scope of Application

This proposed collection will require the submission of transaction information by any CCP whose average daily total open commitments in repo contracts across all services over all business days during the prior calendar quarter is at least $50 billion. ''Open commitments'' refers to the CCP's gross cash positions, prior to netting. For example, a CCP might clear two trades beginning on the same day with an overnight maturity; in the first trade, Firm A lends $100 million to Firm B in exchange for $100 million of securities, and in the second trade, Firm C lends Firm A $100 million in exchange for $100 million of securities. The total open commitments for the CCP for these two trades is $200 million. A CCP is defined in this proposed collection as ''a clearing agency that interposes itself between the counterparties to transactions, acting functionally as the buyer to every seller and the seller to every buyer.''[76] The Office proposes defining ''clearing agency'' the same way as in the Securities Exchange Act of 1934, as amended, which defines a clearing agency as ''any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.''[77] Only CCPs that are clearing agencies and that perform the central clearing function for repo transactions at or above the volume threshold are required to report as covered reporters under this proposed collection. The regulatory text also defines ''repurchase agreement.''[78] Requiring submission of transaction-level repo data from CCPs allows for a more efficient collection than a data submission from each clearing member.

As noted above, this proposed collection establishes a $50 billion volume threshold for determining whether a CCP is a covered reporter and is therefore required to report. The Office believes the proposed $50 billion activity-based threshold indicates sufficient volume for the CCP to be considered a material CCP in the repo market. One of the benefits of a CCP is the netting it provides to clearing members, which increases with the size of the CCP's services. As a result, CCPs in a given market tend to be few in number and large.

While the Office understands that there is only one reporter currently covered by this proposed collection's scope, any other CCP would be required to start submitting data under this rule beginning on the first business day of the third calendar quarter after the calendar quarter in which the CCP meets the $50 billion activity-based materiality threshold. For example, if a CCP were to surpass the threshold beginning with the quarter ending on March 31 of a given year, that CCP would become subject to the reporting requirements of the rule on the first business day of the calendar quarter that begins after two intervening calendar quarters—in this case, October 1.

A covered reporter whose volume falls below the $50 billion threshold for at least four consecutive calendar quarters will have its reporting obligations cease. For example, if a covered reporter ceases to meet the $50 billion threshold beginning with the quarter ending June 30 of a given year, and remains below the $50 billion threshold in each of the following three quarters (in this example, through the quarter ending March 31 of the following year), its reporting obligations would cease as of April 1.

This proposed collection will require CCPs that meet the aforementioned repo volume thresholds to report all repos they clear. Given the existing differences between how general collateral and specific-security trades are reported to repo clearing services, this proposed collection separates the reporting information required into distinct schedules for each type of centrally cleared repo service.

Questions:

4. The covered reporter definition seeks to include in the rule's scope only current or future material repo CCPs. The definition also seeks to exclude tri-party custodian banks already required to report on another portion of the repo

[73] For the final version of each rule, *see* Federal Reserve System, Definitions of ''Predominantly Engaged In Financial Activities'' and ''Significant'' Nonbank Financial Company and Bank Holding Company, Final Rule, 78 FR 20756 (March 29, 2013); and Federal Deposit Insurance Corporation, Definition of ''Predominantly Engaged in Activities That Are Financial in Nature or Incidental Thereto,'' Final Rule, 78 FR 34712 (June 4, 2013).

[74] 12 CFR 380.8(b).

[75] The Office has reviewed the disclosures of the expected covered reporter and its parent under this proposed collection and believes it is predominantly engaged in financial activities and is therefore a financial company.

[76] This definition of ''central counterparty'' is consistent with the definitions used by the Committee on Payment and Market Infrastructures and the International Organization of Securities Commissions (''CPMI–IOSCO''), *see Principles for Financial Market Infrastructures* (April 2012), p. 9, *https://www.bis.org/cpmi/publ/d101a.pdf,* and the Financial Stability Board, *see Guidance on Central Counterparty Resolution and Resolution Planning,* p. 22, *http://www.fsb.org/wp-content/uploads/P050717-1.pdf.*

[77] 15 U.S.C. 78c(a)(23).

[78] *See* Regulatory Text § 1610.10(a).

market from reporting under this proposal. Does the proposed covered reporter definition meet this objective and if not, what might the Office consider as an alternative?

5. Is the $50 billion activity-based volume threshold for identifying covered reporters clear and appropriate for ensuring the inclusion of only current or future material repo CCPs?

6. Is collecting centrally cleared repo transactions from CCPs more efficient than collecting these transactions from individual counterparties? How could the collection be made more efficient?

7. Are the definitions of general collateral trade and specific-security trade in the proposed regulatory text sufficiently clear to allow reporters to determine on which schedules they should be reporting?

b. Information Required

This proposed collection has three schedules: the first covers details on general collateral trades, the second covers details on the securities used to collateralize net positions in general collateral repo, and the third covers specific-security trades. Each schedule is tailored to capture specific information regarding covered transactions in a manner that the Office believes reflects the data exchanged with CCPs in the ordinary course of business. The required data elements in these schedules are listed in Tables 1, 2, and 3 of Section § 1610(c) of the proposed regulatory text. Each table lists each required element and a brief description of that element. Below is a description of the general categories of information covered by the collection and further detail on certain key data fields.

i. Legal Entity Identifier Usage

The Office's published brief on the interagency bilateral repo pilot collection noted difficulties in working with the data due to the absence of standardized counterparty information.[79] Authorities from around the world, including those in the United States, have established a global legal entity identifier (''LEI'') system, with oversight effected by a Regulatory Oversight Committee, composed of those same authorities, to coordinate and oversee a global system of legal entity identification. A Swiss nonprofit foundation, the Global LEI Foundation (''GLEIF''), was established to provide operational governance and management of local operating units that issue LEIs. The LEI is a 20-character identifier based on the ISO 17442 standard that identifies distinct legal entities that engage in financial transactions. An LEI allows for unambiguous identification of firms and affiliates.[80]

The Office proposes to require reporting of an LEI. The LEI reported must be properly maintained, meaning it must be kept current and up to date according to the standards implemented by the GLEIF. The Office believes that while requiring the LEI may result in some additional compliance costs, doing so is reasonable and appropriate due to the added clarity and substantial benefit for the monitoring it provides and rate production. Based on a review of the public membership lists of counterparties to the one expected covered reporter, the Office estimates that under the proposed collection, approximately 800 counterparties will need to acquire an LEI at a cost of approximately $100 per instance initially and approximately $50 on an annual basis thereafter, for a total aggregate cost of $80,000 to market participants the first year and $40,000 annually thereafter. Each legal entity transacting with a covered reporter will be required to obtain only one LEI regardless of the number of reported transactions. The Office recognizes that the LEI acquisition cost may be only a portion of the total compliance cost for repo counterparties, and that firms may incur additional costs stemming from the inclusion of the LEI in their trade reporting systems. In this regard, there are two viable options for including an LEI in the data fields. The first option is to amend the messaging system to include the LEI. The second option is to add LEIs of reporting entities and counterparties after the transactions take place but prior to submission of data to the Office. While this second option would require fewer parties to update their systems, it is possible that market participants may desire access to the LEIs of their counterparties for risk management purposes, thus making the first option preferable to member firms. Either option would be acceptable to the Office.

Identification of the entities involved in a covered repo transaction is important to enhance the ability of the Council and the Office to identify risks to U.S. financial stability by allowing it to understand repo market participants' exposures, concentrations, and network structures. This proposed collection requires the submission of the LEI of each covered reporter, direct clearing member, counterparty, and broker involved in a covered transaction.[81] The LEIs of these entities will facilitate evaluation of the covered transaction and whether a covered transaction was conducted on an arm's-length basis or between affiliates. Further, these LEIs will reduce the need for manual intervention in matching identical participants that supply different naming conventions depending on the sponsoring broker reporting, and eventually, when the LEI system fully produces this capacity, in helping to identify parent and affiliate relationships.

Mandatory adoption of the LEI will also benefit firms and regulators by improving the ability to combine repo information with other information necessary to monitor system or firm risk. This is particularly so given that more than 1 million firms have obtained an LEI and are therefore becoming capable of obtaining these benefits. The aggregate cost savings for the financial service industry upon broader adoption of the LEI have been estimated in the hundreds of millions of dollars.[82]

This proposed collection includes reporting fields for the LEIs of the direct clearing members that are parties to a covered transaction. This proposed collection also includes reporting fields for the LEIs of any cash or securities provider that is a counterparty to the transaction. For these fields, respondents should indicate the LEI of the indirect clearing member if one exists, and otherwise the LEI of the direct clearing member, that has provided cash or securities. When a registered broker is a counterparty to a transaction, it should be listed both as the broker and as a cash provider or securities provider.

Questions:

8. What, if any, challenges do participants in centrally cleared repo markets anticipate regarding obtaining and maintaining an LEI?

9. What, if any, challenges do potential respondents anticipate in reporting the LEIs of participants in centrally cleared repo markets?

[79] *See* Baklanova, Caglio, Cipriani, and Copeland (January 13, 2016).

[80] *See* Global Legal Entity Identifier Foundation, Introducing the Legal Entity Identifier, undated online content, *https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei/*.

[81] For purposes of the data reporting schedules, a broker is an entity that is an SEC-registered broker and is arranging a covered transaction for the accounts of other entities acting as cash providers or securities providers.

[82] *See* generally, McKinsey & Company and Global Legal Entity Identifier Foundation, ''The Legal Entity Identifier: The Value of the Unique Counterparty ID,'' (October 2017), pp. 4, 14, and 17, *https://www.gleif.org/en/about-lei/mckinsey-company-and-gleif-creating-business-value-with-the-lei/*.

10. Would respondents and repo market participants prefer to amend the messaging system to include LEIs, or to add LEIs of reporting entities and counterparties after the transactions take place but prior to submission of data to the Office?

ii. Transaction Information

Transaction-level data coupled with counterparty information permit an understanding of detailed exposures among firms and across asset markets. Transaction-level data are also necessary inputs to calculate the SOFR and BGCR. Transaction-level data will require a unique identifier for each transaction. This identifier must be assigned by the covered reporter and never re-used for another transaction over the life of this proposed collection. The transaction identifier must be persistent throughout the life cycle of the transaction, regardless of any subsequent amendments to the transaction, such as substitutions of collateral. Because CCPs currently must track the life cycle of each trade for settlement purposes, some type of unique identification scheme already exists. Any CCP required to report under this rule would be required to submit its own unique, persistent transaction identifier. As an alternative to a reporter-generated transaction identifier, the Office encourages, but is not requiring, respondents to coordinate with their counterparties to adopt and report using the Unique Transaction Identifier.[83]

In all cases where securities identifiers are used, the type of identifier must be reported, such as ISIN or CUSIP. General collateral trade submissions must contain information on the security asset class in order to identify the correct transactions for rate production. This field must consist of an identifier that corresponds to a set of agreed-upon securities. Collateral delivered against net exposures between firms and CCPs must also be identified using a specific security identifier. This provides information on how CCP exposures are collateralized, as well as the quantity of securities that have been delivered against net exposures. The general collateral trades also must indicate whether the securities were delivered to the CCP against a net security delivery obligation or received from the CCP as collateral against a net cash loan.

Reporting on specific-security repos will require a security identifier as well as information on the quantity of securities delivered against a position, and whether substitution of collateral is permitted. Knowing the quantity of securities delivered will help determine levels of over-collateralization in the market and the flow of securities as firms engage in security transformation and acquire specific securities for delivery or sale. Indicating whether substitution of collateral is allowed may indicate the motivation for a trade. In the case of transactions allowing collateral substitution, covered reporters are required to supply an identifier indicating the securities that are acceptable to the cash provider as substitutes under the repo for the initially pledged collateral.

Questions:

11. The Office is not proposing the reporting of a standardized transaction identifier at this point. Is this the appropriate decision and if so, at which point should such an identifier be required?

12. Should the UTI be required at this point in the event that another covered reporter comes into existence in order to harmonize transactions across clearing platforms?

iii. Date and Tenor Information

This proposed collection will require information on the start and end dates of transactions; the date that each transaction was agreed to; whether a trade has optionality; and, for repos that are open or have optionality, the first possible maturity of the transaction. Existing CCPs do not presently allow for optionality in repos or for open transactions, but if offered in the future, these features would be important to capture.

There are a number of proposed fields regarding date and tenor information. The agreement timestamp is the date and time on which a covered transaction was agreed to. This field is critical for differentiating same-day-start trades from forward-settling trades. The information is essential to understanding how a transaction is priced and determining whether the transaction should be included in an alternative reference rate. The start date is the date on which a settlement obligation related to the exchange of cash and securities for a covered transaction first exists. The match timestamp refers to the time and date on which the covered transaction is matched by the covered reporter. The end date refers to the date on which the cash providers and securities providers to the covered transaction are obliged to return the cash and securities.

For an open trade, no end date is to be specified, and the optionality field must indicate that the transaction has an open maturity. The minimum maturity field in this case must be used to indicate the next date that the interest rate is to be reset.

For repos with optionality, the end date for a transaction must continue to be specified as the date that the transaction would terminate if no option were exercised. The optionality field indicates how the maturity of a transaction can be changed after initial agreement. Minimum maturity in this case refers to the earliest possible date on which the parties could be obliged to return the cash and securities, taking optionality into account.

Observation days consist of all days on which a covered reporter accepts and processes covered transactions. For every observation day, covered reporters are required to submit a file of all outstanding transactions to the Office's collection agent by 6:00 a.m. Eastern time the following business day.

iv. Trade Size and Rate

The principal amount in the centrally cleared general collateral trades schedule is the amount of cash borrowed or lent. This schedule also requires information on the agreed-upon rate for the trade, which is the interest rate at which the cash provider agrees to lend to the securities provider. This rate must be expressed as the annualized rate based on an actual/360-day count.

The securities quantity field in the general collateral net exposure schedule for the general collateral repo collection and the specific-security trades schedule is defined as the principal amount or par value of the securities pledged in a repo transaction.

The specific-security trades schedule includes four fields on the exchange of cash in these repo transactions. Information is required on the amount of cash exchanged by the cash and securities providers at the initiation and close of the trade. This schedule also requires information on the rates reported by the cash and securities providers.

[83] The Unique Transaction Identifier (''UTI''), alternatively called Unique Swap Identifier (''USI''), is a globally unique identifier for individual transactions in financial markets. USIs were introduced in late 2012 in the United States, when reporting transactions to trade repositories became mandatory under the Dodd-Frank Act. The term USI is specific to U.S. regulation, while the UTI represents the output of a global effort among regulators to harmonize transaction reporting standards across jurisdictions. The method for creating and maintaining UTIs was designed to support existing USIs and provide a global regulatory approach. Large trading firms reporting under multiple regulatory regimes may use the terms interchangeably. *See* CPMI–IOSCO, Consultative Report on Harmonization of the Unique Transaction Identifier (August 2015), *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD500.pdf.*

v. Price of Collateral/Security

The securities value field in the general collateral net exposure schedule requires the reporting of the market value of the securities pledged, inclusive of accrued interest. The market value of securities is, in combination with the identifier, important for understanding how CCP exposures are collateralized.

Questions:

13. Are the proposed reporting fields generally appropriate? Do any particular proposed reporting fields raise specific questions or concerns?

14. Are there any additional fields not currently being requested that the Office should consider including in order to better accomplish the Office's or Council's goals presented in this proposal?

15. The proposed regulatory text contains definitions the Office believes are necessary. Are these definitions clear?

c. Submission Process and Implementation

The Office intends to require submission through a collection agent. The Office believes this approach will decrease the costs of compliance for covered reporters and allow data reporting to commence sooner than would otherwise be possible. The Office expects that the Federal Reserve Board will act as the Office's collection agent, with required data to be submitted directly by covered reporters to the FRBNY. The FRBNY will transmit collected data to the Office.

Additionally, the Office expects the FRBNY will have access to the reported data for purposes of the daily SOFR and BGCR rate production. To produce this alternative reference rate calculation, data on covered transactions must be submitted by respondents to the FRBNY no later than 6:00 a.m. Eastern time on the business day following the transaction. The submission process will allow for the secure, automated transmission of files. The Office expects that the final rule will go into effect 60 days after its publication in the **Federal Register** and is proposing that covered reporters begin to comply with the final rule 60 days after its effective date. The Office believes this implementation period will provide adequate time for covered reporters to comply with the proposed requirements.

Questions:

16. Would respondents incur additional costs due to the requirement for unique transaction identification? If so, please provide estimates of those costs.

17. Does the proposed 60-day compliance period for a central counterparty that is a covered reporter on the effective date of the rule provide sufficient time to comply with the data reporting requirements?

18. Does the two quarter phase in period for a central counterparty that becomes a covered reporter after the effective date of the rule provide sufficient time to comply with the data reporting requirements?

19. Are there any additional costs associated with data reporting as contemplated by this proposed collection? If so, please provide estimates of those costs.

20. Would increasing the time period between the effective date of a final rule and the subsequent compliance date substantially reduce burdens for covered reporters or repo market participants, or improve the quality of the data reported under this proposed collection? Are there any aspects of the proposed collection that a phased-in reporting requirement would be particularly useful for?

21. What, if any, barriers to entry could the requirements of this proposed collection create for future CCPs for repo?

VI. Administrative Law Matters

a. Paperwork Reduction Act

The collection of information contained in this proposed collection has been submitted to the Office of Management and Budget (''OMB'') in accordance with the Paperwork Reduction Act of 1995 (''PRA'').[84] Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury/Office of Financial Research, Office of Information and Regulatory Affairs, Washington, DC 20503 (or by email to *oirasubmission@omb.eop.gov*), with copies to the Office of Financial Research at 717 14th Street NW, Washington, DC 20220.

The proposed collection establishes the permanent collection of certain information on repo transactions and is a ''collection of information'' pursuant to the PRA. Any collection of information addressed to all or a substantial majority of an industry is presumed to involve 10 or more covered reporters.[85] While the Office estimates there is only one covered reporter, the Office has undertaken a PRA analysis to ensure that the proposed collection will continue to be PRA compliant in the event additional central counterparties become subject to the rule's reporting requirements. The Office is an independent regulatory agency under the PRA [86] and for purposes of OMB review. In accordance with the requirements of the PRA, the Office may not conduct or sponsor, and a covered reporter is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The Office anticipates that this proposed collection will require submission by one covered reporter, which will be required to make a general collateral and specific-security submission daily in accordance with the tables in the proposed regulatory text. The Office anticipates an annual burden of 1,512 hours per covered reporter. This figure is arrived at by estimating the daily reporting time to be approximately 3 hours for each general collateral and specific-security submission, multiplied by 2 to reflect both types of submissions by the covered reporter, and multiplying that figure by an average of 252 business days in a year, the typical number of days per year that do not fall either on weekends or on holidays widely observed by the market.

To estimate hourly wages, the Office used data from the May 2016 Bureau of Labor Statistics Occupational Employment Statistics for credit intermediation and related activities (NAICS 522000). For hourly compensation, a figure of $75 per hour was used, which is an average of the 90th percentile wages in seven different categories of employment (compliance officers, accountants and auditors, lawyers, management occupations, financial analysts, software developers, and statisticians), plus an additional 32 percent to cover subsequent wage gains and non-wage benefits, which yields an estimate of $99 per hour.[87] Using these assumptions, the Office estimates the recurring operational costs for general collateral and specific-security submissions to be $74,844 annually, for a total estimated annual cost to the covered reporter of $149,688.

Office Estimates Summary:

Title: Ongoing Data Collection of Centrally Cleared Transactions in the U.S.

[84] 44 U.S.C. 3501 *et seq.*

[85] 5 CFR 1320.3(c)(4)(ii).

[86] 44 U.S.C. 3502(5).

[87] The estimate includes an assumed additional 2 percent for subsequent wage gains from 2016 to 2017, and 30 percent for non-wage employee benefits, according to the Bureau of Labor Statistics' June 2017 Employer Costs for Employee Compensation, *https://www.bls.gov/news.release/archives/ecec_09082017.htm.*

Repurchase Agreement Market

Office: Office of Financial Research.

Frequency of Response: Daily (12 CFR 1610.10(d)).

Affected Public: Businesses or other for-profit.

Scope of Covered Reporters: Any central counterparty, defined as a clearing agency that interposes itself between the counterparties to transactions, whose average daily total open commitments in repurchase agreement contracts across all services over the prior calendar quarter is at least $50 billion. (12 CFR 1610.10(a), (b)(2)).

Number of Covered Reporters: One covered reporter submitting information on two clearing services.

Estimated Time Per Covered Reporter Per Submission: 6 hours.

Number of Submissions:

Daily submission containing both general collateral transactions (12 CFR 1610.10(c)(3), (4)) and specific security trades (12 CFR 1610.10(c)(5)).

Anticipated Annual Submissions: 252.

Total Estimated Annual Burden: 1,512 hours.

In addition to recurring reporting costs, the Office anticipates the covered reporter will experience one-time initial start-up costs to account for data management systems and software, operations, and alignment of reporting schedules for ease of data transmission. The estimate of these initial costs is 2,500 hours for the two general collateral schedules, and 2,500 hours for the specific-security schedule, per covered reporter. Because the Office anticipates one covered reporter submitting both the general collateral schedules and the specific-security schedule, the estimated initial start-up cost of required reporting for both submissions is $495,000.

The Office invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the Office, including whether the information would have practical utility; (b) the accuracy of the estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, 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 report the information.

b. Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (the ''RFA'') to address concerns related to the effects of agency rules on small entities.[88] The Office is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule for which general notice of proposed rulemaking is required, or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[89] In accordance with section 3(a) of the RFA, the Office is certifying that this proposed collection will not have a significant economic impact on a substantial number of small entities.

As discussed above, this proposed collection will only apply to CCPs for repos whose average daily total open commitments in repo contracts across all services over the prior calendar quarter is at least $50 billion. Currently, under this scope, this proposed collection would apply only to one entity, whose corporate parent's total consolidated assets were $39 billion as of March 31, 2018.[90] Reporting will be required of additional central counterparties beginning on the first business day of the third calendar quarter after the calendar quarter in which such central counterparties meet the $50 billion activity-based materiality threshold. If a covered reporter ceases to meet this threshold for at least four consecutive calendar quarters, its reporting obligations under this rule would cease.

Under regulations issued by the Small Business Administration, a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7.5 million in assets to $550 million or less in assets.[91] For purposes of the RFA, entities that are banks are considered small entities if their assets are less than or equal to $550 million. The size of the activity-based threshold in this proposed collection ensures that any respondent will be well beyond these small entity definitions.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this proposed collection will not have a significant economic impact on a substantial number of small entities.

c. Plain Language

The Office has sought to present this proposed collection in a simple and straightforward manner. The Office invites comments on how to make this proposal, the regulatory text, or the reporting schedules easier to understand. The Office specifically invites comments on the following questions:

22. Are the requirements in the proposal clearly stated? If not, how could the proposed rule be more clearly stated?

23. Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?

24. Would a different format (e.g., groupings, ordering of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?

List of Subjects in 12 CFR Part 1610

Confidential business information, Economic statistics, Reference rates, Repurchase agreements, Clearing, Central counterparty, Data collection.

■ For the reasons stated in the preamble, the Office of Financial Research proposes to add 12 CFR Part 1610 as set forth below:

PART 1610—REGULATORY DATA COLLECTIONS

Subpart A—Collections Generally

Sec.

1610.1 General Authority
1610.2 General Definitions
1610.3 Treatment of Collected Information
1610.4–9 [Reserved]

Subpart B—Specific Collections

Sec.

1610.10 Centrally Cleared Repurchase Agreement Data

Authority: 12 U.S.C. 5343 and 5344

Subpart A—Collections Generally

§ 1610.1 General Authority.

The collections under this part are made pursuant to the authority contained in 12 U.S.C. 5343(a) and (c)(1) and 5344(b).

§ 1610.2 General Definitions.

Council means the Financial Stability Oversight Council.

Legal Entity Identifier or LEI for an entity shall mean the global legal entity identifier maintained for such entity by

[88] 5 U.S.C. 601 *et seq.*

[89] 5 U.S.C. 603(a).

[90] *See* DTCC, ''DTCC Condensed Consolidated Financial Statements as of March 31, 2018 and December 31, 2017 and for the three months ended March 31, 2018 and 2017,'' *http://www.dtcc.com/~/media/Files/Downloads/legal/financials/2018/DTCC-Condensed-Consolidated-Financial-Statements-Q1-2018.pdf.*

[91] 13 CFR 121.201.

a utility accredited by the Global LEI Foundation or by a utility endorsed by the Regulatory Oversight Committee that satisfies the standards implemented by the Global LEI Foundation. As used in this definition:

(1) Regulatory Oversight Committee means the Regulatory Oversight Committee (of the Global LEI System), whose charter was set forth by the Finance Ministers and Central Bank Governors of the Group of Twenty and the Financial Stability Board, or any successor thereof; and

(2) Global LEI Foundation means the not-for-profit organization organized under Swiss law by the Financial Stability Board in 2014, or any successor thereof.

Office means the U.S. Department of the Treasury's Office of Financial Research.

§ 1610.3 Treatment of Collected Information.

The Office will treat any financial transaction data or position data submitted to the Data Center under this part in accordance with the relevant provisions of law, including 12 U.S.C. 5343(b) and 5344(b).

§ 1610.4–9 [Reserved]

Subpart B—Specific Collections

§ 1610.10 Centrally-Cleared Repurchase Agreement Data.

(a) *Definitions.*

Central counterparty means a clearing agency that interposes itself between the counterparties to transactions, acting functionally as the buyer to every seller and the seller to every buyer.

Clearing agency has the same meaning as set forth in 15 U.S.C. 78c(a)(23).

Covered reporter means any central counterparty for repurchase agreement transactions that meets the criteria set forth in Paragraph (b)(2); provided, however, that any covered reporter shall cease to be a covered reporter only if it does not meet the dollar threshold specified in Paragraph (b)(2) for at least four consecutive calendar quarters.

General collateral trade means a repurchase agreement transaction in which the trade reported to the central counterparty is for a category of securities as opposed to a specific security.

Repurchase agreement transaction means an agreement of a counterparty to transfer securities to another counterparty in exchange for the receipt of cash, and the simultaneous agreement of the former counterparty to later reacquire the same securities (or any subsequently substituted securities) from that same counterparty in exchange for the payment of cash; or an agreement of a counterparty to acquire securities from another counterparty in exchange for the payment of cash, and the simultaneous agreement of the former party to later transfer back the same securities (or any subsequently substituted securities) to the latter counterparty in exchange for the receipt of cash.

Specific-security trade means a repurchase agreement transaction where the trade as reported to the central counterparty is for a mutually agreed upon specific security.

(b) *Purpose and Scope.* (1) *Purpose:* The purpose of this data collection is to require the reporting of certain information to the Office about repurchase agreement transactions cleared through a central counterparty. The information will be used by the Office to support the Council and member agencies by facilitating financial stability monitoring including research consistent with support of the Council and its member agencies and for the publication of alternative reference rates.

(2) *Scope of Application:* Reporting under this Section is required by any central counterparty for repurchase agreement transactions whose average daily total open commitments in repurchase agreement contracts (gross cash positions prior to netting) across all services over all business days during the prior calendar quarter is at least $50 billion.

(c) *Data Required.* (1) Covered reporters shall report trade and collateral information on all repurchase agreement transactions, subject to Paragraph (c)(2), in accordance with the prescribed reporting format in this section.

(2) Covered reporters shall only report trade and collateral information with respect to any repurchase agreement transaction for which there is a current or future delivery obligation as of the file observation date, including forward-starting transactions.

(3) Covered reporters shall submit the following data elements for all general collateral transactions:

TABLE 1—GENERAL COLLATERAL TRADES

Data element	Explanation
File Observation Date	The observation date of the file (typically one business day before the day the file is submitted).
Covered Reporter LEI	The Legal Entity Identifier of the covered reporter.
Transaction ID	Respondent-generated unique transaction identifier.
Submission Timestamp	Time that trade is first submitted to clearing service.
Match Timestamp	Time that trade is matched by clearing service.
Securities Asset Class Identifier	Asset class identifier.
Securities Asset Class Identifier Type	Type of securities identifier used.
Cash Provider LEI	The Legal Entity Identifier of the cash provider.
Cash Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the cash provider accessed the clearing service.
Securities Provider LEI	The Legal Entity Identifier of the securities provider.
Securities Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the securities provider accessed the clearing service.
Broker LEI	The Legal Entity Identifier of the broker.
Start Date	The start date of the repurchase agreement.
End Date	The date the repurchase agreement matures.
Rate	The repurchase agreement rate, expressed as an annual percentage rate on an actual/360-day basis.
Principal	The amount of cash borrowed or lent.
Optionality	The type of optionality, if any, in the repurchase agreement.
Minimum Maturity	The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality).

(4) Covered reporters shall submit the following data elements on the collateral delivered against net general collateral exposures for all general collateral transactions:

TABLE 2—GENERAL COLLATERAL NET EXPOSURE

Data element	Explanation
File Observation Date	The observation date of the file (typically one business day before the day the file is submitted).
Covered Reporter LEI	The Legal Entity Identifier of the covered reporter.
Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member of the clearing service.
Transaction Side	Indicates the side of the transaction: collateral was received by or delivered from the covered reporter.
Securities Identifier	Identifier of securities transferred.
Securities Identifier Type	Type of securities identifier used.
Securities Quantity	Par value or quantity (as applicable) of securities transferred.
Securities Value	The market value as of most recent valuation of securities transferred, including accrued interest.

(5) Covered reporters shall submit the following data elements for all specific-security trades:

TABLE 3—SPECIFIC-SECURITY TRADES

Data element	Explanation
File Observation Date	The observation date of the file (typically one business day before the day the file is submitted).
Covered Reporter LEI	The Legal Entity Identifier of the covered reporter.
Transaction ID	Respondent-generated unique transaction identifier.
Cash Provider LEI	The Legal Entity Identifier of the cash provider.
Cash Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the cash provider accessed the clearing service.
Securities Provider LEI	The Legal Entity Identifier of the securities provider.
Securities Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the securities provider accessed the clearing service.
Broker LEI	The Legal Entity Identifier of the broker.
Submission Timestamp	Time that trade is first submitted to clearing service.
Match Timestamp	Time that trade is matched by clearing service.
Start Date	The start date of the repurchase agreement.
End Date	The date when the repurchase agreement matures; the close leg settlement date.
Optionality	The type of optionality, if any.
Minimum Maturity	The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality).
Security Identifier	Identifier of pledged security.
Securities Identifier Type	Type of securities identifier used.
Securities Quantity	Par value or quantity (as applicable) of securities transferred.
Substitution Collateral Identifier	Asset class identifier or no substitution.
Substitution Collateral Identifier Type	Type of securities identifier used.
Cash Provider Start Leg Amount	The amount of cash transferred by the cash provider on the open leg of the transaction.
Securities Provider Start Leg Amount	The amount of cash received by the securities provider on the open leg of the transaction.
Cash Provider Rate	The rate of interest received by the cash provider, expressed as an annual percentage rate on an actual/360-day basis.
Securities Provider Rate	The rate of interest paid by the securities provider, expressed as an annual percentage rate on an actual/360-day basis.
Cash Provider Close Leg Settlement Amount	The amount of cash received by the cash provider on the close leg of the transaction.
Securities Provider Close Leg Settlement Amount.	The amount of cash paid by the securities provider on the close leg of the transaction.

(d) *Reporting Process and Collection Agent.* The Office may designate a collection agent for the data reporting. Covered reporters shall submit the required data for the previous business day by 6:00 a.m. Eastern time on the following business day.

(e) *Compliance.* (1) Any central counterparty that is a covered reporter as of the effective date of this Section shall comply with the reporting requirements pursuant to this Section 60 days after the effective date of this Section. Any such covered reporter's first submission shall be submitted on the first business day after such compliance date.[1]

(2) Any central counterparty that becomes a covered reporter after the effective date of this Section shall comply with the reporting requirements pursuant to this Section on the first

[1] For example, if this Section becomes effective on March 15, a central counterparty that meets the dollar threshold specified in Paragraph (b)(2) for the calendar quarter ending the previous December 31 will be required to submit its first report on the first business day after May 14.

business day of the third calendar quarter following the calendar quarter in which such central counterparty meets the dollar threshold specified in Paragraph (b)(2).[2]

Kenneth J. Phelan,

Acting Director, Office of Financial Research.

[FR Doc. 2018–14706 Filed 7–9–18; 8:45 am]

BILLING CODE 4810–25–P–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0589; Product Identifier 2018–NM–021–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This proposed AD was prompted by reports of false resolution advisories (RAs) from certain traffic collision avoidance systems (TCASs). This proposed AD would require modification or replacement of certain TCAS processors. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 24, 2018.

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

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

For service information identified in this NPRM, contact Honeywell Aerospace, Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; phone: 602–365–5535; fax: 602–365–5577; internet: *http://www.honeywell.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0589; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0589; Product Identifier 2018–NM–021–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0196, dated October 5, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> Since 2012, a number of false TCAS resolution advisories (RA) have been reported by various European Air Navigation Service Providers. EASA has published certification guidance material for collision avoidance systems (AMC 20–15) which defines a false TCAS RA as an RA that is issued, but the RA condition does not exist. It is possible that more false (or spurious) RA events have occurred, but were not recorded or reported. The known events were mainly occurring on Airbus single-aisle (A320 family) aeroplanes, although several events have also occurred on Airbus A330 aeroplanes. Investigation determined that the false RAs are caused on aeroplanes with a Honeywell TPA–100B TCAS processor installed, P/N [part number] 940–0351–001. This was caused by a combination of three factors: (1) Hybrid surveillance enabled; (2) processor connected to a hybrid GPS [global positioning system] source, without a direct connection to a GPS source; and (3) an encounter with an intruder aeroplane with noisy (jumping) ADS–B Out position.
>
> EASA previously published Safety Information Bulletin (SIB) 2014–33 to inform owners and operators of affected aeroplanes about this safety concern. At that time, the false RAs were not considered an unsafe condition. Since the SIB was issued, further events have been reported, involving a third aeroplane.
>
> This condition, if not corrected, could lead to a loss of separation with other aeroplanes, possibly resulting in a mid-air collision.
>
> Prompted by these latest findings, and after review of the available information, EASA reassessed the severity and rate of occurrence of false RAs and has decided that mandatory action must be taken to reduce the rate of occurrence, and the risk of loss of separation with other aeroplanes. Honeywell International Inc. published Service Bulletin (SB) 940–0351–34–0005 [Publication Number D201611000002] to provide instructions for an upgrade, introducing software version 05/01, changing the processor unit to P/N 940–0351–005.
>
> EASA previously issued AD 2017–0091 (later revised) to address the unsafe condition on aeroplanes that had the P/N 940–0351–001 processor installed by Airbus major change or SB. However, part of the fleet had the same P/N installed by STC [supplemental type certificate]. The relevant STC approval holders (see section Remarks of this [EASA] AD for contact details) have been notified and modification instructions (see section Ref. Publications of this [EASA] AD) can be obtained from those companies.
>
> For the reason described above, this [EASA] AD requires modification or

[2] For example, a central counterparty that meets the dollar threshold specified in Paragraph (b)(2) in a calendar quarter ending March 31 will become a covered reporter subject to the reporting requirements pursuant to this Section on the following October 1 and will be required to submit its first report on that date.

replacement of Honeywell TPA–100B P/N 940–0351–001 TCAS processors. This [EASA] AD also prohibits installation of those processors on post-mod aeroplanes.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0589.

Related Service Information Under 1 CFR Part 51

H4 Aerospace has issued Service Bulletin H4ASB009, Issue 1, dated September 18, 2017, and PMV Engineering has issued Service Bulletin AVI–00690–SB–S99–R01, Revision 01, dated October 5, 2017. This service information, provided by the applicable design change FAA STC approval holders, describes the modification or replacement of the Honeywell TPA–100B TCAS processor. These documents are distinct because they apply to different STCs on the airplanes. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

Honeywell has issued Service Bulletin 940–0351–34–0005, Revision 2, dated December 1, 2017. This service information describes procedures for updating the software of the Honeywell TPA–100B TCAS processor either on the airplane or at an authorized service center.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Differences Between This Proposed AD and the MCAI or Service Information

The applicability of the MCAI includes Airbus SAS models that are modified by certain STCs. However, of these STCs, only H4 Aerospace STC ST03708NY and PMV Engineering STC ST03835NY are validated by the FAA. Although the Airbus SAS Model A320–216 is included in the applicability of the MCAI, it is not included in the applicability of this proposed AD because it is not modified by these two FAA-validated STCs.

Costs of Compliance

We estimate that this proposed AD affects 1209 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	1 work-hour × $85 per hour = $85	Up to $1,623	Up to $1,708	Up to $2,064,972.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Replacement	1 work-hour × $85 per hour = $85	$121,993	$122,078

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2018–0589; Product Identifier 2018–NM–021–AD.

(a) Comments Due Date

We must receive comments by August 24, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, if modified by H4 Aerospace supplemental type certificate (STC) ST03708NY (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSTC.nsf/0/581702F96EC93ACF86257FEA00689E6B?OpenDocument&Highlight=st03708ny*) or PMV Engineering STC ST03835NY (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/06E4A762C1FDF8048625807D006457C7?OpenDocument&Highlight=st03835ny*).

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

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by reports of false resolution advisories (RAs) from certain traffic collision avoidance systems (TCASs). We are issuing this AD to address the occurrence of false RAs from the TCAS, which could lead to a loss of separation from other airplanes, possibly resulting in a mid-air collision.

(f) Compliance

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

(g) Definition of an Affected TCAS Processor

For the purposes of this AD, an affected TCAS processor is defined as a Honeywell TPA–100B TCAS processor having part number (P/N) 940–0351–001.

(h) Modification or Replacement of TCAS Processor

Within 12 months after the effective date of this AD: Update the software of the affected TCAS processor and change the part number to P/N 940–0351–005, or replace the affected TCAS processor with a TPA–100B TCAS processor P/N 940–0351–005, in accordance with the Accomplishment Instructions of H4 Aerospace Service Bulletin H4ASB009, Issue 1, dated September 18, 2017; or PMV Engineering Service Bulletin AVI–00690–SB–S99–R01, Revision 01, dated October 5, 2017, as applicable.

Note 1 to paragraph (h) of this AD: Guidance for accomplishing the actions required by paragraph (h) of this AD can be found in Honeywell Service Bulletin 940–0351–34–0005, Revision 2, dated December 1, 2017.

(i) Parts Installation Prohibition

After modification or replacement of the TCAS processor as required by paragraph (h) of this AD, no person may install on that airplane an affected TCAS processor, as defined in paragraph (g) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0196, dated October 5, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0589.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531.

(3) For service information identified in this AD, contact Honeywell Aerospace, Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; phone: 602–365–5535; fax: 602–365–5577; internet: *http://www.honeywell.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on July 3, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–14694 Filed 7–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0163]

RIN 1625–AA08

Special Local Regulation; Carolina Boat Bash, Little River Inlet, Little River, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation for the Carolina Boat Bash in Little River Inlet, SC. This action is necessary to ensure safety of life on navigable waters during the Carolina Boat Bash. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the designated area unless authorized by Sector Charleston COTP or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before August 9, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0163 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 Lieutenant Justin Heck, Sector Charleston Waterways Management Division, Coast

Guard; telephone (843) 740–3184, email *Justin.C.Heck@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
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On February 23, 2018, the Coast Guard was notified by the Freedom Boat Club/DBC about the Carolina Boat Bash, which will be held on August 18, 2018, and will impact waters of the Little River Inlet, Little River, South Carolina. The legal basis for the proposed rule is the Coast Guard's authority to establish special local regulations is 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Carolina Boat Bash.

III. Discussion of Proposed Rule

The COTP proposes to establish a special local regulation from 11 a.m. to 6 p.m. on August 18, 2018. The event will consist of live music from two 40' by 20' spud barges. This is expected to be a heavily attended event with an estimated 1200–1400 recreational boats possibly transiting the area.

The proposed special local regulation is necessary to ensure the safety of participants, spectators, and vessels from the hazards associated with the event. The duration of the special local regulation is intended to ensure the safety of event participants, the general public, vessels and navigable waters during the event scheduled time frame. Approximately 1400 vessels are anticipated to transit through the event area during that time frame. No vessel or person would be permitted to enter the marked regulated area 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.

The economic impact of this proposed rule is not significant for the following reasons: (1) Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by the COTP or a designated representative; (2) vessels not authorized to enter, transit through, anchor in, or remain within the regulated area may operate in the surrounding areas during the enforcement period; and (3) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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.

We have considered the impact of this proposed rule on small entities. This rule may affect the following entities, some of which may be small entities: the owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons stated in section IV.A. above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

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 (Pub. L. 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 Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation on one day lasting from 11:00 a.m. to 6:00 p.m., prohibiting traffic from approaching the barges. Normally such actions are categorically excluded from further review under paragraph L 63(b) 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 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.T07–0163 to read as follows:

§ 100.T07–0163 Special Local Regulation; Carolina Boat Bash, New River Inlet, SC.

(a) *Location.* This rule establishes a temporary local regulation on all waters within a 500 yard radius of the barge, from which the barge will be placed at position 33°51′.253″ N 078°32′.781″ W in Little River Inlet, Little River, SC.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced on August 18, 2018 from 11:00 a.m. until 6:00 p.m.

Dated: June 15, 2018.

J.W. Reed,

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

[FR Doc. 2018–14615 Filed 7–9–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2018–0225; FRL–9980–53–OAR]

RIN 2060–AT92

Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the Cross-State Air Pollution Rule Update for the 2008 ozone National Ambient Air Quality Standards (NAAQS) (CSAPR Update) fully addresses certain states' obligations under Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) regarding interstate pollution transport for the 2008 ozone NAAQS. The CSAPR Update, published on October 26, 2016, promulgated Federal Implementation Plans (FIPs) for 22 states in the eastern U.S. In the final CSAPR Update, based on information available at that time, the EPA could not conclude that the rule fully addressed CAA section 110(a)(2)(D)(i)(I) obligations for 21 of the 22 CSAPR Update states. This action proposes a determination that, based on additional information and analysis, the CSAPR Update fully addresses this CAA provision for the 2008 ozone NAAQS for all remaining CSAPR Update states. Specifically, EPA proposes to determine

that there will be no remaining nonattainment or maintenance receptors in the eastern U.S. in 2023. Therefore, with the CSAPR Update fully implemented, these states are not expected to contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 2008 ozone NAAQS. In accord with this proposed determination, the EPA proposes to determine that it has no outstanding, unfulfilled obligation under CAA section 110(c)(1) to establish additional requirements for sources in these states to further reduce transported ozone pollution under CAA section 110(a)(2)(D)(i)(I) with regard to the 2008 ozone NAAQS. As a result of this finding, this action proposes minor revisions to the existing CSAPR Update regulations to reflect that the CSAPR Update FIPs fully address CAA section 110(a)(2)(D)(i)(I). The proposed determination would apply to states currently subject to CSAPR Update FIPs as well as any states for which EPA has approved replacement of CSAPR Update FIPs with CSAPR Update SIPs.

DATES: Comments must be received on or before August 31, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0225, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the 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. The EPA will be holding one public hearing on the proposed Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard. The hearing will be held to accept oral comments on the proposal. The hearing will be held on August 1, 2018 in Washington DC. The hearing will begin at 9:00 a.m. (local time) and will conclude at 6:00 p.m. (local time) or two hours after the last registered speaker. The hearing will be held at the Environmental Protection Agency, William Jefferson Clinton East Building, Main Floor Room 1153, 1201 Constitution Avenue NW, in Washington, DC 20460. Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. 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. The EPA website for the rulemaking, which includes the proposal and supporting materials, can be found at *https://www.epa.gov/airmarkets/proposed-csapr-close-out.*

If you would like to present oral testimony at the public hearing, please register online at *https://www.epa.gov/airmarkets/forms/public-hearing-proposed-csapr-close-out* or contact Mr. Brian Fisher, U.S. Environmental Protection Agency, Office of Atmospheric Programs, Clean Air Markets Division, (MS 6204–M), 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone (202) 343 9633, email address is *fisher.brian@epa.gov,* no later than 2 business days prior to the public hearing. If using email, please provide the following information: Time you wish to speak (morning, afternoon, evening), name, affiliation, address, email address, and telephone number.

FOR FURTHER INFORMATION CONTACT: Brian Fisher, Clean Air Markets Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, MC 6204M, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 343–9633; email address: *fisher.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated entities. Entities regulated under the CSAPR Update are fossil fuel-fired boilers and stationary combustion turbines that serve generators producing electricity for sale, including combined cycle units and units operating as part of systems that cogenerate electricity and other useful energy output. Regulated categories and entities include:

Category	NAICS * code	Examples of potentially regulated industries
Industry	221112	Fossil fuel-fired electric power generation.

* 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 regulated. To determine whether your facility is affected by this action, you should carefully examine the applicability provisions in 40 CFR 97.804. If you have questions regarding the applicability of the CSAPR Update to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Outline. The following outline is provided to aid in locating information in this preamble.

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G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer Advancement Act
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Determinations Under Section 307(b)(1) and (d)

I. General Information

Within this document ''we,'' ''us,'' or ''our'' should be interpreted to mean the U.S. EPA.

Where can I get a copy of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0225 (available at *http://www.regulations.gov*). Information related to the proposed action and the public hearing is available at the website: *https://www.epa.gov/airtransport.*

States Covered by This Action

In the CSAPR Update, 81 FR 74504 (Oct. 26, 2016), the EPA promulgated FIPs intended to address 22 eastern states' obligations under CAA section 110(a)(2)(D)(i)(I), also known as the ''good neighbor provision,'' with respect to the 2008 ozone NAAQS. The good neighbor provision requires upwind states to control their emissions that impact air quality problems in downwind states. Based on information available when the CSAPR Update was finalized, the EPA was unable to determine at that time that the FIPs fully addressed good neighbor obligations under this NAAQS for 21 of the 22 states. The EPA has subsequently proposed to approve a draft SIP which, if finalized, would fully address the good neighbor obligation for one of these states, Kentucky. In this action, the EPA proposes to determine that, with CSAPR Update implementation, the 20 remaining states' good neighbor obligations for the 2008 ozone NAAQS are fully addressed. In accord with this determination, the EPA would have no further obligation under CAA section 110(c) to establish requirements for power plants or any other emissions sources in these states to further reduce transported ozone pollution under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS.

The two states among the 22 CSAPR Update states that are not covered by this action are Tennessee and Kentucky. With respect to Tennessee, the EPA already determined in the final CSAPR Update that implementation of the state's emissions budget would fully eliminate the state's significant contribution to downwind nonattainment and interference with maintenance of the 2008 ozone NAAQS because the downwind air quality problems to which the state was linked were projected to be resolved after implementation of the CSAPR Update. 81 FR 74540. With respect to Kentucky, the EPA has proposed in a separate action to approve the state's draft SIP submittal demonstrating that no additional emissions reductions beyond those required by the CSAPR Update are necessary to address the state's good neighbor obligation with respect to the 2008 ozone NAAQS. 83 FR 17123 (April 18, 2018). See Table I.A–1 for a list of states covered by this proposal.

TABLE I.A–1—STATES COVERED BY THIS PROPOSED DETERMINATION REGARDING GOOD NEIGHBOR OBLIGATIONS FOR THE 2008 OZONE NAAQS

State
Alabama.
Arkansas.
Illinois.
Indiana.
Iowa.
Kansas.
Louisiana.
Maryland.
Michigan.
Mississippi.
Missouri.
New Jersey.
New York.
Ohio.
Oklahoma.
Pennsylvania.
Texas.
Virginia.
West Virginia.
Wisconsin.

II. Background and Legal Authority

A. Ground-Level Ozone Pollution and Public Health

Ground-level ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure causes visible foliar injury in some plants, decreases growth in some plants, and affects ecosystem community composition.[1]

In this proposed action, consistent with previous rulemakings described in section II.B, the EPA relies on analysis that reflects the regional nature of transported ground-level ozone pollution. Ground-level ozone is not emitted directly into the air, but is a secondary air pollutant created by chemical reactions between nitrogen oxides (NO_X), carbon monoxide (CO), methane (CH_4), and non-methane volatile organic compounds (VOCs) in the presence of sunlight. Emissions from mobile sources, electric generating units (EGUs), industrial facilities, gasoline vapors, and chemical solvents are some of the major anthropogenic sources of ozone precursors. NO_X emissions from the mobile source category lead all sectors and were more than double emissions from the second-highest emitting sector, and accounted from more than half of the national NO_X emissions in 2014.[2] The potential for ground-level ozone formation increases during periods with warmer temperatures and stagnant air masses. Therefore, ozone levels are generally higher during the summer months.[3] [4] Ground-level ozone concentrations and temperature are highly correlated in the eastern U.S., with observed ozone increases of 2–3 parts per billion (ppb) per degree Celsius reported.[5]

Precursor emissions can be transported downwind directly or, after transformation in the atmosphere, as ozone. Studies have established that ozone formation, atmospheric residence, and transport occur on a regional scale (*i.e.,* hundreds of miles) over much of the eastern U.S. As a result of ozone transport, in any given location, ozone pollution levels are impacted by a combination of local emissions and emissions from upwind sources. Numerous observational studies have

[1] For more information on the human health and welfare and ecosystem effects associated with ambient ozone exposure, see the EPA's October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/R–15–007) in the docket for this rule and also found in the docket for the 2015 ozone NAAQS, Docket No. EPA–HQ–OAR–2013–0169–0057.

[2] EPA. 2014 National Emissions Inventory (NEI) v2. Released 2/2018 and available at *https://www.epa.gov/air-emissions-inventories.*

[3] Rasmussen, D.J. et al. (2011). Ground-level ozone-temperature relationships in the eastern US: A monthly climatology for evaluating chemistry-climate models. Atmospheric Environment 47: 142–153.

[4] High ozone concentrations have also been observed in cold months, where a few areas in the western U.S. have experienced high levels of local VOC and NO_X emissions that have formed ozone when snow is on the ground and temperatures are near or below freezing.

[5] Bloomer, B.J., J.W. Stehr, C.A. Piety, R.J. Salawitch, and R.R. Dickerson (2009). Observed relationships of ozone air pollution with temperature and emissions, Geophys. Res. Lett., 36, L09803.

demonstrated the transport of ozone and its precursors and the impact of upwind emissions on high concentrations of ozone pollution.[6]

The EPA concluded in several previous rulemakings (summarized in section II.B) that interstate ozone transport can be an important component of peak ozone concentrations during the summer ozone season and that NO_X control strategies are effective for reducing regional-scale ozone transport. Model assessments have looked at impacts on peak ozone concentrations after potential emissions reduction scenarios for NO_X and VOCs for NO_X-limited and VOC-limited areas. For example, Jiang and Fast concluded that NO_X emissions reduction strategies are effective in lowering ozone mixing ratios in urban areas and Liao et al. showed that NO_X reductions result in lower peak ozone concentrations in non-attainment areas in the Mid-Atlantic.[7] Assessments of ozone conducted for the October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/R–15–007) also show the importance of NO_X emissions on ozone formation. This analysis is in the docket for this rule and also can be found in the docket for the 2015 ozone NAAQS regulatory impact analysis, Docket No. EPA–HQ–OAR–2013–0169 (document ID EPA–HQ–OAR–2013–0169–0057).

Studies have found that NO_X emissions reductions can be effective in reducing ozone pollution as quantified by the form of the 2008 ozone standard, 8-hour peak concentrations. Specifically, studies have found that NO_X emissions reductions from EGUs, mobile sources, and other source categories can be effective in reducing the upper-end of the cumulative ozone distribution in the summer on a regional scale.[8] Analysis of air quality monitoring data trends shows reductions in summertime ozone concurrent with implementation of NO_X reduction programs.[9] Gilliland et al. examined the NO_X SIP Call and presented reductions in observed versus modeled ozone concentrations in the eastern U.S. downwind from major NO_X sources.[10] The results showed significant reductions in ozone concentrations (10–25 percent) from observed measurements (CASTNET and AQS)[11] between 2002 and 2005, linking reductions in EGU NO_X emissions from upwind states with ozone reductions downwind of the major source areas.[12] Additionally, Gégo et al. showed that ground-level ozone concentrations were significantly reduced after implementation of the NO_X SIP Call.[13]

Mobile sources also account for a large share of the NO_X emissions inventory (*i.e.,* about 7.3 million tons per year in the 2011 base year, which represented more than 50% of continental U.S. NO_X emissions), and the EPA recognizes that emissions reductions achieved from this sector as well can reduce transported ozone pollution. The EPA has national programs that serve to reduce emissions from all contributors to the mobile source inventory (*i.e.,* projected NO_X emissions reductions of about 4.7 million tons per year between the 2011 base year and the 2023 future analytical year). A detailed discussion of the EPA's mobile source emissions reduction programs can be found at *www.epa.gov/otaq.*

In light of the regional nature of ozone transport discussed herein, and given that NO_X emissions from mobile sources are being addressed in separate national rules, in the CSAPR Update (as in previous regional ozone transport actions) the EPA relied on regional analysis and required regional ozone-season NO_X emissions reductions from EGUs to address interstate transport of ozone.

B. The EPA's Statutory Authority for This Proposed Action

The statutory authority for this proposed action is provided by the CAA as amended (42 U.S.C. 7401 *et seq.*). Specifically, sections 110 and 301 of the CAA provide the primary statutory underpinnings for this rule. The most relevant portions of section 110 are subsections 110(a)(1), 110(a)(2) (including 110(a)(2)(D)(i)(I)), and 110(c)(1).

Section 110(a)(1) provides that states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and that these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS.[14] The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS.[15]

The EPA has historically referred to SIP submissions made for the purpose of satisfying the applicable requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required content of these submissions. It includes a list of specific elements that ''[e]ach such plan'' submission must address.[16] All states, regardless of whether the state includes areas designated as nonattainment for the relevant NAAQS, must have SIPs that meet the applicable requirements of section 110(a)(2), including provisions of section 110(a)(2)(D)(i)(I) described later and that are the focus of this rule.

Section 110(c)(1) requires the Administrator to promulgate a FIP at any time within two years after the Administrator: (1) Finds that a state has failed to make a required SIP submission; (2) finds a SIP submission to be incomplete pursuant to CAA section 110(k)(1)(C); or (3) disapproves

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[6] Bergin, M.S. et al. (2007). Regional air quality: local and interstate impacts of NO_X and SO_2 emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

[7] Jiang, G.; Fast, J.D. (2004). Modeling the effects of VOC and NO_X emission sources on ozone formation in Houston during the TexAQS 2000 field campaign. Atmospheric Environment 38: 5071–5085.

[8] Hidy, G.M. and Blanchard C.L. (2015). Precursor reductions and ground-level ozone in the Continental United States. J. of Air & Waste Management Assn. 65, 10.

[9] Simon, H. et al. (2015). Ozone trends across the United States over a period of decreasing NO_X and VOC emissions. Environmental Science & Technology 49, 186–195.

[10] Gilliland, A.B. et al. (2008). Dynamic evaluation of regional air quality models: Assessing changes in O_3 stemming from changes in emissions and meteorology. Atmospheric Environment 42: 5110–5123.

[11] CASTNET is the EPA's Clean Air Status and Trends Network. AQS is the EPA's Air Quality System.

[12] Hou, Strickland & Liao. ''Contributions of regional air pollutant emissions to ozone and fine particulate matter-related mortalities in eastern U.S. urban areas''. Environmental Research, Feb. 2015. Available at *https://ac.els-cdn.com/S0013935114004113/1-s2.0-S0013935114004113-main.pdf?_tid=78c88101-fa6e-4e75-a65c-f56746905e7d&acdnat=1525175812_0e62553b83c9ffa1105aa306a478e8bb*

[13] Gégo et al. (2007). Observation-based assessment of the impact of nitrogen oxides emissions reductions on O_3 air quality over the eastern United States. J. of Applied Meteorology and Climatology 46: 994–1008.

[14] 42 U.S.C. 7410(a)(1).

[15] *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584, 1601 (2014).

[16] The EPA's general approach to infrastructure SIP submissions is explained in greater detail in individual notices acting or proposing to act on state infrastructure SIP submissions and in guidance. *See, e.g.,* Memorandum from Stephen D. Page on Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

a SIP submission, unless the state corrects the deficiency through a SIP revision that the Administrator approves before the FIP is promulgated.[17]

Section 110(a)(2)(D)(i)(I), also known as the ''good neighbor provision,'' provides the primary basis for this action. It requires that each state SIP shall include provisions sufficient to ''prohibit[ ] . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].'' [18]

The EPA has previously issued four rules interpreting and clarifying the requirements of section 110(a)(2)(D)(i)(I) for states in the eastern United States. These rules, and the associated court decisions addressing these rules, summarized here, provide important guidance regarding the requirements of section 110(a)(2)(D)(i)(I).

The NO_X SIP Call, promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS.[19] The rule required 22 states and the District of Columbia to amend their SIPs to reduce NO_X emissions that contribute to ozone nonattainment in downwind states. The EPA set an ozone season NO_X budget for each covered state, essentially a cap on ozone season NO_X emissions in the state. Covered states were given the option to participate in a regional cap-and-trade program, known as the NO_X Budget Trading Program (NBP), to achieve a large portion of the reductions. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) largely upheld the NO_X SIP Call in *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000), *cert. denied,* 532 U.S. 904 (2001).

The EPA's next rule addressing the good neighbor provision, Clean Air Interstate Rule (CAIR), was promulgated in 2005 and addressed both the 1997 $PM_{2.5}$ and 1997 ozone NAAQS.[20] CAIR required SIP revisions in 28 states and the District of Columbia to reduce emissions of sulfur dioxide (SO_2) and/or NO_X—important precursors of regionally transported $PM_{2.5}$ (SO_2 and NO_X) and ozone (NO_X). As in the NO_X SIP Call, states were given the option to participate in regional cap-and-trade programs to achieve the reductions. When the EPA promulgated the final CAIR in May 2005, the EPA also issued a national rule, finding that states had failed to submit SIPs to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ and 1997 ozone NAAQS. Those states were required by the CAA to have submitted good neighbor SIPs for those standards by July 2000 (*i.e.,* three years after the standards were finalized).[21] These findings of failure to submit triggered a 2-year clock for the EPA to issue FIPs to address interstate transport,[22] and on March 15, 2006, the EPA promulgated FIPs to ensure that the emissions reductions required by CAIR would be achieved on schedule.[23] CAIR was remanded to the EPA by the D.C. Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176. For more information on the legal issues underlying CAIR and the D.C. Circuit's holding in *North Carolina,* refer to the preamble of the original CSAPR.[24]

In 2011, the EPA promulgated the original CSAPR to address the issues raised by the remand of CAIR. CSAPR addressed the two NAAQS at issue in CAIR and additionally addressed the good neighbor provision for the 2006 $PM_{2.5}$ NAAQS.[25] CSAPR required 28 states to reduce SO_2 emissions, annual NO_X emissions, and/or ozone season NO_X emissions that significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain these air quality standards. To align implementation with the applicable attainment deadlines, the EPA promulgated FIPs for each of the 28 states covered by CSAPR. The FIPs implement regional cap-and-trade programs to achieve the necessary emissions reductions. Each state can submit a good neighbor SIP at any time that, if approved by the EPA, would replace the CSAPR FIP for that state.[26] CSAPR was the subject of an adverse decision by the D.C. Circuit in August 2012,[27] reversed in April 2014 by the Supreme Court,[28] which largely upheld the rule, including EPA's approach to addressing interstate transport in CSAPR, but remanded to the D.C. Circuit to consider other claims not addressed by the Court. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand from the Supreme Court, in July 2015 the D.C. Circuit affirmed the EPA's interpretation of various statutory provisions and the EPA's technical decisions. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (2015) (*EME Homer City II*). However, the court also remanded the rule without vacatur for reconsideration of the EPA's emissions budgets for certain states, which the court found may over-control those states' emissions with respect to the downwind air quality problems to which the states were linked. *Id.* at 129–30, 138. For more information on the legal considerations of CSAPR and the court's decisions in the *EME Homer City* litigation, refer to the preamble of the CSAPR Update.[29]

In 2016, the EPA promulgated the CSAPR Update to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS. The final rule generally updated the CSAPR ozone season NO_X emissions budgets for 22 states to achieve cost-effective NO_X emissions reductions from EGUs within those states.[30] The CSAPR Update implemented these budgets through FIPs requiring sources to participate in a revised CSAPR ozone season NO_X allowance trading program. As under the original CSAPR, each state can submit a good neighbor SIP at any time that, if approved by the EPA, would replace the CSAPR Update FIP for that state.[31] The final CSAPR Update also addressed the remand by the D.C. Circuit of certain states' original CSAPR phase 2 ozone season NO_X emissions budgets in *EME Homer City II.* The CSAPR Update is subject to pending

[17] 42 U.S.C. 7410(c)(1).

[18] 42 U.S.C. 7410(a)(2)(D)(i)(I).

[19] 63 FR 57356 (Oct. 27, 1998). As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but the EPA subsequently stayed the rule's provisions with respect to that standard. 40 CFR 51.121(q).

[20] 70 FR 25162 (May 12, 2005).

[21] 70 FR 21147 (May 12, 2005). *See* n.14 and main text, *supra.*

[22] *See* n.17 and main text, *supra.*

[23] 71 FR 25328 (April 28, 2006).

[24] 76 FR 48208, 48217 (Aug. 8, 2011).

[25] 76 FR 48208.

[26] EPA has already approved SIPs fully replacing the original CSAPR FIPs for Alabama, 81 FR 59869 (Aug. 31, 2016), Georgia, 82 FR 47930 (Oct. 13, 2017), and South Carolina, 82 FR 47936 (Oct. 13, 2017).

[27] On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012) (*EME Homer I*), vacating CSAPR. The EPA sought review with the D.C. Circuit *en banc* and the D.C. Circuit declined to consider the EPA's appeal *en banc. EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. January 24, 2013), ECF No. 1417012 (denying the EPA's motion for rehearing en banc).

[28] On January 23, 2013, the Supreme Court granted the EPA's petition for certiorari. *EPA* v. *EME Homer City Generation, L.P.,* 133 S. Ct. 2857 (2013) (granting the EPA's and other parties' petitions for certiorari). On April 29, 2014, the Supreme Court issued a decision reversing the D.C. Circuit's *EME Homer City* opinion.

[29] 81 FR 74511.

[30] One state, Kansas, was made newly subject to a CSAPR ozone season NO_X requirement by the CSAPR Update. All other CSAPR Update states were already subject to ozone season NO_X requirements under the original CSAPR.

[31] EPA has already approved a SIP fully replacing the CSAPR Update FIP for Alabama. 82 FR 46674 (Oct. 6, 2017).

legal challenges in the D.C. Circuit. *Wisconsin* v. *EPA,* No. 16–1406 (D.C. Cir. filed Nov. 23, 2016). Further information about the CSAPR Update can be found in section II.D of this notice.

Section 301(a)(1) of the CAA also gives the Administrator the general authority to prescribe such regulations as are necessary to carry out functions under the Act.[32] Pursuant to this section, the EPA has authority to clarify the applicability of CAA requirements. In this action, among other things, the EPA is clarifying the applicability of section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. In particular, the EPA is using its authority under sections 110 and 301 to make a determination that no further enforceable reductions in emissions of NO_X are required under this provision with respect to the 2008 ozone NAAQS for the states covered by this rule. The EPA is making minor revisions to the existing state-specific sections of the CSAPR Update regulations for all states covered by that action other than Kentucky and Tennessee.

C. Good Neighbor Obligations for the 2008 Ozone NAAQS

On March 12, 2008, the EPA promulgated a revision to the NAAQS, lowering both the primary and secondary standards to 75 ppb. *See* National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008). Specifically, the standards require that an area may not exceed 75 ppb using the 3-year average of the fourth highest 24-hour maximum 8-hour rolling average ozone concentration. These revisions of the NAAQS, in turn, triggered a 3-year deadline for states to submit SIP revisions addressing infrastructure requirements under CAA sections 110(a)(1) and 110(a)(2), including the good neighbor provision. Several events affected application of the good neighbor provision for the 2008 ozone NAAQS, including reconsideration of the 2008 ozone NAAQS and legal developments pertaining to the EPA's original CSAPR, which created uncertainty surrounding the EPA's statutory interpretation and implementation of the good neighbor provision.[33] Notwithstanding these events, EPA ultimately affirmed that states' good neighbor SIPs were due on March 12, 2011.

The EPA subsequently took several actions that triggered the EPA's obligation under CAA section 110(c) to promulgate FIPs addressing the good neighbor provision for several states.[34] First, on July 13, 2015, the EPA published a rule finding that 24 states failed to make complete submissions that address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2008 ozone NAAQS. *See* 80 FR 39961 (effective August 12, 2015). The finding action triggered a 2-year deadline for the EPA to issue FIPs to address the good neighbor provision for these states by August 12, 2017. The CSAPR Update finalized FIPs for 13 of these states (Alabama, Arkansas, Illinois, Iowa, Kansas, Michigan, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia). The EPA also determined in the CSAPR Update that the Agency had fully satisfied its FIP obligation as to nine additional states identified in the finding of failure to submit (Florida, Georgia, Maine, Massachusetts, Minnesota, New Hampshire, North Carolina, South Carolina, and Vermont). The EPA determined that these states did not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. 81 FR 74506.[35] On June 15, 2016 and July 20, 2016, the EPA published additional rules finding that New Jersey and Maryland, respectively, also failed to submit transport SIPs for the 2008 ozone NAAQS. *See* 81 FR 38963 (June 15, 2016) (effective July 15, 2016); 81 FR 47040 (July 20, 2016) (Maryland, effective August 19, 2016). The finding actions triggered 2-year deadlines for the EPA to issue FIPs to address the good neighbor provision for Maryland by August 19, 2018, and New Jersey by July 15, 2018. The CSAPR Update finalized FIPs for these two states.

In addition to the previously identified finding actions, the EPA also finalized disapproval or partial disapproval actions for SIPs submitted by Indiana, Kentucky, Louisiana, New York, Ohio, Texas, and Wisconsin.[36] These disapprovals triggered the EPA's obligation to promulgate FIPs to implement the requirements of the good neighbor provision for those states within 2 years of the effective date of each disapproval. The EPA promulgated CSAPR Update FIPs for Indiana, Kentucky, Louisiana, New York, Ohio, Texas, and Wisconsin.

As discussed in more detail in the next section, in issuing the CSAPR Update, the EPA did not determine that it had entirely addressed the EPA's outstanding CAA obligations to implement the good neighbor provision with respect to the 2008 ozone NAAQS for 21 of 22 states covered by that rule. Accordingly, the CSAPR Update did not fully satisfy the EPA's obligation to address the good neighbor provision requirements for those states by approving SIPs, issuing FIPs, or some combination of those two actions. The EPA found that the CSAPR Update FIP fully addressed the good neighbor provision for the 2008 ozone NAAQS only with respect to Tennessee.

The EPA notes that it has also already separately proposed an action to fully address Kentucky's good neighbor obligation for the 2008 ozone NAAQS. 83 FR 17123 (Apr. 18, 2018). On May 23, 2017, the U.S. District Court for the Northern District of California issued an order requiring the EPA to take a final action fully addressing the good neighbor obligation for the 2008 ozone NAAQS for Kentucky by June 30, 2018. *See* Order, *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328 (N.D. Cal. May 23, 2017). On February 28, 2018, Kentucky submitted to the EPA a draft SIP addressing the remaining good neighbor obligation. On May 10, 2018, Kentucky submitted their final SIP to EPA. The EPA proposed to approve the state's draft SIP, 83 FR 17123 (April 18, 2018), and intends to take an appropriate final action that would address this obligation for Kentucky consistent with the court-ordered deadline.

As noted previously, subsequent to the promulgation of the CSAPR Update, the EPA approved a SIP fully replacing the FIP for Alabama. 82 FR 46674 (October 6, 2017). In that SIP approval, the EPA found that the rule partially satisfies Alabama's good neighbor obligation for the 2008 ozone NAAQS. Thus, the EPA continues to have an obligation, stemming from the July 13, 2015 findings notice, to fully address the good neighbor provision requirements for the 2008 NAAQS with respect to Alabama. As previously

[32] 42 U.S.C. 7601(a)(1).

[33] These events are described in detail in section IV.A.2 of the CSAPR Update. 81 FR 74515.

[34] This section of the preamble focuses on SIP and FIP actions for those states addressed in the CSAPR Update. The EPA has also acted on SIPs for other states not mentioned in this action. The memorandum, *Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone NAAQS,* more fully describes the good neighbor SIP status for the 2008 ozone NAAQS and is available in the docket for this action.

[35] The two remaining states addressed in the findings of failure to submit (California and New Mexico) were not part of the CSAPR Update analysis and are not addressed in this rulemaking.

[36] *See* the following actions: Indiana (81 FR 38957, June 15, 2016); Kentucky (78 FR 14681, March 7, 2013); Louisiana (81 FR 53308, August 12, 2016); New York (81 FR 58849, August 26, 2016); Ohio (81 FR 38957, June 15, 2016); Texas (81 FR 53284, August 12, 2016); and Wisconsin (81 FR 53309, August 12, 2016).

noted, other states have also submitted SIPs, some of which the EPA has approved and some of which still remain pending. However, these states are not the subject of this rulemaking and these actions are therefore not described in detail in this section.

Table II.C–1 summarizes the statutory deadline for the EPA to address its FIP obligation under CAA section 110(c) and the event that activated the EPA's obligation for each of the 20 remaining CSAPR Update states addressed in this proposed action. For more information regarding the actions triggering the EPA's FIP obligation and the EPA's action on SIPs addressing the good neighbor provision for the 2008 ozone NAAQS, see the memorandum, *Status of* 110(a)(2)(D)(i)(I) SIPs *for the 2008 Ozone NAAQS,* in the docket for this action.

TABLE II.C–1—EVENTS THAT ACTIVATED EPA'S OBLIGATION AND STATUTORY FIP DEADLINES

State	Type of action (**Federal Register** citation, publication date)	Statutory FIP deadline [37]
Alabama	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Arkansas	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Illinois	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Indiana	SIP disapproval (81 FR 38957, 6/15/2016)	7/15/2018
Iowa	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Kansas	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Louisiana	SIP disapproval (81 FR 53308, 8/12/2016)	9/12/2018
Maryland	Finding of Failure to Submit (81 FR 47040, 7/20/2016)	8/19/2018
Michigan	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Mississippi	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Missouri	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
New Jersey	Finding of Failure to Submit (81 FR 38963, 6/15/2016)	7/15/2018
New York	SIP disapproval (81 FR 58849, 8/12/2016)	9/26/2018
Ohio	SIP disapproval (81 FR 38957, 6/15/2016)	7/15/2018
Oklahoma	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Pennsylvania	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Texas	SIP disapproval (81 FR 53284, 8/12/2016)	9/12/2018
Virginia	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
West Virginia	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Wisconsin	Partial SIP disapproval as to prong 2 (81 FR 53309, 8/12/2016)	9/12/2018

D. Summary of the CSAPR Update

On October 16, 2016, the EPA finalized the CSAPR Update. The purpose of the CSAPR Update was to protect public health and welfare by reducing interstate pollution transport that significantly contributes to nonattainment, or interferes with maintenance, of the 2008 ozone NAAQS in the eastern U.S. As discussed in section II.C, the EPA finalized a FIP for each of the 22 states subject to the rule,[38] either having previously found that those states failed to submit a complete good neighbor SIP (15 states) or having issued a final rule disapproving their good neighbor SIP submittals (7 states). For the 22 states covered by the CSAPR Update, the EPA promulgated EGU ozone season NO_X emissions budgets, implemented through a regional allowance trading program, to reduce interstate ozone transport for the 2008 ozone NAAQS during the ozone season (May–September), beginning with the 2017 ozone season.

The EPA aligned its analysis for the CSAPR Update (and implementation of the trading program) with relevant attainment dates for the 2008 ozone NAAQS, consistent with the D.C. Circuit's decision in *North Carolina* v. *EPA.*[39] The EPA's final 2008 Ozone NAAQS SIP Requirements Rule established the attainment deadline of July 20, 2018 for ozone nonattainment areas classified as Moderate.[40] Because the attainment date falls during the 2018 ozone season, the 2017 ozone season was the last full season from which data could be used to determine attainment of the NAAQS by the July 20, 2018 attainment date. Therefore, consistent with the court's instruction in *North Carolina,* the EPA established and implemented emissions budgets starting with the 2017 ozone season. 81 FR 74507.

To establish the CSAPR Update emissions budgets, the EPA followed a four-step analytic process that has been used in each of the Agency's regional interstate transport rulemakings. The four-step interstate transport framework is described in more detail in section III.A. To summarize, in step 1, the Agency identified downwind receptors that are expected to have problems attaining or maintaining the NAAQS. In step 2, the EPA examined which upwind states contribute to the nonattainment or maintenance receptors identified in step 1. In step 3, the EPA quantified the upwind emissions that significantly contribute to nonattainment or interfere with maintenance. The EPA quantified significantly contributing emissions from upwind states by evaluating levels of uniform NO_X control stringency, represented by an estimated marginal cost per ton of NO_X reduced. The EPA applied a multi-factor test to evaluate cost, available emissions reductions, and downwind air quality impacts to determine the appropriate level of uniform NO_X control stringency that addressed the impacts of interstate transport on downwind nonattainment or maintenance receptors. The EPA used

[37] The FIP deadline is two years from the effective date of the SIP disapproval or Finding of Failure to Submit, which generally trails the publication date by 30 or 45 days.

[38] Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

[39] 531 F.3d 896, 911–12 (D.C. Cir. 2008) (holding that the EPA must coordinate interstate transport compliance deadlines with downwind attainment deadlines).

[40] 80 FR 12264, 12268 (Mar. 6, 2015); 40 CFR 51.1103. Ozone nonattainment areas are classified as either Marginal, Moderate, Serious, Severe, or Extreme, based on the severity of the air quality problem in the area. Areas with more acute air quality problems are required to implement more stringent control requirements and are provided additional time to attain the NAAQS. See CAA sections 181 and 182, 42 U.S.C. 7511, 7511a.

this multi-factor assessment to gauge the extent to which emissions reductions should be implemented beginning in 2017 and to ensure those reductions do not represent over-control. In step 4, the EPA identified emissions budgets for significantly contributing states that reflected the absence of significant contribution and provided for implementation of the budgets through an allowance trading program.

The multi-factor test generated a ''knee in the curve,'' *i.e.,* a point at which the cost-effectiveness of the emissions reductions is maximized, so named for the discernable turning point observable in a cost curve. *See* 81 FR 74550. In the CSAPR Update this was at the point where emissions budgets reflected a control stringency with an estimated marginal cost of $1,400 per ton of NO_X reduced. This level of stringency in emissions budgets represented the level at which incremental EGU NO_X reduction potential and corresponding downwind ozone air quality improvements were maximized—relative to other cost levels evaluated—with respect to marginal cost. That is, the ratio of emissions reductions to marginal cost and the ratio of ozone improvements to marginal cost were maximized relative to the other emissions budget levels evaluated. The EPA found that highly cost-effective EGU NO_X reductions were available to make meaningful and timely improvements in downwind ozone air quality to address interstate ozone transport for the 2008 ozone NAAQS for the 2017 ozone season. 81 FR 74508. Further, the agency's evaluation showed that emissions budgets reflecting the $1,400 per ton cost threshold did not over-control upwind states' emissions relative to either the downwind air quality problems to which they were linked or the 1 percent contribution threshold in step 2 that triggered their further evaluation in step 3. *Id.* at 74551–52. As a result, the EPA finalized EGU ozone season NO_X emissions budgets developed using uniform control stringency represented by $1,400 per ton.

To implement the CSAPR Update's emissions reductions, the EPA promulgated FIPs requiring power plants in covered states to participate in the CSAPR NO_X Ozone Season Group 2 allowance trading program starting in 2017.[41] CSAPR's trading programs and the EPA's prior emissions trading programs (*e.g.,* CAIR and the NO_X Budget Trading Program) provide a proven implementation framework for achieving emissions reductions. In addition to providing environmental certainty (*i.e.,* a cap on emissions), these programs also provide regulated sources with flexibility in choosing compliance strategies. By using the CSAPR allowance trading programs, the EPA applied an implementation framework that was shaped by notice and comment in previous rulemakings and reflected the evolution of these programs in response to court decisions and practical experience gained by states, industry, and the EPA.

Based on information available at the time of its promulgation, the EPA was unable to conclude that the CSAPR Update fully addressed most of the covered states' good neighbor obligations for the 2008 ozone NAAQS. 81 FR 74521. Information available at the time indicated that, even with CSAPR Update implementation, several downwind receptors were expected to continue having problems attaining and maintaining this NAAQS and that emissions from upwind states were expected to continue to contribute greater than or equal to 1 percent of the NAAQS to these areas during the 2017 ozone season. *Id.* at 74551–52. Further, the EPA could not conclude at that time whether additional EGU and non-EGU reductions implemented on a longer timeframe than 2017 would be feasible and cost-effective to address states' good neighbor obligations for this NAAQS.

As noted, the EPA premised its conclusion that the CSAPR Update may not fully address states' good neighbor obligations in part on the Agency's assessment that air quality problems would persist at downwind receptors in 2017 even with CSAPR Update implementation. The EPA's assessment of CSAPR Update implementation using the Air Quality Assessment Tool (AQAT) indicated that certain eastern air quality monitors would continue to have problems attaining and maintaining the 2008 ozone NAAQS in 2017. 81 FR 74550–52. Specifically, projected nonattainment receptors remained in Connecticut, Texas, and Wisconsin, while projected maintenance-only receptors remained in Connecticut, Maryland, Michigan, New York, and Texas.[42] See Table II.C–1 for a list of remaining nonattainment receptors and Table II.C–2 for a list of remaining maintenance-only receptors. (The EPA's approach to defining nonattainment and maintenance-only receptors is explained in section III.C.1 below.)

TABLE II.C–2—REMAINING 2017 PROJECTED NONATTAINMENT RECEPTORS IN THE EASTERN U.S.

Monitor ID	State	County
090019003	Connecticut	Fairfield.
090099002	Connecticut	New Haven.
480391004	Texas	Brazoria.
484392003	Texas	Tarrant.
484393009	Texas	Tarrant.
551170006	Wisconsin	Sheboygan.

TABLE II.C–3—REMAINING 2017 PROJECTED MAINTENANCE-ONLY RECEPTORS IN THE EASTERN U.S.

Monitor ID	State	County
090010017	Connecticut	Fairfield.
090013007	Connecticut	Fairfield.
240251001	Maryland	Harford.
260050003	Michigan	Allegan.
360850067	New York	Richmond.
361030002	New York	Suffolk.
481210034	Texas	Denton.
482010024	Texas	Harris.
482011034	Texas	Harris.
482011039	Texas	Harris.

The EPA's analysis also showed that 21 of the 22 CSAPR Update states would continue to contribute equal to or greater than 1 percent of the 2008 ozone NAAQS to at least one remaining nonattainment or maintenance receptor in 2017.[43] Thus, for those 21 states, the EPA could not, based on information available in the CSAPR Update rulemaking, make an air quality-based conclusion that the CSAPR Update would fully resolve states' good neighbor obligations with respect to the 2008 ozone NAAQS. (For one state, Tennessee, the EPA determined that the CSAPR Update fully resolved its good neighbor obligation.)

Further, it was not feasible for the EPA to complete an emissions control analysis that would otherwise be necessary to evaluate full elimination of each state's significant contribution to nonattainment or interference with maintenance and also ensure that emissions reductions would be achieved by 2017. 81 FR at 74522. Specifically, the EPA was unable to fully consider both non-EGU ozone season NO_X

[41] The ozone season NO_X allowance trading program created under the original CSAPR was renamed the CSAPR NO_X Ozone Season Group 1 Trading Program and now applies only to sources in Georgia. In the CSAPR Update, the EPA found that Georgia did not contribute to interstate transport with respect to the 2008 ozone NAAQS, but the state has an ongoing ozone season NO_X requirement under the original CSAPR.

[42] Projected AQAT design values for the $1400/ton policy case are available in Tables D–6 and D–7 of the CSAPR Update ''Ozone Transport Policy Analysis Final Rule TSD'' (August 2016), Docket ID No. EPA–HQ–OAR–2015–0500–0555.

[43] *See* EPA's Air Quality Assessment Tool from the CSAPR Update in the docket for this rulemaking.

reductions and further EGU reductions that may have been achievable after 2017. *Id.* at 74521. The EPA did not quantify non-EGU stationary source emissions reductions to address interstate ozone transport for the 2008 ozone NAAQS in the CSAPR Update for two reasons. First, the EPA explained that there was greater uncertainty in the EPA's assessment of non-EGU NO_X mitigation potential, and that more time would be required for states and the EPA to improve non-EGU point source data and pollution control assumptions before we could develop emissions reduction obligations based on that data. *Id.* at 74542. Second, the EPA explained that we did not believe that significant, certain, and meaningful non-EGU NO_X reductions were feasible for the 2017 ozone season. *Id.* Many commenters generally agreed with the EPA that non-EGU emissions reductions were not readily available for the 2017 ozone season but some advocated that such reductions should be included as appropriate in future mitigation actions. *Id.* at 74521–22. With respect to EGUs, the EPA concluded that additional control strategies, such as the implementation of new post-combustion controls, would take several years to implement, which was beyond the 2017 ozone season targeted in the CSAPR Update. *Id.* at 74541. Thus, the EPA could not make an emissions reduction-based conclusion that the CSAPR Update would fully resolve states' good neighbor obligations with respect to the 2008 ozone NAAQS because the reductions required by the CSAPR Update were EGU-only and because the EPA focused the policy analysis for the CSAPR Update on reductions available by the beginning of the 2017 ozone season.

Finally, in promulgating the CSAPR Update, the EPA stated its belief that it was beneficial to implement, without further delay, EGU NO_X reductions that were achievable in the near term, particularly before the Moderate area attainment date of 2018. Notwithstanding that additional reductions may be required to fully address the states' interstate transport obligations, the EGU NO_X emissions reductions implemented by the final rule were needed for upwind states to eliminate their significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS and to assist downwind states with ozone nonattainment areas that are required to attain the standard by July 20, 2018.

As a result of the remaining air quality problems and the limitations on the EPA's analysis, for all but one of the 21 states at issue, the EPA did not determine in the CSAPR Update that the CSAPR Update fully addressed those states' downwind air quality impacts under the good neighbor provision for the 2008 ozone NAAQS. *Id.* at 74521. For one state, Tennessee, the EPA determined in the final CSAPR Update that Tennessee's emissions budget fully eliminated the state's significant contribution to downwind nonattainment and interference with maintenance of the 2008 ozone NAAQS because the downwind air quality problems to which the state was linked were projected to be resolved with implementation of the CSAPR Update. *Id.* at 74552.

III. Proposed Determination Regarding Good Neighbor Obligations for the 2008 Ozone NAAQS

As described in section II.D, in the CSAPR Update the EPA promulgated FIPs intended to address the good neighbor provision for the 2008 ozone NAAQS, but could not at that time determine that those FIPs fully address 2008 ozone NAAQS good neighbor obligations for 21 of the 22 CSAPR Update states, based on information available when the rule was finalized. As a result, the CSAPR Update did not fully satisfy the EPA's obligation to issue FIPs or approve SIPs to address those states' good neighbor obligations for the 2008 ozone NAAQS. In this notice, the EPA proposes to determine that, based on additional information and analysis, the CSAPR Update fully addresses 20 of these states' good neighbor obligations for the 2008 ozone NAAQS. In particular, the EPA proposes to determine that there will be no remaining nonattainment or maintenance receptors in the eastern U.S. in 2023. Therefore, after the CSAPR Update is implemented, these states are not expected to contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 2008 ozone NAAQS. The obligation as to the remaining state (Kentucky) is currently being addressed in a separate action.

A. Analytic Approach

The Agency is evaluating its determination regarding CSAPR Update states' remaining good neighbor obligations for the 2008 ozone NAAQS by applying the same approach used in previous federal actions addressing regional interstate transport of ozone pollution, including the CSAPR Update which addressed the same NAAQS at issue in this rulemaking. Each of these rulemakings followed the same four-step interstate transport framework to quantify and implement emissions reductions necessary to address the interstate transport requirements of the good neighbor provision.[44] These steps are summarized in the following four paragraphs.

Step 1: Identify downwind air quality problems relative to the 2008 ozone NAAQS. The EPA has historically identified downwind receptors with air quality problems using air quality modeling projections and, where appropriate, considering monitored ozone data for a future compliance year. In the CSAPR Update, the agency relied on modeled and monitored data to identify not only those receptors expected to be in nonattainment with the ozone NAAQS, but also those receptors that may have difficulty maintaining the NAAQS, notwithstanding clean monitored data or projected attainment.

Step 2: Determine which upwind states are ''linked'' to these identified downwind air quality problems and thereby warrant further analysis to determine whether their emissions violate the good neighbor provision. In the CSAPR Update, the EPA identified such upwind states as those modeled to contribute to a downwind receptor at or above an air quality threshold equivalent to one percent of the 2008 ozone NAAQS.

Step 3: For states linked to downwind air quality problems, *identify upwind emissions on a statewide basis that significantly contribute* to nonattainment or interfere with maintenance of a standard in any area. In all of the EPA's prior rulemakings addressing interstate ozone pollution transport, the Agency identified and apportioned emissions reduction responsibility among multiple upwind states linked to downwind air quality problems by considering feasible NO_X control strategies and using cost-based and air quality-based criteria to evaluate regionally uniform NO_X control strategies that were then used to quantify the amount of a linked upwind state's emissions, if any, that significantly contribute to nonattainment or interfere with maintenance in another state.

[44] With respect to the 2015 ozone NAAQS, the EPA recently provided information to states to inform their development of SIPs to address CAA section 110(a)(2)(D)(i)(I). In a memorandum dated March 27, 2018, the Agency noted that, in developing their own rules, states have flexibility to follow the familiar 4-step transport framework (using the EPA's analytical approach or somewhat different analytical approaches within these steps) or alternative frameworks, so long as their chosen approach has adequate technical justification and is consistent with the requirements of the CAA.

Step 4: For upwind states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, *implement the necessary emissions reductions* within the state. In the CSAPR Update, the EPA implemented the necessary emissions reductions from upwind states found to have good neighbor obligations by requiring EGUs in those states to participate in the CSAPR NO_X Ozone Season Group 2 Trading Program, which is very similar to the allowance trading programs used to implement the emissions reductions quantified in the original CSAPR and other earlier rules.[45]

Because this action is evaluating outstanding obligations that remain with respect to the 2008 ozone NAAQS, the EPA believes it is reasonable to apply the same framework used in the CSAPR Update in this proposed action.

Within this four-step interstate transport framework, the EPA only proceeds to step four, in which it requires sources in upwind states to *implement* enforceable emissions limitations, if: (1) Downwind air quality *problems are identified* in at step 1; (2) an *upwind state is linked* to a downwind air quality problem at step 2; *and* (3) sources in the linked upwind state are *identified as having emissions* that significantly contribute to nonattainment and interfere with maintenance of the NAAQS considering cost- and air-quality-based factors. For the reasons described in the following paragraphs, the EPA believes this approach is a reasonable interpretation of the good neighbor provision.

The good neighbor provision instructs the EPA and states to apply its requirements ''consistent with the provisions of'' title I of the CAA. The EPA is therefore interpreting the requirements of the good neighbor provision, and the elements of its four-step interstate transport framework, to apply in a manner consistent with the designation and planning requirements in title I that apply in downwind states. *See North Carolina,* 531 F.3d at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I). The EPA notes that this consistency instruction follows the requirement that plans ''contain adequate provisions prohibiting'' certain emissions in the good neighbor provision. The following paragraphs will therefore explain how the EPA's interpretation of the circumstances under which the good neighbor provision requires that plans ''prohibit'' emissions through enforceable measures is consistent with the circumstances under which downwind states are required to implement emissions control measures in nonattainment areas.

For purposes of this analysis, the EPA notes specific aspects of the title I designations process and attainment planning requirements for the ozone NAAQS that provide particularly relevant context for evaluating the consistency of the EPA's approach to the good neighbor provision in upwind states. The EPA notes that this discussion is not intended to suggest that the specific requirements of designations and attainment planning apply to upwind states pursuant to the good neighbor provision, but rather to explain why the EPA's approach to interpreting the good neighbor approach is reasonable in light of relevant, comparable provisions found elsewhere in title I. In particular, these provisions demonstrate that the EPA's approach is consistent with other relevant provisions of title I with respect to what data is considered in the EPA's analysis and when states are required to implement enforceable measures.

First, areas are initially designated attainment or nonattainment for the ozone NAAQS based on actual measured ozone concentrations. CAA section 107(d) (noting that an area shall be designated attainment where it ''meets'' the NAAQS and nonattainment where it ''does not meet'' the NAAQS). Therefore, a designation of nonattainment does not in the first instance depend on what specific factors have influenced the measured ozone concentrations or whether such levels are due to enforceable emissions limits. If an area measures a violation of the relevant ozone NAAQS, then the area is designated nonattainment. In cases where the ozone nonattainment area is classified as Moderate or higher, the responsible state is required to develop an attainment plan, which generally includes the application of various enforceable control measures to sources of emissions located in the nonattainment area, consistent with the requirements in Part D of title I of the Act.[46] *See generally* CAA section 182, 42 U.S.C. 7511a. If, however, an area measures compliance with the ozone NAAQS, the area is designated attainment, and sources in that area generally are not subject to any new enforceable control measures under Part D.[47]

Similarly, in determining the boundaries of an ozone nonattainment area, the CAA requires the EPA to consider whether ''nearby'' areas ''contribute'' to ambient air quality in the area that does not meet the NAAQS. 42 U.S.C. 7407(d). For each monitor or group of monitors indicating a violation of the ozone NAAQS, the EPA assesses information related to five factors, including current emissions and emissions-related data from the areas near the monitor(s), for the purpose of establishing the appropriate geographic boundaries for the designated ozone nonattainment areas. A nearby area may be included within the boundary of the ozone nonattainment area only after assessing area-specific information, including an assessment of whether current emissions from that area contribute to the air quality problem identified at the violating monitor.[48] If such a determination is made, sources in the nearby area are also subject to the applicable Part D control requirements. However, if the EPA determines that the nearby area does not contribute to the measured nonattainment problem, then the nearby area is not part of the designated nonattainment area and sources in that area are not subject to such nonattainment control requirements.

The EPA's historical approach to addressing the good neighbor provision via the four-step interstate transport framework, and the approach the EPA proposes to continue to apply here, is consistent with these title I requirements. That is, in steps 1 and 2 of the framework, the EPA evaluates whether there is a downwind air quality problem (either nonattainment or maintenance), and whether an upwind state impacts the downwind area such that it contributes to and is therefore ''linked'' to the downwind area. The EPA's determination at step 1 of the good neighbor analysis that it has not

[45] Affected sources have participated in EPA-administered allowance trading programs under both SIPs and FIPs.

[46] Areas classified as Marginal nonattainment areas are required to submit emissions inventories and implement a nonattainment new source review permitting program, but are not generally required to implement controls at existing sources. *See* CAA section 182(a), 42 U.S.C. 7511a(a).

[47] Clean Air Act section 184 contains the exception to this general rule: states that are part of the Ozone Transport Region are required to provide SIPs that include specific enforceable control measures, similar to those for nonattainment areas, that apply to the whole state, even for areas designated attainment for the ozone NAAQS. *See generally* 42 U.S.C. 7511c.

[48] *See* Attachment 2 to *Area Designations for the 2008 Ozone National Ambient Air Quality Standards.* Memorandum from Robert J. Meyers, Principal Deputy Assistant Administrator, US EPA to Regional Administrators. December 4, 2008. Available at *https://archive.epa.gov/ozonedesignations/web/pdf/area_designations_for_the_2008_revised_ozone_naaqs.pdf.*

identified any downwind air quality problems to which an upwind state could contribute is analogous to the EPA's determination in the designation analysis that an area should be designated attainment. Similarly, EPA's determination at step 2 of the good neighbor analysis that, while it has at step 1 identified downwind air quality problems, an upwind state does not sufficiently impact the downwind area such that the state is ''linked,'' is analogous to the EPA's determination in the designation analysis that a nearby area does not contribute to a NAAQS violation in another area. Thus, under the good neighbor provision, the EPA determines at step 1 or 2, as appropriate, that the upwind state will not significantly contribute to nonattainment or interfere with maintenance in the downwind area. *See, e.g.,* 81 FR 74506 (determining that emissions from 14 states do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS); 76 FR 48236 (finding that states whose contributions to downwind receptors are below the air quality threshold do not significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS). Under such circumstances, sources in the upwind state are not obligated to implement any control measures under the good neighbor provision, which is consistent with the fact that sources located in attainment areas generally are not required to implement the control measures found in Part D of the Act. *Cf. EME Homer City II,* 795 F.3d at 130 (determining that CSAPR ozone-season NO_X budgets for 10 states were invalid based on determination that modeling showed no future air quality problems); 81 FR 74523–24 (removing three states from CSAPR ozone season NO_X program based on determination that states are not linked to any remaining air quality problems for the 1997 ozone NAAQS).

The EPA acknowledges one distinction between the good neighbor and designation analyses: The good neighbor analysis relies on *future-year* projections of emissions to calculate ozone concentrations and upwind state contributions, compared to the designation analysis's use of *current* measured data. As described in more detail later, this approach is a reasonable interpretation of the term ''will'' in the good neighbor provision, *see North Carolina,* 531 F.3d at 913–14, and interpreting language specific to that provision does not create an impermissible inconsistency with other provisions of title I. Moreover, the EPA's use of future-year modeling in the good neighbor analysis to identify downwind air quality problems and linked states is consistent with its use of current measured data in the designations process. The EPA's future-year air quality projections consider a variety of factors, including current emissions data, anticipated future control measures, economic market influences, and meteorology. Many of these same factors, *e.g.,* current control measures, economic market influences, and meteorology, can affect the NO_X emissions levels and consequent measured ozone concentrations that inform the designations process. Like the factors that affect measured ozone concentrations used in the designations process, not all of the factors influencing the EPA's modeling projections are or can be enforceable limitations on emissions or ozone concentrations. However, the EPA believes that consideration of these factors contributes to a reasonable estimate of anticipated future ozone concentrations. *See EME Homer City II,* 795 F.3d at 135 (declining to invalidate EPA's modeling projections ''solely because there might be discrepancies between those predictions and the real world''); *Chemical Manufacturers Association* v. *EPA,* 28 F.3d 1259, 1264 (DC Cir. 1994) (''a model is meant to simplify reality in order to make it tractable''). Thus, the EPA believes that consideration of these factors in its future-year modeling projections used at steps 1 and 2 of the good neighbor analysis is reasonable and consistent with the use of measured data in the designation analysis.[49]

The EPA notes that there is a further distinction between the section 107(d) designations provision and the good neighbor provision in that the latter provision uses different terms to describe the threshold for determining whether emissions in an upwind state should be regulated (''contribute significantly'') as compared to the standard for evaluating the impact of nearby areas in the designations process (''contribute''). Thus, at step 3 of the good neighbor analysis the EPA evaluates additional factors, including cost and air-quality considerations, to determine whether emissions from a linked upwind state do or would violate the good neighbor provision. Only if the EPA at step 3 determines that the upwind state's emissions do or would violate the good neighbor provision will it proceed to step 4, at which point emissions in the upwind state must be controlled so as to address the identified violation, analogous to the trigger for the application of Part D requirements to sources located in designated nonattainment areas. The EPA interprets the good neighbor provision to not require it or the upwind state to proceed to step 4 and implement any enforceable measures to ''prohibit'' emissions unless it identifies a violation of the provision at step 3. *See, e.g.,* 76 FR 48262 (finding at step 3 that the District of Columbia is not violating the good neighbor provision, and therefore will not at step 4 be subject to any control requirements in CSAPR, because no cost-effective emissions reductions were identified).

B. Selection of a Future Analytic Year

In this action, consistent with historical practice, the EPA focuses its analysis on a future year in light of the forward-looking nature of the good neighbor obligation in section 110(a)(2)(D)(i)(I). Specifically, the statute requires that states prohibit emissions that ''will'' significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. The EPA reasonably interprets this language as permitting states and the EPA in implementing the good neighbor provision to prospectively evaluate downwind air quality problems and the need for further upwind emissions reductions. In the EPA's prior regional transport rulemakings, the Agency generally evaluated whether upwind states ''will'' significantly contribute to nonattainment or interfere with maintenance based on projections of air quality in the future year in which any emissions reductions would be expected to go into effect. Thus, when the EPA finalized the NO_X SIP Call in 1998, it used the anticipated 2007 full compliance year for its analysis, and when the EPA finalized CAIR in 2005, it used the years 2009 and 2010, anticipated compliance years for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS, respectively. 63 FR 57377; 70 FR 25241. The D.C. Circuit affirmed the EPA's interpretation of ''will'' in CAIR, finding the EPA's consideration of future projected air quality (in addition to current measured data) to be a reasonable interpretation of an ambiguous term. *North Carolina,* 531 F.3d at 913–14. The EPA applied the same approach in finalizing CSAPR in

[49] The EPA also notes that the consideration of projected *actual* emissions in the future analytic year—as opposed to allowable levels—is also consistent with the statute's instruction that states (or EPA in the states' stead) prohibit emissions that ''will'' impermissibly impact downwind air quality. This term is reasonably interpreted to mean that the EPA should evaluate anticipated emissions (what sources *will* emit) rather than potential emissions (what sources *could* emit).

2011 and the CSAPR Update in 2016 by evaluating air quality in 2012 and 2017, respectively. 76 FR 48211; 81 FR 74537. Thus, consistent with this precedent, a key decision that informs the application of the interstate transport framework is selecting a future analytic year. In determining the appropriate future analytic year for purposes of assessing remaining interstate transport obligations for the 2008 ozone NAAQS, the EPA considered two primary factors: (1) The applicable attainment dates; and (2) the timing to feasibly implement new NO_X control strategies, which are discussed in the following two sections. The EPA proposes to determine that these factors collectively support the use of 2023 as the future analytic year for this proposed action.

1. Attainment Dates for the 2008 Ozone NAAQS

First, the EPA considers the downwind attainment dates for the 2008 ozone NAAQS. In *North Carolina,* the D.C. Circuit held that emissions reductions required by the good neighbor provision should be evaluated considering the relevant attainment dates of downwind nonattainment areas impacted by interstate transport. 531 F.3d at 911–12 (holding that the EPA must consider downwind attainment dates when establishing interstate transport compliance deadlines). Many areas currently have attainment dates of July 20, 2018 for areas classified as Moderate, but, as noted earlier, the 2017 ozone season was the last full season from which data could be used to determine attainment of the NAAQS by the July 20, 2018 attainment date. Given that the 2017 ozone season has now passed, it is not possible to achieve additional emissions reductions by the Moderate area attainment date. It is therefore necessary to consider what subsequent attainment dates should inform the EPA's analysis. The next attainment dates for the 2008 ozone NAAQS will be July 20, 2021, for nonattainment areas classified as Serious, and July 20, 2027, for nonattainment areas classified as Severe.[50] Because the various attainment deadlines are in July, which is in the middle of the ozone monitoring season for all states, data from the calendar year prior to the attainment date (*e.g.,* data from 2020 for the 2021 attainment date and from 2026 for the 2027 attainment date) are the last data that can be used to demonstrate attainment with the NAAQS by the relevant attainment date. Therefore, the EPA considers the control strategies that could be implemented by 2020 and 2026 in assessing the 2021 and 2027 attainment dates in its subsequent analysis. The EPA has also considered that, in all cases, the statute provides that areas should attain as expeditiously as practicable.[51]

2. Feasibility of Control Strategies To Reduce Ozone Season NO_X

Second, the EPA considers the timeframes that may be required to implement further emissions reductions as expeditiously as practicable. Generally, NO_X emissions levels are expected to decline in the future through the combination of the implementation of existing local, state, and federal emissions reduction programs and changing market conditions for generation technologies and fuels.[52] This is an important consideration because the U.S. Supreme Court and the D.C. Circuit Court have both held that the EPA may not over-control: It may not require emissions reductions (at step 3 of the good neighbor framework) from a state that are greater than necessary to achieve attainment and maintenance of the NAAQS in all of the downwind areas to which that state is linked.[53] In particular, in *EME Homer City II,* the D.C. Circuit determined that the CSAPR phase 2 ozone-season NO_X budgets for ten states were invalid because EPA's modeling showed that the downwind air quality problems to which these states were linked would be resolved by 2014, when the phase 2 budgets were scheduled to be implemented. 795 F.3d at 129–30. Therefore, because new controls cannot be implemented feasibly for several years, and at that later point in time air quality will likely be better due to continued phase-in of existing regulatory programs, changing market conditions, and fleet turnover, it is reasonable for the EPA to evaluate air quality (at step 1 of the good neighbor framework) in a future year that is aligned with feasible control installation timing in order to ensure that the upwind states continue (at step 2) to be linked to downwind air quality problems when any potential emissions reductions (identified at step 3) would be implemented (at step 4) and to ensure that such reductions do not over-control relative to the identified ozone problem.

The EPA's analysis of the feasibility of NO_X control strategies reflects the time needed to plan for, install, test, and place into operation new EGU and non-EGU NO_X reduction strategies regionally—*i.e.,* across multiple states. This regional analytic approach is consistent with the regional nature of interstate ozone pollution transport as described in section II.A. The Agency adopted this approach for this proposal based on previous interstate ozone transport analyses showing that where eastern downwind ozone problems are identified, multiple upwind states typically are linked to these problems.[54] Specifically of relevance to this action, as discussed in section II.C, the EPA's assessment of CSAPR Update implementation found that 21 states continued to contribute greater than or equal to 1% of the 2008 ozone NAAQS to identified downwind nonattainment or maintenance receptors in multiple downwind states in 2017. Thus, to reasonably address these ozone transport problems, the EPA must identify and apportion emissions reduction responsibility across multiple upwind states. In other words, the EPA's analysis should necessarily be regional, rather than focused on individual linkages. Where such an analysis is needed for multiple states, the inquiry into the availability and feasibility of control options is necessarily considerably more complicated than for a single state or sector.

Further, the feasibility of new emissions controls should be considered with regard to multiple upwind source categories to ensure that the Agency properly evaluates NO_X reduction potential and cost-effectiveness from all reasonable control measures (including those that are or may be available outside of the EGU sector). NO_X emissions come from multiple anthropogenic source categories, such as mobile sources, electric utilities, resource extraction industries, and industrial and commercial facilities. As noted in section II.A, the EPA has historically addressed mobile source emissions through national rulemakings. Moreover, mobile source emissions are already decreasing

[50] While there are no areas (outside of California) that are currently designated as Serious or Severe for the 2008 ozone NAAQS, the CAA requires that the EPA reclassify to Serious any Moderate nonattainment areas that fail to attain by their attainment date of July 20, 2018. Similarly, if any area fails to attain by the Serious area attainment date, the CAA requires that the EPA reclassify the area to Severe.

[51] *See* CAA section 181(a)(1), 42 U.S.C. 7511(a)(1).

[52] Annual Energy Outlook 2018. *Electricity Supply, Disposition, Prices, and Emissions.* Reference Case. Department of Energy, Energy Information Administration. Available at *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=8-AEO2018&cases=ref2018&sourcekey=0.*

[53] *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. at 1600–01; *EME Homer City II,* 795 F.3d at 127.

[54] 81 FR 74538.

because of sector-specific standards related to fuels, vehicle fuel economy, pollution controls, and repair and replacement of the existing fleet. Programs such as the Tier 3 vehicle emissions standards are already being phased in between now and 2023. That rule was finalized in 2014 with a phase-in schedule of 2017–2025 reflecting fleet turnover. Thus, another reason that in this proposed action the EPA has focused on stationary sources is that emissions reductions from those sources could likely be implemented more quickly than would result from any attempt to effect additional reductions from mobile sources beyond those described.

Among stationary sources, EGUs in the eastern U.S. have been the primary subject of regulation to address interstate ozone pollution transport and have made significant financial investments to achieve emissions reductions. While the EPA continues to evaluate control feasibility for EGUs in its analysis, the EPA's recent analyses indicate that non-EGU source categories, which the EPA has not made subject to new regulations to address interstate ozone transport since the NO_X SIP Call, may also be well-positioned to cost-effectively reduce NO_X relative to EGUs.[55] Accordingly, the EPA's assessment of control feasibility focuses on both EGU and non-EGU sources.

a. EGUs

First, the EPA presents its feasibility assessment of NO_X control strategies for EGUs. In establishing the CSAPR Update EGU ozone season NO_X emissions budgets, the Agency quantified the emissions reductions achievable from all NO_X control strategies that were feasible to implement in less than one year and cost-effective at a marginal cost of $1,400 per ton of NO_X removed.[56] These EGU NO_X control strategies were: optimizing NO_X removal by existing, operational selective catalytic reduction (SCR) controls; turning on and optimizing existing idled SCR controls; installing state-of-the-art NO_X combustion controls; and shifting generation to existing units with lower-NO_X emissions rates within the same state. 81 FR 74541. The Agency believes that the resulting CSAPR Update emissions budgets are being appropriately implemented under the CSAPR NO_X Ozone Season Group 2 allowance trading program. Preliminary data for the 2017 ozone season (the first CSAPR Update compliance period) indicate that power plant ozone season NO_X emissions across the 22 state CSAPR Update region were reduced by 77,420 tons (or 21%) from 2016 to 2017.[57] As a result, total 2017 ozone season NO_X emissions from covered EGUs across the 22 CSAPR Update states were approximately 294,478 tons,[58] well below the sum of states' emissions budgets established in the CSAPR Update of 316,464 tons. Accordingly, for the purposes of this proposed determination, the EPA considers the turning on and optimizing of existing SCR controls and the installation of combustion controls to be NO_X control strategies that have already been appropriately evaluated and implemented in the final CSAPR Update.

In the CSAPR Update, the EPA also identified one EGU NO_X control strategy that was considered feasible to implement within one year but was not cost-effective at a marginal cost of $1,400 per ton of NO_X removed: specifically, turning on existing idled selective non-catalytic reduction (SNCR) controls. In the CSAPR Update, the EPA identified a marginal cost of $3,400 per ton as the level of uniform control stringency that represents turning on and fully operating idled SNCR controls.[59] However, the CSAPR Update finalized emissions budgets using $1,400 per ton control stringency, finding that this level of stringency represented the control level at which incremental EGU NO_X reductions and corresponding downwind ozone air quality improvements were maximized with respect to marginal cost. In finding that use of the $1,400 control cost level was appropriate, the EPA established that the more stringent emissions budget level reflecting $3,400 per ton (representing turning on idled SNCR controls) yielded fewer additional emissions reductions and fewer air quality improvements relative to the increase in control costs. In other words, based on the CSAPR Update analysis, establishing emissions budgets at $3,400 per ton, and therefore developing budgets based on operation of idled SNCR controls, was not determined to be cost-effective for addressing good neighbor provision obligations for the 2008 ozone NAAQS. 81 FR 74550. The EPA believes that the strategy of turning on and fully operating idled SNCR controls was appropriately evaluated in the CSAPR Update with respect to addressing interstate ozone pollution transport for the 2008 ozone NAAQS. Accordingly, in this proposal the EPA is not further assessing this control strategy for purposes of identifying an appropriate future analytic year.

As mentioned previously, the EPA evaluated shifting generation from EGUs with higher NO_X-emissions rates to EGUs with lower NO_X-emissions rates as a means of reducing emissions in the context of the CSAPR Update. Shifting generation is a NO_X control strategy that occurs on a time- and cost-continuum, in contrast to the relatively discrete price-points and installation timeframes that can be identified for combustion and post-combustion controls. Therefore, in the CSAPR Update, the EPA identified the discrete cost thresholds used to evaluate upwind states' good neighbor obligations based on its evaluation of combustion and post-combustion controls, and secondarily examined the amount of generation shifting that would result at the same cost threshold associated with the particular control technology. Quantifying NO_X reductions from shifting generation anticipated at the same cost thresholds relative to the control technologies being considered (*e.g.,* restarting idled SCR controls) helped ensure that the emissions reductions associated with the control strategies could be expected to occur. In other words, had the agency excluded consideration of generation shifting in calculating emissions budgets, generation shifting would have nonetheless occurred as a compliance strategy, but the consequence would have been a smaller amount of emissions reduction than what the agency knew to be achievable and cost-effective at the selected cost threshold. Thus, although potential emissions reductions resulting from generation shifting were factored into the final budgets, this compliance strategy did not drive the EPA's identification of cost thresholds analyzed in the rule.

For the same reasons, the EPA does not find it appropriate to evaluate generation shifting, in isolation from viable combustion or post-combustion control assessments, for purposes of selecting a future analytic year. If the EPA were to choose an earlier analytic year based on the ability of upwind sources to implement some level of

[55] See Assessment of Non-EGU NO_X Emission Controls, Cost of Controls, and Time for Compliance Final TSD from the CSAPR Update in the docket for this rulemaking.

[56] The CSAPR Update was signed on September 7, 2016—approximately 8 months before the beginning of the 2017 ozone season on May 1.

[57] *https://ampd.epa.gov/ampd/* (Data current as of March 1, 2018).

[58] *Id.*

[59] *See* EGU NO_X Mitigation Strategies Final Rule TSD (docket ID EPA–HQ–OAR–2015–0500–0554, available at *www.regulations.gov* and *https://www.epa.gov/sites/production/files/2017-05/documents/egu_nox_mitigation_strategies_final_rule_tsd.pdf*) (NO_X Mitigation Strategies TSD).

generation shifting within that timeframe, before other specific control technologies could be implemented, this would have the consequence of limiting the EPA's analysis and the amount of emissions reductions that would be considered cost-effective and therefore subject to regulation under the good neighbor provision, relative to a more robust analysis that considers other emissions controls available within defined timeframes. Further, due to continued lower cost natural gas prices and price projections, significant shifting from higher emitting coal sources to lower emitting gas sources (relative to historical generation levels) is occurring and expected to continue to occur by 2023 due to market drivers. Thus, there may be limited opportunity for the sources to implement further emissions reductions through generation shifting over the next 5 years. Given the indeterminate implementation timeframes for generation shifting and the EPA's historical consideration of this strategy as a secondary factor in quantifying emissions budgets, the EPA believes the most reasonable approach for selecting a future analytic year is to focus on the timeframe in which specific control technologies other than generation shifting can be implemented.[60]

For these reasons, for purposes of identifying an appropriate future analytic year, the EPA is focusing its assessment of EGUs in this action on controls that were deemed to be infeasible to install for the 2017 ozone season rather than reassessing controls previously analyzed for cost-effective emissions reductions in the CSAPR Update. In establishing the CSAPR Update emissions budgets, the EPA identified but did not analyze the following two EGU NO_X control strategies in establishing the CSAPR Update emissions budgets because implementation by 2017 was not considered feasible: (1) Installing new SCR controls; and (2) installing new SNCR controls. In the CSAPR Update, EPA observed that EGU SCR post-combustion controls can achieve up to 90 percent reduction in EGU NO_X emissions. In 2017, these controls were in widespread use by EGUs in the east. EPA also observed that SNCR controls can be effective at reducing NO_X emissions and can achieve up to a 25 percent emissions reduction from EGUs (with sufficient reagent). In 2017, these controls were also used across the power sector. In the 22-state CSAPR Update region, approximately 62 percent of coal-fired EGU capacity is equipped with SCR controls and 12 percent is equipped with SNCR controls.[61]

Installing new SCR or SNCR controls for EGUs generally involves the following steps: conducting an engineering review of the facility; advertising and awarding a procurement contract; obtaining a construction permit; installing the control technology; testing the control technology; and obtaining or modifying an operating permit.[62] Because installing these post-combustion controls—SCR or SNCR—involve the same steps and many of the same considerations, the timing of their feasible regional development is described together in the following paragraphs. However, the EPA notes differences between these control technologies with respect to the potential viability of achieving cost-effective regional NO_X reductions from EGUs. As described above, SCR controls generally achieve greater EGU NO_X reduction efficiency (up to 90%) than SNCR controls (up to 25%). Resulting in part from this disparity in NO_X reduction efficiency, when considering both control costs and NO_X reduction potential in developing cost per ton analysis for the CSAPR Update, the EPA found new SCR controls to be more cost-effective at removing NO_X. Specifically, the EPA found that new SCR controls could generally reduce EGU emissions for $5,000 per ton of NO_X removed whereas new SNCR controls could generally reduce EGU emissions at a higher cost of $6,400 per ton of NO_X removed.[63] In other words, the greater NO_X reduction efficiency for SCR controls translates into greater cost-effectiveness relative to SNCR controls. The general cost-effectiveness advantage is consistent with observed installation patterns where SCR controls (62% of coal-fired capacity) are more prevalent across the east relative to SNCR (12% of coal-fired capacity).

For SCR, the total time associated with navigating necessary steps is estimated to be up to 39 months for an individual power plant installing SCR on more than one boiler.[64] However, more time is needed when considering installation timing for new SCR controls across the Eastern EGU fleet addressed in this action. As described in the subsequent paragraphs, EPA determined that a minimum of 48 months is a reasonable time period to allow for the coordination of outages, shepherding of labor and material supply, and identification of retrofit projects. This timeframe would facilitate multiple power plants with multiple boilers to conduct all stages of post-combustion and combustion control project planning, installation, and operation.

Scheduled curtailment, or planned outage, for pollution control installation would be necessary to complete either SCR or SNCR projects. Given that peak demand and rule compliance would both fall in the ozone season, sources would likely try to schedule installation projects for the ''shoulder'' seasons (*i.e.,* the spring and/or fall seasons), when electricity demand is lower than in the summer, reserves are higher, and ozone season compliance requirements are not in effect. If multiple units were under the same timeline to complete the retrofit projects as soon as feasible from an engineering perspective, this could lead to bottlenecks of scheduled outages as each unit attempts to start and finish its installation in roughly the same compressed time period. Thus, any compliance timeframe that would assume installation of new SCR or SNCR controls should encompass multiple shoulder seasons to accommodate scheduling of curtailment for control installation purposes and better accommodate the regional nature of the program.

In addition to the coordination of scheduled curtailment, an appropriate compliance timeframe should accommodate the additional coordination of labor and material supply necessary for any fleet-wide mitigation efforts. The total construction labor for a SCR system associated with a 500-megawatt (MW) EGU is in the range of 300,000 to 500,000 man-hours, with boilermakers accounting for

[60] Because the EPA is not in this proposal evaluating additional generation shifting possibilities, it does not at this time need to revisit the question whether it is within the EPA's authority or otherwise proper to consider generation shifting in implementing the good neighbor provision. The EPA is aware that this has been an issue of contention in the past, and stakeholders have raised serious concerns regarding this issue. *See, e.g.,* 81 FR at 74545 (responding to comments); CSAPR Update Rule—Response to Comment, at 534–50 (EPA–HQ–OAR–2015–0500–0572) (summarizing and responding to comments). The EPA may revisit this question in addressing good neighbor requirements for other NAAQS but is not soliciting comment at this time on this issue with regard to the 2008 ozone NAAQS.

[61] National Electric Energy Data System v6 (NEEDS). EPA. Available at *https://www.epa.gov/airmarkets/national-electric-energy-data-system-needs-v6.*

[62] Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA–600/R–02/073 (Oct. 2002), *available at https://nepis.epa.gov/Adobe/PDF/P1001G0O.pdf.*

[63] NO_X Mitigation Strategies TSD.

[64] Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies. EPA Final Report. Table 3–1. Available at *https://archive.epa.gov/clearskies/web/pdf/multi102902.pdf.*

approximately half of this time.[65] SNCR installations, while generally having shorter individual project timeframes of 10 to 13 months from bid solicitation to startup, share similar labor and material resources and the timing of SNCR installation planning is therefore linked to the timing of SCR installation planning. In recent industry surveys, one of the largest shortages of union craft workers was for boilermakers. This shortage of skilled boilermakers is expected to rise due to an anticipated nine percent increase in boilermaker labor demand growth by 2026, coupled with expected retirements and comparatively low numbers of apprentices joining the workforce.[66] The shortage of and demand for skilled labor, including other craft workers critical to pollution control installation, is pronounced in the manufacturing industry. The Association of Union Constructors conducted a survey of identified labor shortages and found that boilermakers were the second-most frequently reported skilled labor market with a labor shortage.[67] Moreover, recovery efforts from the natural disasters of Hurricanes Harvey and Irma and wildfires in 2017 are expected to further tighten the labor supply market in manufacturing in the near term.[68] The EPA determined that these tight labor market conditions within the relevant manufacturing sectors, combined with fleet-level mitigation initiatives, would likely lead to some sequencing and staging of labor pool usage, rather than simultaneous construction across all efforts. This sector-wide trend supports SCR and SNCR installation timeframes for a fleet-wide program that exceeds the demonstrated single-unit installation timeframe.

In addition to labor supply, NO_X post-combustion control projects also require materials and equipment such as steel and cranes. Sheet metal workers, necessary for steel production, are also reported as having well above an average supply-side shortage of labor.[69] This, coupled with growth in steel demand estimated at three percent in 2018 suggests that there may be a constricted supply of steel needed for installation of new post-combustion controls.[70] Similarly, cranes are critical for installation of SCRs, components of which must be lifted hundreds of feet in the air during construction. Cranes are also facing higher demand during this period of economic growth, with companies reporting a shortage in both equipment and manpower.[71] [72] The tightening markets in relevant skilled labor, materials, and equipment, combined with the large number of installations that could be required fleet-wide under a regional air pollution transport program, necessitates longer installation time-tables relative to what has been historically demonstrated at the unit-level.

The time lag observed between the planning phase and in-service date of SCR operations in certain cases also illustrates that site-specific conditions sometimes lead to installation times of four years or longer. For instance, SCR projects for units at the Ottumwa power plant (Iowa), Columbia power plant (Wisconsin), and Oakley power plant (California) were all in the planning phase in 2014. By 2016, these projects were under construction with estimated in-service dates of 2018.[73] Similarly, individual SNCR projects can exceed their estimated 10 through 13-month construction time frame. For example, projects such as SNCR installation at the Jeffrey power plant (Kansas) were in the planning phase in 2013, but not in service until 2015.[74] Completed projects, when large in scale, also illustrate how timelines can extend beyond the bare minimum necessary for a single unit when the project is part of a larger air quality initiative involving more than one unit at a plant. For instance, the Big Bend Power Station in Florida completed a multi-faceted project that involved adding SCRs to all four units as well as converting furnaces, over-fire air changes, and making windbox modifications. The time from the initial planning stages to completion was a decade.[75]

While individual unit-level SCR and SNCR projects can average 39 and 10 months, respectively, from bid to startup, a comprehensive and regional emissions reduction effort also requires more time to accommodate the labor, materials, and outage coordination for these two types of control strategies. Because these post-combustion control strategies share similar resource inputs and are part of regional emissions reduction programs rather than unit-specific technology mandates, the timeframes for one type are inherently linked to the other type. This means that SNCR projects cannot be put on an early schedule in light of their reduced construction timing without impacting the availability of resources for the manufacture and installation of SCRs and thus the potential start dates of those projects.

In short, given the market and regulatory circumstances in which EPA evaluated this effort, our analysis shows that four years would be an expeditious timeframe to coordinate the planning and completion of any mitigation efforts necessary in this instance.

b. Non-EGU Control Technologies

The EPA is also evaluating the feasibility of implementing NO_X control technologies for non-EGUs in its assessment of an appropriate future analytic year. While the EPA did not regulate non-EGUs in the CSAPR Update, the rule did evaluate the feasibility of NO_X controls on non-EGUs in the eastern United States to assess whether any such controls could be implemented in time for the 2017 ozone season. The EPA noted that there was greater uncertainty in the assessment of non-EGU point-source NO_X mitigation potential as compared to EGUs, and therefore explained that more time was required for states and the EPA to improve non-EGU point source data, including data on existing control efficiencies, additional applicable pollution control technologies, and installation times for those control technologies. 81 FR 74542. A significant factor influencing uncertainty was that the EPA lacked sufficient information on the capacity and experience of suppliers and major engineering firms' supply chains to determine if they would be able to install the required pollution controls for non-EGU sources

[65] *Id.*

[66] Occupational Outlook Handbook. Bureau of Labor Statistics. Available at *https://www.bls.gov/ooh/construction-and-extraction/boilermakers.htm.*

[67] Union Craft Labor Supply Survey. The Association of Union Constructors. Exhibit 4–2 at page 29. Available at *https://www.tauc.org/files/2017_TAUC_UNION_CRAFT_LABOR_SUPPLY_REVISEDBC_FINAL.pdf.*

[68] Skilled Wage Growth Less Robust, Worker Shortage Still an Issue. Industry Week. October 23, 2017. Available at *http://www.industryweek.com/talent/skilled-wage-growth-less-robust-worker-shortage-still-issue.*

[69] Union Craft Labor Supply Survey. The Association of Union Constructors. Exhibit 4–2 at page 29. Available at *https://www.tauc.org/files/2017_TAUC_UNION_CRAFT_LABOR_SUPPLY_REVISEDBC_FINAL.pdf.*

[70] Worldsteel Short Range Outlook. October 16, 2017. Available at *https://www.worldsteel.org/media-centre/press-releases/2017/worldsteel-Short-Range-Outlook-2017-2018.html.*

[71] *See, e.g.,* Seattle Has Most Cranes in the Country for 2nd Year in a Row—and Lead is Growing. Seattle Times. July 11, 2017. Available at *https://www.seattletimes.com/business/real-estate/seattle-has-most-cranes-in-the-country-for-2nd-year-in-a-row-and-lead-is-growing/.*

[72] See RLB Crane Index, January 2018 in the docket for this action.

[73] 2014 EIA Form 860. Schedule 6. Environmental Control Equipment.

[74] 2013 EIA Form 860, Schedule 6, Environmental Control Equipment.

[75] *Big Bend's Multi-Unit SCR Retrofit.* Power Magazine. March 1, 2010. Available at *http://www.powermag.com/big-bends-multi-unit-scr-retrofit/.*

in time for the 2017 ozone season. Further, using the best information available to the EPA at that time, the EPA found that there were more non-EGU point sources than EGU sources and that these sources on average emit less NO_X than EGUs. The implication was that there were more individual sources that could be controlled, but relatively fewer emissions reductions available from each source when compared to the number of EGUs and emissions reductions available from EGUs. Considering these factors, the EPA found that it was substantially uncertain whether significant aggregate NO_X mitigation would be achievable from non-EGU point sources to address the 2008 ozone NAAQS by the 2017 ozone season. *Id.*

Although the EPA determined that there were limited achievable emissions reductions available from non-EGUs by the 2017 ozone season, the EPA acknowledged that it may be appropriate to evaluate potential non-EGU emissions reductions achievable on a timeframe after the 2017 ozone season to assess upwind states' full good neighbor obligation for the 2008 ozone NAAQS. 81 FR 74522. In particular, the EPA's preliminary assessment indicated that there may be emissions reductions achievable from non-EGUs at marginal costs lower than the costs of remaining NO_X control strategies available for EGUs. Accordingly, in assessing an appropriate future analytic year, the EPA is also considering the potential implementation timeframes for NO_X emissions reductions available for non-EGUs. In evaluating potential non-EGU emissions reductions in the CSAPR Update, the EPA included preliminary estimates of installation times for some non-EGU NO_X control technologies in a technical support document entitled Assessment of Non-EGU NO_X Emission Controls, Cost of Controls, and Time for Compliance Final Technical Support Document (henceforth, ''Final Non-EGU TSD''). These preliminary estimates were based on research from a variety of information sources, including:

- *Typical Installation Timelines for NO_X Emissions Control Technologies on Industrial Sources, Institute of Clean Air Companies,* December 2006 (all sources except cement kilns and reciprocating internal combustion engines (RICE));[76]
- *Cement Kilns Technical Support Document for the NO_X FIP*, US EPA, January 2001;[77] and
- *Availability and Limitations of NO_X Emission Control Resources for Natural Gas-Fired Reciprocating Engine Prime Movers Used in the Interstate Natural Gas Transmission Industry,* Innovative Environmental Solutions Inc., July 2014 (prepared for the INGAA Foundation).[78]

The EPA's analysis in the Final Non-EGU TSD focused on potential control technologies within the range of costs considered in the final CSAPR Update for EGUs, or those controls available at a marginal cost of $3,400 per ton (2011 dollars) of NO_X reduced or less. The EPA's analysis did not evaluate implementation timeframes or potential emissions reductions available from controls at higher cost thresholds. *See* Final Non-EGU TSD at 18. This focus excluded some emissions source groups with emissions reduction potential at a marginal cost greater than $3,400 per ton, including: industrial/commercial/institutional boilers using SCR and low-NO_X burners (LNB); and catalytic cracking units, process heaters, and coke ovens using LNB and flue gas recirculation. However, while emissions reduction potential from these source groups is uncertain, the timeframe for these control technologies would be subject to similar considerations and limitations discussed in the following paragraphs.

Among the control technologies that were evaluated in the Final Non-EGU TSD, the EPA identified six categories of common control technologies available for different non-EGU emissions source categories. *Id.* at 19. For four of the technology categories (SNCR, SCR, LNB, and mid-kiln firing), the EPA preliminarily estimated that such controls for non-EGUs could be installed in approximately 1 year or less in some unit-specific cases. Installation time estimates presented in the Final Non-EGU TSD begin with control technology bid evaluation (bids from vendors) and end with the startup of the control technology.[79] *See* Final Non-EGU TSD at 20. For the other two technology categories (biosolid injection technology (BSI) and OXY-firing), as well as one emissions source category (RICE), the EPA had no installation time estimates or uncertain installation time estimates. For example, the EPA found that the use of BSI is not widespread, and therefore the EPA does not have reliable information regarding the time required to install the technology on cement kilns. The installation timing for OXY-firing is similarly uncertain because the control technology is installed only at the time of a furnace rebuild, and such rebuilds occur at infrequent intervals of a decade or more.

For those categories for which preliminary estimates were available, as noted in the Final Non-EGU TSD, the single-unit installation time estimates provided do not account for additional important considerations in assessing the full amount of time needed for installation of NO_X control measures at non-EGUs; those considerations include time, labor, and materials needed for programmatic adoption of measures and time required for installing controls on multiple sources in a few to several non-EGU sectors across the region.

The preliminary estimates of installation time shown in the Final Non-EGU TSD are for installation at a single source and do not account for the time required for installing controls to achieve sector-wide compliance. When considering installation of control measures on sources regionally and across non-EGU sectors, the time for full sector-wide compliance is uncertain, but it is likely longer than the installation times shown for control measures as mentioned above for individual sources in the Final Non-EGU TSD. As discussed earlier with respect to EGUs, regional, sector-wide compliance could be slowed down by limited vendor capacity, limited available skilled labor for manufacturers such as boilermakers (who produce steel fabrications, including those for pollution control equipment), availability of raw materials and equipment (*e.g.,* cranes) for control technology construction, and bottlenecks in delivery and installation of control technologies. Some of the difficulties with control technology installation as part of regional, sector-wide compliance at non-EGUs, such as availability of skilled labor and materials, could also have an impact on monitor installation at such sources.

[76] Institute of Clean Air Companies. Typical Installation Timelines for NO_X Emissions Control Technologies on Industrial Sources, December 2006. Available at *https://c.ymcdn.com/sites/icac.site-ym.com/resource/resmgr/ICAC_NOx_Control_Installatio.pdf*.

[77] US EPA. Cement Kilns Technical Support Document for the NO_X FIP. January 2001. Available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0500-0094*.

[78] INGAA Foundation. Availability and Limitations of NO_X Emission Control Resources for Natural Gas-Fired Reciprocating Engine Prime Movers Used in the Interstate Natural Gas Transmission Industry, Innovative Environmental Solutions Inc., July 2014. Available at *http://www.ingaa.org/Foundation/Foundation-Reports/NOx.aspx*.

[79] In this document, we present different installation time estimates for SCRs for EGUs and non-EGUs. These installation times are not inconsistent because: (i) The EGU time estimate of 39 months mentioned above is based on multi-boiler installation and factors in a pre-vendor bid engineering study consideration; and (ii) the non-EGU SCR installation time estimates are based on single-unit installation and do not factor in pre-vendor bid evaluation.

EPA currently has insufficient information on vendor capacity and limited experience with suppliers of control technologies and major engineering firms, which results in uncertainty in the installation time estimates for non-EGU sectors. In summary, there is significant uncertainty regarding the implementation timeframes for various NO_X control technologies for non-EGUs. While the EPA has developed preliminary estimates for some potential control technologies, these estimates do not account for additional considerations such as the impacts of sector- and region-wide compliance. For purposes of this analysis, the EPA believes that it is reasonable to assume that it is likely that an expeditious timeframe for installing sector- or region-wide controls on non-EGU sources may collectively require four years or more.

3. Focusing on 2023 for Analysis

As discussed in section III.B, the EPA weighed several factors to identify an appropriate future analytic year for evaluating interstate transport obligations for the 2008 ozone NAAQS. First, the EPA identified the relevant attainment dates to guide the EPA's consideration as 2021 and 2027, respectively the Serious and Severe area attainment dates for the 2008 ozone NAAQS.

Second, the EPA identified and analyzed the feasibility and timing needed for installing additional NO_X emissions controls. As discussed in section III.B.2, the EPA believes it is appropriate to assume that planning for, installing, and commencing operation of new controls, regionally, for EGUs and non-EGUs would take up to 48 months, and possibly more in some cases, following promulgation of a final rule requiring appropriate emissions reductions. This period of time reflects, among other considerations, the time needed to regionally develop new post-combustion SCR projects—systems that continue to represent the engineering gold-standard in terms of reducing NO_X from the U.S. power sector.

To determine how this feasibility assessment should influence potential compliance timeframes, the EPA believes it is appropriate to consider the anticipated date of promulgation of a rule that would set any appropriate emissions reduction requirements, since regulated entities cannot be expected or required to take action to comply with a rule prior to its promulgation. The EPA, therefore, considered the timeframe in which a future rulemaking that might require such emissions reductions would likely be finalized.

The EPA is subject to several statutory and court-ordered deadlines to issue FIPs (or, alternatively, to fully approve a SIP) to address the requirements of the good neighbor provision for the 2008 ozone NAAQS for several states. An August 12, 2017 statutory deadline has passed for the EPA to act with respect to 13 states.[80] The EPA also has several upcoming statutory deadlines in 2018 and 2019 to address these requirements for eight other CSAPR Update states.[81] The timeframe for the EPA's action to resolve the obligation as to five of those states is the subject of litigation in the United States District Court for the Southern District of New York. The EPA is subject to court-ordered deadlines to sign and disseminate a proposed action fully addressing the good neighbor obligations under the 2008 ozone NAAQS for those five states by no later than June 29, 2018, and to promulgate a final action addressing these requirements by December 6, 2018.[82] As noted earlier, the EPA is also subject to a court-ordered deadline of June 30, 2018, for the EPA to address these requirements for Kentucky,[83] which the EPA intends to address in a separate rulemaking. Considering the EPA's conclusion that four years is an expeditious timeframe for implementation of any of the control strategies considered herein, compliance is likely not feasible until the 2023 ozone season. In other words, 48 months from a final rule promulgated in December 2018 would be December 2022, after which the next ozone season begins in May 2023. Considering the time necessary to implement the controls calculated from a realistic timeframe in which EPA expects to promulgate a final rule requiring such controls, the EPA believes that such reductions on a variety of sources across the region are unlikely to be implemented for a full ozone season until 2023.

Finally, consistent with the court's holding in *North Carolina,* the Agency considers this timing in light of upcoming attainment dates for the 2008 ozone NAAQS. While 2023 is later than the next attainment date for nonattainment areas classified as Serious (*i.e.,* July 20, 2021), for the reasons discussed above the EPA does not believe it is realistically possible that substantial emissions control requirements could be promulgated and implemented by that Serious area attainment date. Rather, the most expeditious timeframe in which additional control strategies could be implemented at both EGUs and non-EGUs is four years after promulgation of a final rule requiring appropriate emissions reductions. At the same time, the EPA does not believe that it should generally take longer than 2023 to install emissions controls on a regional basis, based on the analysis above. Therefore, there is no basis to postpone all emissions reductions to the next attainment date after 2023, which is for nonattainment areas classified as Severe (*i.e.,* July 20, 2027). Accordingly, the EPA believes implementation of additional emissions reductions by 2023 is the earliest feasible timeframe that could be reasonably required of EGU and non-EGU sources that would be potentially subject to control requirements. Although this year does not precisely align with a particular attainment date, it reflects the year that is as expeditious as practicable for region-wide implementation, while also taking into account the relevant attainment dates.

Given the current stage of the 2008 ozone implementation cycle, the EPA's feasibility analysis set forth above, the relevant attainment dates, and the courts' holdings in *North Carolina* and *EME Homer City II,* the EPA believes that 2023 is the most appropriate year for all states covered in this action, to assess downwind air quality and to evaluate any remaining requirements under the good neighbor provision for the 2008 ozone NAAQS. The EPA is requesting comment on the use of 2023 as a reasonable year for this assessment.

C. Air Quality Analysis

In this section, the Agency describes the air quality modeling performed consistent with step 1 of the framework described in section III.A, to identify locations where it expects nonattainment or maintenance problems with respect to the 2008 ozone NAAQS in the 2023 analytic year. This section includes information on the air quality modeling platform used in support of the proposed determination with a focus on the base year and future base case emissions inventories. The May 2018

[80] 80 FR 39961 (finding that states failed to make complete submissions that address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2008 ozone NAAQS).

[81] The EPA has deadlines to promulgate FIPs for Indiana (81 FR 38957), Ohio (81 FR 38957) and New Jersey (81 FR 38963) by July 15, 2018; for Maryland (81 FR 47040) by August 19, 2018; for Louisiana (81 FR 53308), Texas (81 FR 53284) and Wisconsin (81 FR 53309) by September 12, 2018; and for New York (81 FR 58849) by September 26, 2018.

[82] Order, *New York* v. *Pruitt,* No. 1:18–cv–00406–JGK (S.D.N.Y. June 12, 2018).

[83] Order, *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328 (N.D. Cal. May 23, 2017).

Air Quality Modeling Technical Support Document (AQM TSD) in the docket for this rule contains more detailed information on the air quality modeling for 2023 used to support this rulemaking.

The EPA provided an opportunity to comment on the air quality modeling platform and air quality modeling results that are used in this proposed determination when it published a Notice of Data Availability (82 FR 1733) on January 6, 2017, which provided the preliminary modeling results for the 2023 analytic year. Specifically, in the NODA the EPA requested comment on the data and methodologies related to the 2011 and 2023 emissions and the air quality modeling to project 2023 ozone concentrations and ozone contributions. While the EPA issued this NODA to provide information to states for the 70 ppb 2015 ozone NAAQS, the modeling approaches and future year projection methods were also applicable for the 75 ppb 2008 ozone NAAQS. In fact, commenters explicitly commented on these methods with respect to the 2008 ozone NAAQS. The EPA considered comments received on the NODA in the development of air quality modeling analysis used in this proposed determination.

The modeling results presented here were originally released to the public with an accompanying memorandum on October 27, 2017.[84]

1. Definition of Nonattainment and Maintenance Receptors

In this action, the EPA is continuing to apply the CSAPR Update approach to identifying nonattainment and maintenance receptors for the 2008 ozone NAAQS in the 2023 analytic year. The EPA here describes the analytical approach pursued in the CSAPR and CSAPR update with regard to the good neighbor requirement for the 2008 ozone NAAQS. For consistency's sake, the analysis and discussion underlying and presented in this proposal adheres to that analytical approach. However, as noted previously, EPA has identified a number of potential flexibilities in identifying downwind air quality problems for states developing good neighbor SIPs for the 2015 ozone NAAQS.[85] However, the EPA finds that it is reasonable to use the same methodology that was used to identify upwind states' good neighbor obligations under the CSAPR Update because this rule addresses interstate transport with respect to the same NAAQS and the same states as the ones at issue in that action.[86]

To give independent effect to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS, consistent with the D.C. Circuit's opinion in *North Carolina,* the EPA separately identified downwind areas expected to be in nonattainment of the 2008 ozone NAAQS and downwind areas expected to have problems maintaining the 2008 ozone NAAQS.

Specifically, the EPA has identified as *nonattainment* receptors those monitors that both currently measure nonattainment based on measured 2014–2016 design values[87] and that the EPA projects will be in nonattainment for the 2008 ozone NAAQS in 2023 (*i.e.,* are projected to have average design values that exceed the NAAQS).

The EPA has identified *maintenance* receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that accounts for historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant base-year period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor. The EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. Therefore, the maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify downwind areas where emissions from upwind states could therefore interfere with the area's ability to maintain the NAAQS. For this proposal, the EPA assesses the magnitude of the maximum projected design value for 2023 at each receptor in relation to the 2008 ozone NAAQS. Where that value exceeds the NAAQS, the EPA determines that receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in CSAPR and upheld by the D.C. Circuit in *EME Homer City II.*[88] That is, monitoring sites with a maximum projected design value that exceeds the NAAQS in 2023 are considered to have a maintenance problem in 2023.[89]

Maintenance-only receptors therefore include those sites where the projected maximum design value exceeds the NAAQS, but the projected average design value is at or below the NAAQS. In addition, those sites that are currently measuring clean data (*i.e.,* are at or below the 2008 ozone NAAQS), but are projected to be in nonattainment based on the average design value (and that, by definition, are projected to have a maximum design value above the standard) are also identified as maintenance-only receptors. Unlike nonattainment receptors, the EPA did not consider current clean monitored data to disqualify a receptor from being identified as a maintenance receptor in order to account for the possibility that certain areas would fail to maintain the NAAQS in the future, even though they may be currently attaining the NAAQS. *North Carolina,* 531 F.3d at 910–11 (finding that failure to give independent significance to the maintenance prong ''provides no protection for downwind areas that, despite EPA's predictions, still find themselves struggling to meet NAAQS due to upwind interference'').

For further details regarding the EPA's identification of receptors in the CSAPR Update, *see* 81 FR 74526.

[84] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10, Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I) (Oct. 27, 2017), *available at https://www.epa.gov/airmarkets/october-2017-memo-and-supplemental-information-interstate-transport-sips-2008-ozone-naaqs.*

[85] See supra note 43. These potential flexibilities include: evaluation of alternative methodologies to give independent meaning to the term ''interfere with maintenance under CAA section 110(a)(2)(D)(i)(I); identification of maintenance receptors at risk of exceeding the NAAQS using an approach that does not rely on the projection of maximum design values; assessment of current and projected emissions reductions and whether downwind areas have considered and/or utilized available mechanisms for regulatory relief; and consideration of model performance.

[86] 81 FR 74533.

[87] The ozone design value at a particular monitoring site is the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration at that site. *See* 40 CFR part 50, Appendix P.

[88] *See* 795 F.3d at 136.

[89] All nonattainment receptors also, by definition, meet EPA's criteria for identifying maintenance receptors—*i.e.,* in addition to currently measuring nonattainment and having projected average design values that exceed the NAAQS, the receptors also would have difficulty maintaining the NAAQS accounting for variability in air quality at the receptor. The EPA refers to maintenance receptors that are not also nonattainment receptors as ''maintenance-only'' receptors.

2. Overview of Air Quality Modeling Platform

The EPA performed nationwide photochemical modeling for 2023 to identify nonattainment and maintenance receptors relevant for the 2008 ozone NAAQS. For this proposed rule, the EPA performed air quality modeling for two emissions scenarios: (1) a 2011 base year; and (2) the 2023 analytic year (*i.e.,* a business-as-usual scenario in 2023: One without any additional interstate ozone transport requirements beyond those imposed by the CSAPR Update).

The 2011 base year has previously been used to support the CSAPR Update proposal and final rule. The EPA chose to continue using 2011 as the base year because when EPA's analyses commenced, 2011 was the most recent emissions modeling platform available that included future year projected inventories, as are needed for transport analyses. Using 2011 as a base year also remains appropriate from the standpoint of good modeling practice. The meteorological conditions during the summer of 2011 were generally conducive for ozone formation across much of the U.S., particularly the eastern U.S. As described in the AQM TSD, the EPA's guidance for ozone attainment demonstration modeling, hereafter referred to as the modeling guidance, recommends modeling a time period with meteorology conducive to ozone formation for purposes of projecting future year design values.[90] The EPA therefore believes that meteorological conditions and emissions during the summer of 2011 provide an appropriate basis for projecting 2023 ozone concentrations.

For this proposal, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx) version 6.40[91] to simulate pollutant concentrations for the 2011 base year and the 2023 future year scenarios. This version of CAMx was the most recent publicly available version of this model at the time that the EPA performed air quality modeling for this proposed rule. CAMx is a grid cell-based, multi-pollutant photochemical model that simulates the formation and fate of ozone and fine particles in the atmosphere. The CAMx model applications were performed for a modeling region (*i.e.,* modeling domain) that covers the contiguous 48 United States, the District of Columbia, and adjacent portions of Canada and Mexico using grid cells with a horizontal resolution of 12 km x 12 km. A map of the air quality modeling domain is provided in the AQM TSD.

The 2011-based air quality modeling platform includes 2011 base year emissions, 2023 future year projections of these emissions, and 2011 meteorology for air quality modeling with CAMx. In the remainder of this section, the EPA provides an overview of the 2011 and 2023 emissions inventories and the methods for identifying nonattainment and maintenance receptors along with a list of 2023 baseline nonattainment and maintenance receptors in the U.S.

To ensure the reliability of its modeling results, the EPA conducted an operational model performance evaluation of the 2011 modeling platform by comparing the 8-hour daily maximum ozone concentrations predicted during the May through September ozone season to the corresponding measured concentrations in 2011. This evaluation generally followed the approach described in the modeling guidance. Details of the model performance evaluation are described in the AQM TSD. The model performance results indicate that the 8-hour daily maximum ozone concentrations predicted by the 2011 CAMx modeling platform generally reflect the corresponding magnitude of observed 8-hour ozone concentrations on high ozone days in the 12-km U.S. modeling domain. These results provide confidence in the ability of the modeling platform to provide a reasonable projection of expected future year ozone concentrations and contributions.

3. Emissions Inventories

The EPA developed emissions inventories for this rule, including emissions estimates for EGUs, non-EGU point sources, stationary nonpoint sources, onroad mobile sources, nonroad mobile sources, wildfires, prescribed fires, and biogenic emissions. The EPA's air quality modeling relies on this comprehensive set of emissions inventories because emissions from multiple source categories are needed to model ambient air quality and to facilitate comparison of model outputs with ambient measurements.

To prepare the emissions inventories for air quality modeling, the EPA processed the emissions inventories using the Sparse Matrix Operator Kernel Emissions (SMOKE) Modeling System version 3.7 to produce the gridded, hourly, speciated, model-ready emissions for input to the CAMx air quality model. Additional information on the development of the emissions inventories and on datasets used during the emissions modeling process for this proposed rule is provided in the October 2017 Technical Support Document ''Additional Updates to Emissions Inventories for the Version 6.3, 2011 Emissions Modeling Platform for the Year 2023'' (Proposed Rule Emissions Modeling TSD).[92]

The emissions inventories, methodologies, and data used for the air quality modeling for this proposed rule incorporate public comments received on the January 2017 NODA. The updates resulting from comments received on this NODA are documented in the Proposed Rule Emissions Modeling TSD. The emissions inventories for this proposed rule were the result of several iterations of comments on the data and methods used in the 2011 emissions modeling platform. The initial modeling platform based on the 2011 National Emissions Inventory (NEI) was released for public comment in November 2013 through a NODA (78 FR 70935). Future year inventories for 2018 were released shortly thereafter through a separate NODA in January 2014 (79 FR 2437). Updated inventories for 2011 and the year 2017 were released for public comment in August 2015 through a notice prior to the proposed CSAPR Update. 80 FR 46271. The comments were incorporated into inventories used for the proposal modeling in this action. During 2016, the comments received on the proposal inventories were incorporated into the final CSAPR Update inventories for years 2011 and 2017. 81 FR 74527. In late 2016, inventories for the year 2023 were developed using methods similar to those of the CSAPR Update, and the resulting inventories were released in the January 2017 NODA described above.[93]

The EPA emissions data representing the year 2011 supports air quality modeling of a base year from which future air quality could be forecasted. The 2011 emissions inventories used in

[90] U.S. Environmental Protection Agency, 2014. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, Research Triangle Park, NC, *available at http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf.*

[91] CAMx v6.40 was the most recent public release version of CAMx at the time the EPA updated its modeling in fall 2017. Comprehensive Air Quality Model with Extensions version 6.40 User's Guide. Ramboll Environ, December 2016, *available at http://www.camx.com/.*

[92] This TSD is also available in the docket for this proposed rule and at *https://www.epa.gov/air-emissions-modeling/additional-updates-2011-and-2023-emissions-version-63-platform-technical.*

[93] Technical support documents are available for each iteration of the inventories on EPA's emissions modeling website: *https://www.epa.gov/air-emissions-modeling/2011-version-6-air-emissions-modeling-platforms.*

the air quality modeling were based on the inventories released with the January 2017 NODA with updates incorporated as a result of comments on the NODA and as a result of improved data and methods that became available after the NODA modeling was completed. The future base case scenario modeled for 2023 includes a representation of changes in activity data and of predicted emissions reductions from on-the-books actions, including planned emissions control installations and promulgated federal measures that affect anthropogenic emissions.[94] The emissions inventories for air quality modeling include sources that are held constant between the base and future years, such as biogenic emissions and emissions from agricultural, wild and prescribed fires.[95] The emissions inventories used for Canada were received from Environment and Climate Change Canada in April 2017 and were provided for the years 2013 and 2025. This was the first time that future year projected inventories for Canada were provided directly by Environment and Climate Change Canada and the new inventories are thought to be an improvement over inventories projected by EPA. The EPA used the Canadian emissions inventories without adjusting the emissions to the represented year because the EPA lacks specific knowledge regarding Canadian emissions trends and because the interval of years (*i.e.,* 12) was the same as that used for the U.S. modeling which relied on 2011 to 2023 interval. For Mexico, inventory data was based on a 2023 run of MOVES-Mexico. For area, nonroad, and point source emissions in Mexico, EPA used the Inventario Nacional de Emisiones de Mexico using 2018 and 2025 data projections to interpolate 2023 estimates.

The modeled annual NO_X and SO_2 emissions for EGUs for the year 2011 are based primarily on data from continuous emissions monitoring systems (CEMS), with other EGU pollutants estimated using emissions factors and annual heat input data reported to the EPA. For EGUs without CEMS, the EPA used data submitted to the NEI by the states. The modeled 2011 inventories include some updates to 2011 EGU stack parameters and emissions made in response to comments on the January 2017 NODA. For more information on the details of how the 2011 EGU emissions were developed and prepared for air quality modeling, see the Proposed Rule Emissions Modeling TSD.

As summarized in the October memo, and described in detail in the Proposed Rule Emissions Modeling TSD, the EPA projected future 2023 baseline EGU emissions using an approach that is consistent with the EGU projections that the EPA used in the CSAPR Update, specifically using the EGU projection methodology used to develop the ''budget-setting base case.'' 81 FR 74543.[96] The EGU projection begins with 2016 reported SO_2 and NO_X data for units reporting under the Acid Rain and CSAPR programs under 40 CFR part 75. These were the most recent ozone season data available at the time of the EPA's analysis. The EPA first held these observed emissions levels constant for its 2023 estimates, but then made some unit-specific adjustments to emissions to account for upcoming retirements, post-combustion control retrofits, coal-to-gas conversions, combustion controls upgrades, new units, CSAPR Update compliance, state rules, and Best Available Retrofit Technology (BART) requirements under the regional haze program of the CAA.[97] The resulting estimated EGU emissions values are therefore based on the latest reported operational data combined with known and anticipated fleet and pollution controls changes. For emissions from EGUs not reporting under 40 CFR part 75, the EPA largely relied on unadjusted 2011 NEI data for its 2023 assumptions.[98] Additional details are provided in the Proposed Rule Emissions Modeling TSD.

The 2011 non-EGU point source emissions in the 2011 base case inventory generally match those in the 2011 NEI version 2.[99] Prior to air quality modeling, the emissions inventories must be processed into a format that is appropriate for the air quality model to use. Details on the development and processing of the emissions for 2011 and on the development of the 2023 non-EGU emissions inventories are available in the Proposed Rule Emissions Modeling TSD. Projection factors and percent reductions used in this proposal to estimate 2023 emissions inventories reflect comments received through the January 2017 NODA, along with emissions reductions due to national and local rules, control programs, plant closures, consent decrees and settlements. The Proposed Rule Emissions Modeling TSD contains details on the factors used and on their respective impacts on the emissions inventories.

A recent and important methodological update to the emissions inventory implemented after the release of the January 2017 NODA is a revised methodology for estimating point and nonpoint 2023 emissions from the oil and gas sector. The projection factors used in the updated 2023 oil and gas emissions inventory incorporate state-level factors based on historical growth from 2011–2015 and region-specific factors that represent projected growth from 2015 to 2023. The 2011–2015 state-level factors were based on historical state oil and gas production data published by the U.S. Department of Energy's Energy Information Administration (EIA), while the 2015–2023 factors are based on projected oil and gas production in EIA's 2017 Annual Energy Outlook (AEO) Reference Case without the Clean Power Plan for the six EIA supply regions. The 2017 AEO was the latest available at the time the modeling was performed. Details on the revised methodology that the EPA used to project oil and gas emissions to 2023, as well as changes to the base year 2011 and future year 2023 emissions inventories for other sectors, can be found in the Proposed Rule Emissions Modeling TSD.

The EPA developed the onroad mobile source emissions using the EPA's Motor Vehicle Emissions Simulator, version 2014a (MOVES2014a). The agency computed

[94] Biogenic emissions and emissions from wildfires and prescribed fires were held constant between 2011 and 2023 since: (1) These emissions are tied to the 2011 meteorological conditions; and (2) the focus of this rule is on the contribution from anthropogenic emissions to projected ozone nonattainment and maintenance.

[95] As recommended in the modeling guidance, the acceptability of model performance was judged by considering the 2011 CAMx performance results in light of the range of performance found in recent regional ozone model applications. These other modeling studies represent a wide range of modeling analyses that cover various models, model configurations, domains, years and/or episodes, and chemical mechanisms. Overall, the ozone model performance results for the 2011 CAMx simulations are within the range found in other recent peer-reviewed and regulatory applications. The model performance results, as described in the AQM TSD, demonstrate that the predictions from the 2011 modeling platform correspond to measured data in terms of the magnitude, temporal fluctuations, and spatial differences for 8-hour daily maximum ozone.

[96] Also see the Ozone Transport Policy Analysis Final Rule Technical Support Document. EPA. August 2016. Available at *https://www.epa.gov/sites/production/files/2017-05/documents/ozone_transport_policy_analysis_final_rule_tsd.pdf.*

[97] The EPA uses the U.S. EIA Form 860 as a source for upcoming controls, retirements, and new units.

[98] Available at *https://www.epa.gov/air-emissions-modeling/2011-version-63-platform.*

[99] For more information on the 2011 National Emissions Inventory version 2, see *https://www.epa.gov/air-emissions-inventories/2011-national-emissions-inventory-nei-technical-support-document.*

these emissions within SMOKE by multiplying the MOVES-based emissions factors with the activity data appropriate to each year of modeling. MOVES2014a reflects projected changes to fuel usage and onroad mobile control programs finalized as of March 2014. Impacts of rules that were in effect in 2011 are reflected in the 2011 base year emissions at a level that corresponds to the extent to which each rule had penetrated the fleet and fuel supply by that year. Local control programs such as the California Low Emission Vehicle (LEV) III program, also implemented in states other than California, are included in the onroad mobile source emissions. Activity data for onroad mobile sources, such as the vehicle miles traveled in 2023, were projected for future year using trends identified in AEO 2016.

The commercial marine category 3 vessel (''C3 marine'') emissions in the 2011 base case emissions inventory for this rule are equivalent to those in the 2011NEIv2 with the inclusion of updated emissions for California. These emissions reflect reductions associated with the Emissions Control Area proposal to the International Maritime Organization control strategy (EPA–420–F–10–041, August 2010); reductions of NO_X, VOC, and CO emissions for new C3 engines that went into effect in 2011; and fuel sulfur limits that went into effect as early as 2010. The cumulative impacts of these rules through 2023 are incorporated in the 2023 projected emissions for C3 marine sources. An update made for this modeling was to treat the larger C3 marine sources with plume rise in the modeling, thereby putting the emissions into model layers higher than ground-level. This was done because the ships have stacks that release emissions higher than the 20-meter threshold for the ground-level layer in the air quality model. The height at which the emissions are inserted into the model impacts how the emissions are transported within the model. The emissions from the smaller category 1 (C1) and category 2 (C2) vessels are still released into the ground-level layer of the model.

To develop the nonroad mobile source emissions inventories other than C3 marine for the modeling platform, the EPA used monthly, county, and process level emissions output from the National Mobile Inventory Model (NMIM) (*http://www.epa.gov/otaq/nmim.htm*). The nonroad mobile emissions control programs include reductions to locomotives, diesel engines, and marine engines, along with standards for fuel sulfur content and evaporative emissions. A comprehensive list of control programs included for mobile sources is available in the Proposed Rule Emissions Modeling TSD.

The emissions for stationary nonpoint sources in the 2011 base case emissions inventory are largely consistent with those in the 2011NEIv2. 2023 estimates were projected using a variety of factors, including AEO 2017 projections for 2023 and state projection factors using EIA data from 2011–2015. For more information on the nonpoint sources in the 2011 base case inventory, see the Proposed Rule Emissions Modeling TSD and the 2011NEIv2 TSD. Based on comments from the January 2017 NODA, where states provided the EPA with information about projected control measures or changes in nonpoint source emissions, the EPA incorporated that information into its projections. These changes were limited and are discussed in the Proposed Rule Emissions Modeling TSD.

4. Air Quality Modeling To Identify Nonattainment and Maintenance Receptors

The following summarizes the procedures for projecting future-year 8-hour ozone average and maximum design values to 2023 to determine nonattainment and maintenance receptors. Consistent with the EPA's modeling guidance, the agency uses the air quality modeling results in a ''relative'' sense to project future concentrations. That is, the ratios of future year model predictions to base year model predictions are used to adjust ambient ozone design values up or down depending on the relative (percent) change in model predictions for each location. The modeling guidance recommends using measured ozone concentrations for the 5-year period centered on the base year as the air quality data starting point for future year projections. This average design value is used to dampen the effects of inter-annual variability in meteorology on ozone concentrations and to provide a reasonable projection of future air quality at the receptor under ''average'' conditions. Because the base year for this rule is 2011, the EPA is using the base period 2009–2013 ambient ozone design value data to project 2023 average design values in a manner consistent with the modeling guidance.

The approach for projecting future ozone design values involved the projection of an average of up to three design value periods, which include the years 2009–2013 (design values for 2009–2011, 2010–2012, and 2011–2013). The 2009–2011, 2010–2012, and 2011–2013 design values are accessible at *www.epa.gov/airtrends/values.html.* The average of the three design values creates a ''5-year weighted average'' value. The 5-year weighted average values were then projected to 2023. To project 8-hour ozone design values, the agency used the 2011 base year and 2023 future base-case model-predicted ozone concentrations to calculate relative response factors (RRFs) for the location of each monitoring site. The RRFs were then applied to actual monitored data, *i.e.,* the 2009–2013 average ozone design values (to generate the projected average design values) and the individual design values for 2009–2011, 2010–2012, and 2011–2013 (to generate potential maximum design values). Details of this approach are provided in the Proposed Rule AQM TSD.

The EPA considers projected design values that are greater than or equal to 76.0 ppb to be violating the 2008 ozone NAAQS in 2023. As noted previously, nonattainment receptors are those sites that have projected average design values greater than the 2008 ozone NAAQS and are also violating the NAAQS based on the most recent measured air quality data. Therefore, as an additional step, for those sites that are projected to be violating the NAAQS based on the average design values in 2023, the EPA examined the most recent measured design value data to determine if the site was currently violating the NAAQS. For this proposal, the agency examined ambient data for the 2014–2016 period, which are the most recent available, certified measured design values at the time of this rule.

As discussed above, maintenance-only receptors include both: (1) Those sites with projected average and maximum design values above the NAAQS that are currently measuring clean data; and (2) those sites with projected average design values below the level of the NAAQS, but with projected maximum design values of 76.0 ppb or greater.

In projecting these future year design values, the EPA applied its own modeling guidance,[100] which recommends using model predictions from the ''3 x 3'' array of grid cells surrounding the location of the monitoring site to calculate the relative response factors and identify future areas of nonattainment. In addition, in

[100] U.S. Environmental Protection Agency, 2014. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze. *http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf.*

light of comments on the January 2017 NODA and other analyses, the EPA also projected 2023 design values based on a modified version of this approach for those monitoring sites located in coastal areas. In brief, in the alternative approach, the EPA eliminated from the design value calculations those modeling data in grid cells not containing a monitoring site that are dominated by water (*i.e.,* more than 50 percent of the land use in the grid cell is water).[101] For each individual monitoring site, the EPA is providing the base period 2009–2013 average and maximum design values, 2023 projected average and maximum design values based on both the ''3 x 3'' approach and the alternative approach affecting coastal sites, and 2014–2016 measured design values. As discussed further below, under both the 3 x 3 approach and the alternative approach all monitoring sites in the Eastern U.S. are modeled to be clean for the 2008 ozone NAAQS in 2023. Thus, according to the EPA's findings, there will be no remaining nonattainment or maintenance receptors in the eastern U.S. in 2023.

Tables III.C–1 and III.C–2 contain the ambient 2009–2013 base period average and maximum 8-hour ozone design values, the 2023 projected baseline average and maximum design values, and the ambient 2014–2016 design values for the air quality monitors that were identified in the CSAPR Update as having remaining problems attaining or maintaining the 2008 ozone NAAQS in 2017, even with CSAPR Update implementation. Table III.C–1 contains data for the monitors identified as remaining nonattainment receptors in 2017 in the CSAPR Update and Table III.C–2 contains data for the monitors identified as remaining maintenance-only receptors in 2017 in the CSAPR Update.[102] The design values for all monitoring sites in the contiguous U.S. are provided in the docket. According to the EPA's findings, there are no remaining nonattainment or maintenance receptors in the eastern U.S. in 2023.

The EPA solicits public comment on the reliability of the modeling data, including any information which may support or not support these results.[103] [104]

TABLE III.C–1—BASE PERIOD, CURRENT (2014–2016), AND 2023 PROJECTED DESIGN VALUES (ppb) FOR MONITORS IDENTIFIED AS REMAINING NONATTAINMENT RECEPTORS IN 2017 IN THE CSAPR UPDATE [103] [104]

Monitor ID	State	County	2009–2013 Avg	2009–2013 Max	2014–2016	2023en ''3 x 3'' Avg	2023en ''3 x 3'' Max	2023en ''No Water'' Avg	2023en ''No Water'' Max
090019003	Connecticut	Fairfield	83.7	87	85	72.7	75.6	73.0	75.9
090099002	Connecticut	New Haven	85.7	89	76	71.2	73.9	69.9	72.6
480391004	Texas	Brazoria	88.0	89	75	74.0	74.9	74.0	74.9
484392003	Texas	Tarrant	87.3	90	73	72.5	74.8	72.5	74.8
484393009	Texas	Tarrant	86.0	86	75	70.6	70.6	70.6	70.6
551170006	Wisconsin	Sheboygan	84.3	87	79	70.8	73.1	72.8	75.1

TABLE III.C–2—BASE PERIOD, CURRENT (2014–2016), AND 2023 PROJECTED DESIGN VALUES (ppb) FOR MONITORS IDENTIFIED AS REMAINING MAINTENANCE-ONLY RECEPTORS IN 2017 IN THE CSAPR UPDATE

Monitor ID	State	County	2009–2013 Avg	2009–2013 Max	2014–2016	2023en ''3 x 3'' Avg	2023en ''3 x 3'' Max	2023en ''No Water'' Avg	2023en ''No Water'' Max
090010017	Connecticut	Fairfield	80.3	83	80	69.8	72.1	68.9	71.2
090013007	Connecticut	Fairfield	84.3	89	81	71.2	75.2	71.0	75.0
240251001	Maryland	Harford	90.0	93	73	71.4	73.8	70.9	73.3
260050003	Michigan	Allegan	82.7	86	75	69.0	71.8	69.0	71.7
360850067	New York	Richmond	81.3	83	76	71.9	73.4	67.1	68.5
361030002	New York	Suffolk	83.3	85	72	72.5	74.0	74.0	75.5
481210034	Texas	Denton	84.3	87	80	69.7	72.0	69.7	72.0
482010024	Texas	Harris	80.3	83	79	70.4	72.8	70.4	72.8
482011034	Texas	Harris	81.0	82	73	70.8	71.6	70.8	71.6
482011039	Texas	Harris	82.0	84	67	71.8	73.6	71.8	73.5

5. Pollutant Transport From Upwind States

Although the EPA has conducted nationwide contribution modeling for 2023, the EPA does not believe this information is necessary for evaluating remaining good neighbor obligations for the 2008 ozone NAAQS downwind because there are no ozone monitoring sites in the Eastern U.S. that are expected to have problems attaining or maintaining the 2008 ozone NAAQS in 2023. Nonetheless, the results of EPA's state-by-state ozone contribution modeling were released in a memorandum on March 27, 2018 and are also available in the docket for this

[101] A model grid cell is identified as a ''water'' cell if more than 50 percent of the grid cell is water based on the 2006 National Land Cover Database. Grid cells that meet this criterion are treated as entirely over water in the Weather Research Forecast (WRF) modeling used to develop the 2011 meteorology for EPA's air quality modeling.

[102] The EPA recognizes that the modeling results indicate a substantial projected improvement in ozone air quality (compared to current measured ozone levels) at several locations, including three monitors in Connecticut located near the sea—*i.e.,* on the order of 10–12 ppb.

[103] From 40 CFR 50.15(b): ''The 8-hour primary and secondary ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to 0.075 ppm, as determined in accordance with appendix P to this part.''

[104] From section 2.2 of appendix P to 40 CFR part 50: ''The computed 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations shall be reported to three decimal places (the digits to the right of the third decimal place are truncated, consistent with the data handling procedures for the reported data).''

action.[105] The EPA notes that, while the air quality modeling did identify potential remaining problem receptors in California in 2023, none of EPA's prior analysis nor its current contribution modeling have linked any of the CSAPR Update states in the eastern U.S. to any of those potential remaining problem receptors. Therefore, the EPA does not believe there is a need to further evaluate the contributions of the 20 CSAPR Update states to any downwind receptors identified in EPA's 2017 modeling conducted for the CSAPR Update.

D. Proposed Determination

The EPA proposes to determine that, with CSAPR Update implementation, 20 eastern states' good neighbor obligations for the 2008 ozone NAAQS are fully addressed.[106] The states covered by this action are listed in table III.D–1. The EPA's proposed determination is based on proposed findings that: (1) 2023 is a reasonable future analytic year for evaluating ozone transport problems with respect to the 2008 ozone NAAQS; and (2) that interstate ozone transport air quality modeling projections for 2023 indicate that no further air quality problems will remain in the east in 2023.

As a result, the EPA proposes to conclude that, after implementation of the CSAPR Update, none of the states analyzed will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, and therefore that the CSAPR update fully addresses those states' good neighbor obligations with respect to that NAAQS. In accord with this determination, the EPA has no remaining obligation issue FIPs nor are states required to submit SIPs that would establish additional requirements for sources in these states to further reduce transported ozone pollution with regard to the 2008 ozone NAAQS.

As explained in more detail in section III.B, the EPA's selection of 2023 as a reasonable future analytic year is supported by an assessment of attainment dates for the 2008 ozone NAAQS and feasibility for control strategies to reduce NO_X in CSAPR Update states. The EPA's NO_X control strategy feasibility assessment prioritizes NO_X control strategies in CSAPR Update states that would be additional to those strategies that were already quantified into CSAPR Update emissions budgets. The EPA believes that 2023 is an appropriate future analytic year, taking into consideration relevant attainment dates, because it is the first ozone season for which significant new controls to reduce NO_X could be feasibly installed across the CSAPR Update region, and thus represents the timeframe that is as expeditious as practicable for upwind states to implement additional emissions reductions. Furthermore, as described in section III.C, the EPA's analysis of step 1 for the 2023 analytic year indicates that there are no monitoring sites in the east that are projected to have nonattainment or maintenance problems with respect to the 2008 ozone NAAQS in 2023. Together, these findings lead to EPA's proposed determination that—with CSAPR Update implementation—CSAPR Update states are not expected to significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states in 2023.

As a result of this proposed determination, the EPA proposes to find that the promulgation of the CSAPR Update for these states fully satisfies the requirements of the good neighbor provision for the 2008 ozone NAAQS, and therefore also satisfies the Agency's obligation pursuant to CAA section 110(c) for these states. Accordingly, the EPA would have no remaining obligation to issue FIPs nor are the states required to submit SIPs that would further reduce transported ozone pollution, beyond the existing CSAPR Update requirements, with regard to the 2008 ozone NAAQS.

TABLE III.D–1—STATES COVERED BY THE PROPOSED DETERMINATION REGARDING GOOD NEIGHBOR OBLIGATIONS FOR THE 2008 OZONE NAAQS

State name
Alabama.
Arkansas.
Illinois.
Indiana.
Iowa.
Kansas.
Louisiana.
Maryland.
Michigan.
Mississippi.
Missouri.
New Jersey.
New York.
Ohio.
Oklahoma.
Pennsylvania.
Texas.
Virginia.
West Virginia.
Wisconsin.

Consistent with this proposed determination, this action also proposes minor revisions to the existing state-specific sections of the CSAPR Update regulations for states other than Kentucky and Tennessee. The revisions will remove the current statements indicating that the CSAPR Update FIP for each such state only partially addresses the state's good neighbor obligation under CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. Because states can replace the CSAPR Update FIPs with SIPs, these revisions will also mean that a SIP that is approved through notice-and-comment rulemaking to fully replace the CSAPR Update FIP for one of these states would also fully address the state's good neighbor obligation for this NAAQS. In particular, the EPA proposes to find that the Agency's previous approval of Alabama's CSAPR Update SIP fully satisfies the state's good neighbor obligation for the 2008 ozone NAAQS. Thus, Alabama would have no obligation to submit any additional SIP revision addressing this obligation.

The EPA seeks comments on this proposal, including the legal, technical, and policy decisions informing the EPA's proposed determination that the CSAPR Update fully addresses the good neighbor obligation with respect to the 2008 ozone NAAQS for 20 eastern states. Note that the EPA in this proposal is not reconsidering or reopening the determinations made in the CSAPR Update, which was finalized in 2016, regarding the obligations of upwind states pursuant to the good neighbor provision for the 2008 ozone NAAQS. Those determinations have already been subject to notice and comment rulemaking processes, and the FIPs promulgated in that action are already being implemented. The analysis conducted in this action does not reconsider any analysis conducted or determinations made in that action.

[105] Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I). EPA Memorandum to Regional Air Division Directors. March 27, 2018. Available at *https://www.epa.gov/sites/production/files/2018-03/documents/transport_memo_03_27_18_1.pdf.*

[106] See Table III.D–1 for a list of states covered by this proposal. EPA has also already separately proposed to approve Kentucky's draft SIP submittal demonstrating that the CSAPR Update is a full remedy for Kentucky's good neighbor obligation for the 2008 ozone NAAQS. 83 FR 17123 (Apr. 18, 2018).

Thus, the EPA is not requesting comment on any of the legal, technical, or policy decisions informing that the CSAPR Update.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be subject to Executive Order 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

C. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667. The minor revisions to the FIP provisions proposed in this action would have no impact on monitoring, recordkeeping, and reporting requirements for affected EGUs in the CSAPR NO_X Ozone Season Group 2 Trading Program.

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action makes a minor modification to existing CSAPR Update FIPs and does not impose new requirements on any entity. The EPA has therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. This action simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials while developing the CSAPR Update. A summary of that consultation is provided in the preamble for the CSAPR Update, 81 FR 74584 (October 26, 2016).

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary.

J. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 because it does not establish an environmental health or safety standard. This action simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary. Consistent with Executive Order 12898 and the EPA's environmental justice policies, the EPA considered effects on low-income populations, minority populations, and indigenous peoples while developing the CSAPR Update. The process and results of that consideration are described in the preamble for the CSAPR Update, 81 FR 74585 (October 26, 2016).

L. Determinations Under Section 307(b)(1) and (d)

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

The EPA proposes to find that any final action related to this rulemaking is ''nationally applicable'' or, in the alternative, is based on a determination of ''nationwide scope and effect'' within the meaning of section 307(b)(1).

Through this rulemaking action, the EPA is interpreting section 110 of the CAA, a statutory provision that applies to all states and territories in the United States. In addition, the proposed rule addresses emissions impacts and sources located in 20 States, which are located in multiple EPA Regions and federal circuits. The proposed rule is also based on a common core of factual findings and analyses concerning the transport of pollutants between the different states. Courts have found similar actions to be nationally applicable.[107] Furthermore, EPA intends this interpretation and approach to be consistently implemented nationwide with respect to section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

For these reasons, the Administrator proposes to determine that any final action related to this proposal is nationally applicable or, in the alternative, is based on a determination of nationwide scope and effect for purposes of section 307(b)(1). Thus, pursuant to section 307(b) any petitions for review of any final actions regarding the rulemaking must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date any final action is published in the **Federal Register**.

In addition, pursuant to sections 307(d)(1)(C) and 307(d)(1)(V) of the CAA, the Administrator proposes to determine that this action is subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, ''the promulgation or revision of an implementation plan by the Administrator under CAA section 110(c).'' 42 U.S.C. 7407(d)(1)(B). Under section 307(d)(1)(V), the provisions of section 307(d) also apply to ''such other actions as the Administrator may determine.'' 42 U.S.C. 7407(d)(1)(V). The Agency has complied with procedural requirements of CAA section 307(d) during the course of this rulemaking.

[107] *See, e.g., Texas* v. *EPA,* 2011 U.S. App. LEXIS 5654 (5th Cir. 2011) (finding SIP call to 13 states to be nationally applicable and thus transferring the case to the U.S. Court of Appeals for the D.C. Circuit in accordance with CAA section 307(b)(1)); *W. Va. Chamber of Commerce* v. *Browner,* No. 98 1013, 1998 U.S. App. LEXIS 30621, at *24 (4th Cir. 1998) (finding the NO_X SIP Call to be nationally applicable based on ''the nationwide scope and interdependent nature of the problem, the large number of states, spanning most of the country, being regulated, the common core of knowledge and analysis involved in formulating the rule, and the common legal interpretation advanced of section 110 of the Clean Air Act''). *Cf.* Judgment, *Cedar Falls Utilities* v. *EPA,* No. 16–4504 (8th Cir. Feb. 22, 2017) (transferring petition to review CSAPR Update to D.C. Circuit).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: June 29, 2018.

E. Scott Pruitt,

Administrator.

For the reasons stated in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

§§ 52.54, 52.184, 52.731, 52.789, 52.840, 52.882, 52.984, 52.1084, 52.1186, 52.1284, 52.1326, 52.1584, 52.1684, 52.1882, 52.1930, 52.2040, 52.2283, 52.2440, 52.2540, and 52.2587 [Amended]

■ 2. In 40 CFR part 52 remove the text '', provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision'' from the second sentence in each of the following paragraphs:

■ a. Section 52.54(b)(2);
■ b. Section 52.184(b);
■ c. Section 52.731(b)(2);
■ d. Section 52.789(b)(2);
■ e. Section 52.840(b)(2);
■ f. Section 52.882(b)(1);
■ g. Section 52.984(d)(2);
■ h. Section 52.1084(b)(2);
■ i. Section 52.1186(e)(2);
■ j. Section 52.1284(b);
■ k. Section 52.1326(b)(2);
■ l. Section 52.1584(e)(2);
■ m. Section 52.1684(b)(2);
■ n. Section 52.1882(b)(2);
■ o. Section 52.1930(b);
■ p. Section 52.2040(b)(2);
■ q. Section 52.2283(d)(2);
■ r. Section 52.2440(b)(2);
■ s. Section 52.2540(b)(2); and
■ t. Section 52.2587(e)(2).

[FR Doc. 2018–14737 Filed 7–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–0682; FRL–9980–66–OAR]

RIN 2060–AU12

National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards: Petroleum Refinery Sector Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) Refinery MACT 1, which was published in the **Federal Register** on December 1, 2015, and subsequently amended on July 13, 2016. The December 1, 2015, action was the result of a risk and technology review in which the Environmental Protection Agency (EPA) finalized amendments to Refinery MACT 1 and Refinery MACT 2. The July 13, 2016, action finalized technical corrections and clarifications, as well as changes to compliance dates for various emission sources, including the maintenance vent standards that apply during periods of startup, shutdown, maintenance, or inspection. In this action, the EPA is proposing to amend the compliance dates for maintenance vents to January 30, 2019. These proposed revisions do not affect any other requirements in the December 1, 2015, or July 13, 2016, final actions. This proposed action will have an insignificant effect on emissions reductions and no effect on costs.

DATES:

Comments. Comments must be received on or before August 9, 2018.

Public Hearing. If a public hearing is requested by July 16, 2018, then we will hold a public hearing on July 25, 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 July 23, 2018.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0682, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. See **SUPPLEMENTARY INFORMATION** for detail about how the EPA treats submitted comments. *Regulations.gov* is our preferred method of receiving comments. However, the following

other submission methods are also accepted:

- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2010–0682 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2010–0682.
- *Mail:* 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–2010–0682, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* 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.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Brenda Shine, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3608; fax number: (919) 541–0516; and email address: *shine.brenda@epa.gov*.

SUPPLEMENTARY INFORMATION:

Public Hearing. If a public hearing is requested, it will be held at the 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/petroleum-refinery-sector-risk-and-technology-review-and-new-source*. 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 at (919) 541–0832 or by email at *hunt.virginia@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*.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–0682. All documents in the docket are listed in *Regulations.gov*. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. 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–2010–0682. 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 *https://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 *https://www.regulations.gov* or email. This type of information should be submitted by mail as discussed below.

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/commenting-epa-dockets*.

The *https://www.regulations.gov* website allows you to submit your comments anonymously, 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 *https://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 digital storage media 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 *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media 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 directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media 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 Code of Federal Regulations (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–2010–0682.

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AFPM American Fuel and Petrochemical Manufacturers
API American Petroleum Institute
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
HAP hazardous air pollutant(s)
LEL lower explosive limit
MACT maximum achievable control technology
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
UMRA Unfunded Mandates Reform Act

Organization of this Document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
II. Background
III. What actions are we proposing?
IV. Summary of Cost, Environmental, and Economic Impacts
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations.

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992), the category titled Petroleum Refineries—Other Sources Not Distinctly Listed includes any facility engaged in producing gasoline, napthas, kerosene, jet fuels, distillate fuel oils, residual fuel oils, lubricants, or other products from crude oil or unfinished petroleum derivatives. This category includes all refinery emission sources except for three process vent sources listed in the Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plant Units source category. The refinery process units in the Petroleum Refineries—Other Sources Not Distinctly Listed source category include, but are not limited to, thermal cracking, vacuum distillation, crude distillation, hydroheating/hydrorefining, isomerization, polymerization, lube oil processing, and hydrogen production.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]
Petroleum Refineries	40 CFR part 63, subpart CC	324110

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/petroleum-refinery-sector-risk-and-technology-review-and-new-source.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2010–0682).

II. Background

The EPA initially promulgated NESHAP pursuant to the Clean Air Act (CAA) sections 112(d)(2) and (3) for major sources in the Petroleum Refineries—Other Sources Not Distinctly Listed source category on August 18, 1995, in 40 CFR part 63, subpart CC. These standards are also referred to as maximum achievable control technology (MACT) standards and this NESHAP for petroleum refineries is commonly referred to as Refinery MACT 1. The 1995 Refinery MACT 1 rule regulates miscellaneous process vents, storage vessels, wastewater, equipment leaks, gasoline loading racks, and marine tank vessel loading. On October 28, 2009, the EPA promulgated amendments to Refinery MACT 1 to include MACT standards for heat exchange systems, which were not originally addressed in Refinery MACT 1. This same rulemaking included updating cross-references to the General Provisions in 40 CFR part 63.

The EPA completed a residual risk and technology review of Refinery MACT 1, publishing final amendments on December 1, 2015. The December 1, 2015, final amendments included revisions to the Refinery MACT 1 requirements for process vents designated as ''maintenance vents.'' Maintenance vents are used only during startup, shutdown, maintenance, or inspection of equipment activities during which the equipment is emptied, depressurized, degassed, or placed into service. The December 1, 2015, final amendments require that the hydrocarbon content of the vapor in the equipment served by the maintenance

vent to be less than or equal to 10 percent of the lower explosive limit (LEL) prior to venting to the atmosphere. The December 1, 2015, final rule also provides specific allowances for situations when the 10-percent LEL cannot be demonstrated or is technically infeasible. The compliance date included in the December 1, 2015, final rule for maintenance vents located at sources constructed on or before June 30, 2014, was February 1, 2016 (the effective date of the December 1, 2015, final amendments).

On January 19, 2016, the EPA received a petition for reconsideration from the American Petroleum Institute (API) and the American Fuel and Petrochemical Manufacturers (AFPM) formally requesting that the EPA reconsider the compliance date for maintenance vents located at sources constructed on or before June 30, 2014, among other issues.

In response to this petition, on July 13, 2016, the EPA revised the compliance date for maintenance vents located at sources constructed on or before June 30, 2014, from February 1, 2016, to August 1, 2017 (81 FR 45232; July 13, 2016).

III. What actions are we proposing?

In this action, the EPA is proposing to revise the compliance date for maintenance vents located at sources constructed on or before June 30, 2014, from August 1, 2017, to January 30, 2019. This proposed compliance date would provide petroleum refinery owners or operators with an additional 18 months to achieve compliance. The EPA is aware that many refineries have made good faith efforts to achieve compliance, including applying for and receiving an additional 12-month compliance extension. This makes their compliance deadline August 1, 2018, under the procedures provided in the General Provisions at 40 CFR 63.6(i). The compliance date included in this proposal (*i.e.,* January 30, 2019) is 3 years from the effective date of the December 1, 2015, final rule (*i.e.,* February 1, 2016). This proposed compliance date is consistent with CAA section 112(i)(3)(A), which specifies that the EPA provide a compliance date no more than 3 years after the effective date of the standard.

The EPA is proposing to amend the compliance date due to challenges petroleum refinery owners or operators have experienced in attempting to comply with the December 1, 2015, final rule requirements notwithstanding the additional compliance time provided in the July 13, 2016, final rule (*i.e.,* August 1, 2017) and the compliance extension procedure in 40 CFR 63.6(i) (*i.e.,* August 1, 2018). The new requirements for maintenance vents promulgated in the December 1, 2015, rule resulted in the need for completing the ''management of change process'' for affected sources (81 FR 45232, 45237, July 13, 2016). The management of change process includes evaluating the change, forming an internal team to accomplish the change, engineering the change which could include developing new set points, installing new controls or alarms, conducting risk assessments, updating associated plans and procedures, providing training, performing pre-startup safety reviews, and implementing the change as required by other regulatory programs. Some refinery owners or operators have also indicated the need to install additional control equipment to meet the new requirements, which would require additional engineering design, site preparation, and installation.

Additionally, the EPA has received various requests from industry stakeholders for clarification regarding the maintenance vent provisions.[1] [2] [3] [4] In consideration of these submissions, the EPA has proposed technical corrections and clarifications for maintenance vents in a proposed rule which was published in the **Federal Register** on April 10, 2018. The public comment period for this proposed rule closed on May 25, 2018. The April 10, 2018, proposed rule directly affects compliance for maintenance vents and, therefore, creates uncertainty for affected sources, affecting the ability of refinery owners or operators to fully invest in compliance solutions.

A compliance date of January 30, 2019, will provide sufficient time for the EPA to take final action on the April 10, 2018, proposal, and sufficient time for sources to complete the management of change process and to fully invest in compliance solutions.

[1] Supplemental Request for Administrative Reconsideration of Targeted Elements of the EPA's Final Rule ''Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards; Final Rule'' Howard Feldman, API, and David Friedman, AFPM. February 1, 2016. Docket Item No.: EPA–HQ–OAR–2010–0682–0892.

[2] Letter from Matt Todd, API, and David Friedman, AFPM, to P. Lassiter, EPA. July 12, 2016. Available in Docket ID: EPA–HQ–OAR–2010–0682–0914.

[3] Letter from Matt Todd, API, and David Friedman, AFPM, to P. Lassiter, EPA. March 28, 2017. Available in Docket ID: EPA–HQ–OAR–2010–0682–0915.

[4] Todd, Matt. ''Examples.'' Message to Brenda Shine. September 11, 2017. Email. Available in Docket ID: EPA–HQ–OAR–2010–0682–0927.

IV. Summary of Cost, Environmental, and Economic Impacts

The additional compliance time will have an insignificant effect on emission reductions and no effect on costs. The amount of time the maintenance vents are used are relatively infrequent and are usually of short duration (81 FR 45237, July 13, 2016). In addition, the proposed compliance date only provides approximately 6 months additional time beyond the August 1, 2018, compliance date for facilities that received a compliance extension under the procedure in 40 CFR 63.6(i).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. The OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 63, subparts CC and UUU under the provisions of the PRA, 44 U.S.C. 3501 *et seq.,* and has assigned the OMB control numbers 2060–0340 and 2060–0554. The proposed amendments are revisions to compliance dates that do not affect the estimated burden of the existing rule. Therefore, we have not revised the information collection request for the existing rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities, if the rule relieves regulatory burden, has

no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. The action consists of revisions to compliance dates which do not change the expected economic impact analysis performed for the existing rule. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposed amendments revise compliance dates. The additional compliance time will have an insignificant effect on emission reductions as many refiners already have measures in place due to state and other federal requirements to minimize emissions during these periods. Further, these periods are relatively infrequent and are usually of short duration. Therefore, the proposed amendments should not appreciably increase risk for any populations.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The proposed amendments revise compliance dates. The additional compliance time will have an insignificant effect on emission reductions as many refiners already have measures in place due to state and other federal requirements to minimize emissions during these periods. Further, these periods are relatively infrequent and are usually of short duration. Additionally, the proposed compliance date only provides approximately 6 months beyond the August 1, 2018, compliance date for facilities operating under the compliance extension procedure in 40 CFR 63.6(i). Therefore, the proposed amendments should not appreciably increase risk for any populations.

List of Subjects in 40 CFR Parts 60 and 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 3, 2018.

E. Scott Pruitt,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

■ 2. The appendix to subpart CC is amended by revising items 2(iv), 3(iv) and 4(v) in table 11 to read as follows:

Appendix to Subpart CC of Part 63—Tables

* * * * *

Table 11—Compliance Dates and Requirements

* * * * *

If the construction/ reconstruction date is . . .	Then the owner or operator must comply with . . .	And the owner or operator must achieve compliance . . .	Except as provided in . . .
* * *	* * *	* * *	* * *
(2) * * *	(iv) Requirements for existing sources in § 63.643(c).	On or before January 30, 2019	§§ 63.640(k), (l), and (m) and 63.643(d).
* * *	* * *	* * *	* * *
(3) * * *	(iv) Requirements for existing sources in § 63.643(c).	On or before January 30, 2019	§§ 63.640(k), (l), and (m) and 63.643(d).
* * *	* * *	* * *	* * *
(4) * * *	(v) Requirements for existing sources in § 63.643(c).	On or before January 30, 2019	§§ 63.640(k), (l), and (m) and 63.643(d).

If the construction/ reconstruction date is . . .	Then the owner or operator must comply with . . .	And the owner or operator must achieve compliance . . .	Except as provided in . . .
*	*	*	*	*	*	*

[FR Doc. 2018–14736 Filed 7–9–18; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Chapter III, Subchapter B

[Docket No. FMCSA–2018–0037]

Federal Motor Carrier Safety Regulations (FMCSRs) Which May Be a Barrier to the Safe Integration of Automated Driving Systems in Commercial Vehicle Operations; Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public listening session.

SUMMARY: The FMCSA announces a public listening session on July 12, 2018, to solicit information on issues relating to the design, development, testing, and integration of automated driving systems (ADS) equipped commercial motor vehicles (CMVs) on our Nation's roadways. The listening session will provide interested parties an opportunity to share their views on the FMCSRs as they relate to the development and safe integration of ADS. It will also allow FMCSA to share with stakeholders the ADS strategy and open a channel for two-way communication. This listening session will supplement the information gathered from FMCSA's previous requests for comment on issues related to automation. The session will be conducted at the same location as the 2018 Automated Vehicles Symposium sponsored by the Association for Unmanned Vehicle Systems International and the Transportation Research Board. During the session representatives from FMCSA and the Federal Highway Administration (FHWA) will solicit information on issues relating to the design, development, testing and integration of ADS-equipped commercial vehicles. Attendees are also encouraged to share any data or analysis on this topic with FMCSA and FHWA representatives.

DATES: The meeting will be held Thursday, July 12, 2018, from 1:30 p.m. to 3:30 p.m., Pacific Daylight Time (PDT). Comments will be accepted from in-person participants as well as comments submitted via the internet. If all interested participants have had an opportunity to comment, the session may conclude early.

ADDRESSES: The public listening session will be held as part of the 2018 Automated Vehicles Symposium at the Hilton San Francisco Union Square, 333 O'Farrell Street, San Francisco, California 94102. Participation in the listening session is free.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Huntley, Division Chief, Vehicle and Roadside Operations Division, Office of Carrier, Driver and Vehicle Safety, MC–PSV, (202) 366–9209, *michael.huntley@dot.gov,* Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact Victoria Waters, (734) 647–4217 by July 2, 2018.

SUPPLEMENTARY INFORMATION:

Background

The FMCSA is responsible for overseeing the safety of CMVs, their drivers, and those motor carriers operating CMVs in interstate commerce. The Agency works with Federal, State, and local enforcement agencies, the motor carrier industry, safety groups, and organized labor to reduce crashes, injuries, and fatalities involving large trucks and buses.

The FMCSRs provide rules to ensure the safe operation of CMVs, as defined in 49 CFR 390.5, which includes vehicles with a gross vehicle weight/gross combination weight or gross vehicle weight rating/gross combination weight rating, whichever is greater, of 10,001 pounds or more; passenger-carrying vehicles designed or used to transport 9 to 15 passengers for direct compensation; passenger-carrying vehicles designed or used to transport 16 or more passengers; and any size vehicle transporting hazardous materials in a quantity requiring placards.

On September 12, 2017, the Department published the *Automated Driving Systems (ADS): A Vision for Safety 2.0.* (the Voluntary Guidance), adopting the SAE International (SAE) J3016 standard's definition for levels of automation.[1] The SAE definitions divide vehicles into levels base on ''who does what, when.'' Generally:

- *SAE Level 0, No Driving Automation;* the driver performs all driving tasks.
- *SAE Level 1, Driver Assistance;* the vehicle is controlled by the driver, but some driving assist features may be included in the vehicle design.
- *SAE Level 2, Partial Driving Automation;* the vehicle has combined automated functions, like acceleration and steering, but the driver must remain engaged with the driving task and monitor the environment at all times.
- *SAE Level 3, Conditional Driving Automation;* the driver is a necessity, but is not required to monitor the environment. The driver must be ready to take control of the vehicle at all times with notice.
- *SAE Level 4, High Driving Automation;* the vehicle is capable of performing all driving functions under certain conditions. The driver may have the option to control the vehicle.
- *SAE Level 5, Full Driving Automation:* the vehicle is capable of performing all driving functions under all conditions.

Using the SAE levels described above, the Department draws a distinction between Levels 0–2 and 3–5 based on whether the human driver or the automated system is primarily responsible for monitoring the driving environment. For the purposes of this **Federal Register** notice and the July 12 public listening session, the Agency's primary focus is SAE Levels 3–5 ADS.

The FMCSA encourages the development of these advanced safety technologies for use in CMVs. The Agency also recognizes the need to work with the States and localities to ensure that all testing and use of these advanced safety systems supports the safe operation and deployment of ADS-equipped CMVs.

FMCSA's 2018 Request for Comments

On March 28, 2018, FMCSA published ''Request for Comments Concerning Federal Motor Carrier Safety Regulations (FMCSRs) Which May Be a

[1] Publication No. DOT HS 812 442.

Barrier to the Safe Testing and Deployment of Automated Driving Systems-Equipped Commercial Motor Vehicles on Public Roads.'' [2] The notice solicited public comments on existing FMCSRs that may need to be updated, modified, or eliminated to facilitate the safe introduction of ADS-equipped CMVs onto our Nation's roadways. The Agency indicated that it had commissioned the U.S. Department of Transportation's John A. Volpe National Transportation Systems Center (Volpe) to conduct a preliminary review of the FMCSRs to identify regulations that may relate to the development and safe introduction of ADS. The Agency requested comments on this report, including whether any of FMCSA's current safety regulations may hinder the testing and safe integration of ADS-equipped CMVs. Further, FMCSA requested comment on certain FMCSRs likely to be affected as ADS-equipped CMVs are increasingly integrated into our roadways, including regulations concerning hours of service and driver fatigue, the use of electronic devices, roadside inspection, and Commercial Driver's License requirements.

To further support FMCSA's effort to understand necessary changes to the FMCSRs, FMCSA requested information from companies engaged in the design, development, testing, and integration of ADS-equipped CMVs into the fleet. Specifically, the Agency requested information about: (1) The scenarios and environments where entities expect that ADS will soon be tested and integrated into CMVs operating on public roads or in interstate commerce; (2) the operational design domains (ODD) in which these systems are being operated, tested and deployed; and, (3) suggested measures to ensure the protection of any proprietary or confidential business information shared with the Agency on this topic.

The comment period ended on May 10, 2018. Interested parties may view the comments the Agency received at *www.regulations.gov* (docket number FMCSA–2018–0037).

In the Spring Regulatory and Deregulatory Agenda issued after the publication of the March 28 RFC notice, FMCSA announced the initiation of rulemaking concerning ADS-equipped CMVs beginning with an Advance Notice of Proposed Rulemaking (ANPRM), which is currently scheduled to be published in late 2018 (''Safe Integration of Automated Driving Systems-Equipped Commercial Motor Vehicles,'' RIN 2126–AC17).

Meeting Participation

The FMCSA hopes to supplement the information gathered from the RFC by targeting stakeholders who have not previously provided many comments, including academia, insurance groups, and technology providers and developers. The listening session will provide interested parties an opportunity to provide information and data that can inform the Agency's future rulemaking efforts by sharing their views on the FMCSRs as they relate to the development and safe integration of ADS through oral presentations. The Agency will provide the public with all relevant details for this meeting at: *http://www.fmcsa.dot.gov.*

Oral comments from the public will be heard during the meeting. Members of the public may also submit written comments to public docket referenced at the beginning of this notice using any of the following methods:

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

Issued on: July 5, 2018.

Wiley Deck,

Director of Governmental Affairs.

[FR Doc. 2018–14780 Filed 7–6–18; 11:15 am]

BILLING CODE 4910–EX–P

[2] 83 FR 12933, *https://www.gpo.gov/fdsys/pkg/FR-2018-03-26/pdf/2018-05788.pdf.* To view the public comments, visit *www.regulations.gov* and search under Docket No. FMCSA–2018–0037.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–XG295

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Notice of Receipt of a Petition for Rulemaking

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

ACTION: Notice of receipt; request for comments.

SUMMARY: On March 23, 2018, the State of New York submitted a petition to the Secretary of Commerce requesting rulemaking under the Administrative Procedure Act. The petition requests that NMFS revise the current state-by-state commercial quota allocations in the summer flounder fishery. This notice announces that NMFS, acting on the Secretary's behalf, has received this request, and provides the opportunity for public comment.

DATES: Comments must be received by 5 p.m. local time, on July 25, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0074, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0074,*

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

- OR -

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on the NY Fluke Petition for Rulemaking.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: On March 23, 2018, the State of New York and the New York State Department of Environmental Conservation (''New York'') submitted a petition to the Secretary of Commerce requesting rulemaking under the Administrative Procedure Act. The petition requests that NMFS amend the Summer Flounder, Scup, and Black Sea Bass

Fishery Management Plan (FMP) to revise the summer flounder state-by-state commercial quota allocations. The existing allocations were implemented in 1993 through Amendment 2 to the FMP. These allocations were based on the best available historical landings information from 1980–1989. The existing state allocations provide New York with 7.65 percent of the total coastwide commercial quota. New York asserts that, since 1993, the summer flounder stock distribution and commercial fishing activity have shifted northeast towards New York. As a result, New York believes the summer flounder commercial quota should be re-allocated amongst the states to reflect this shift in stock distribution and fishing activity, and New York should receive a higher percentage of the coastwide quota. New York argues in its petition that the current quota allocations are outdated, discriminatory, inefficient, costly, and unsafe, and should be replaced as soon as possible.

New York proposed that NMFS revise the allocations in a two-phase process. First, state-by-state allocations would be removed and replaced with coastwide management of the commercial quota for an interim period while new information is collected to inform revisions to the state quota allocation system. Then, revised state-by-state quota allocations that are ''far to New York'' would be implemented in phase two, based on the coastwide harvest activity information collected during phase one.

The Mid-Atlantic Fishery Management Council, acting jointly with the Atlantic States Marine Fisheries Commission, is already developing an amendment to the FMP that considers reallocating the summer flounder commercial state quotas. Included in the alternatives under consideration are changes to the state-by-state quota allocations based on updated stock distribution, similar to New York's request in this petition. The potential coastwide quota allocation percentage for New York under consideration in the amendment ranges from 7.65 percent (status quo) to 10.71 percent. The Council intends to conduct public hearings on this amendment later this summer to solicit comments on the amendment's draft alternatives. The Council is scheduled to take final action at its December 2018 meeting. Once the Council submits the final amendment for review and approval, NMFS will review the Council's amendment to determine if it is consistent with the National Standards, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws. Under the current timeline, this would result in the implementation of this new allocation amendment in the fall of 2019. Any new state allocations are intended to be implemented for the 2020 fishing year, beginning on January 1, 2020, if adopted and approved.

NMFS is providing this notice to acknowledge the receipt of New York's petition. With this notice, NMFS also seeks to emphasize the importance of the Council process, and encourage interested parties, including the State of New York and New York fishermen, to engage in the Council and Commission's development of the Commercial Summer Flounder Amendment at upcoming public hearings and Council meetings. NMFS will share comments received on this petition with the Council and Commission as the comments will likely have direct applicability to the allocation alternatives under consideration in the amendment. The Council's final commercial amendment will be reviewed by NMFS for consistency with the National Standards and other provisions of the Magnuson-Stevens Act. If, after completion of the amendment process, the state of New York wishes to revisit this petition request, NMFS may publish a subsequent notice to initiate rulemaking or formally deny the petition request. However, in the interim, NMFS defers to the ongoing Council amendment intended to address the current commercial quota allocation for summer flounder.

Dated: July 5, 2018.

Patricia A. Montanio,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2018–14716 Filed 7–9–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 83, No. 132
Tuesday, July 10, 2018

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

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a series of meetings to discuss next steps and prepare for a hearing on their study of mass incarceration and the judicial system in Arkansas.

DATES: The meetings will take place on:

- Wednesday July 18, 2018 at 3 p.m. Central
- Tuesday August 7, 2018 at 3 p.m. Central
- Wednesday August 29, 2018 at 2 p.m. Central

Public Call Information: Dial: 877–260–1479, Conference ID 7186761.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. These meetings are available to the public through the above 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 respective meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link (*https://www.facadatabase.gov/committee/meetings.aspx?cid=236*). Click on ''meeting details'' and then ''documents'' to download. 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

Welcome and Roll Call
Civil Rights in Arkansas: Mass Incarceration and the Judicial System in Arkansas
Future Plans and Actions
Public Comment
Adjournment

Dated: July 5, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–14697 Filed 7–9–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Spatial, Address, and Imagery Data (SAID) Program

AGENCY: U.S. Census Bureau, 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: To ensure consideration, written comments must be submitted on or before September 10, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket Number USBC–2018–0010, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robin A. Pennington, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233 (or through the internet at *robin.a.pennington@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Spatial, Address, and Imagery Data (SAID) Program, formerly known as the Geographic Support System (GSS) Partnership Program, is one of seven voluntary geographic partnership programs that collect data to update the U.S. Census Bureau's geographic database of addresses, streets, boundaries, and imagery known as the Master Address File/Topologically Integrated Geocoding and Referencing (MAF/TIGER) System. The data collected in the SAID Program is also used to define geographic boundaries, including census blocks, and to place households and group quarters in a specific census block. The Census Bureau uses the MAF/TIGER System to link demographic data from surveys and the decennial census to locations and areas, such as cities, school districts, and counties. To properly tabulate statistics by geography, the Census Bureau must have accurate and current addresses and boundaries.

The SAID Program follows the process below:

1. The Census Bureau invites participants, including tribal, state, county, and local governments; federal agencies; and other organizations each fiscal year.

2. Participants provide a current address list with associated points and attributes, spatial data, and/or imagery that is no more than two years old.

3. Participants upload the requested data files to a Census Bureau Secure File Transfer Protocol site, per Census Bureau procedures.

4. The Census Bureau updates the MAF/TIGER System with the address and street centerline data provided by the participants, and uses the provided imagery for quality control and change detection.

5. The Census Bureau uses these updated addresses and streets to support all Census Bureau field operations, surveys, and data tabulation.

The SAID Program complements the 2020 Census In-Office Address Canvassing Operation and 2020 Census Local Update of Census Addresses Operation (LUCA) by improving address coverage, collecting and updating street features, and enhancing the overall quality and integrity of the MAF/TIGER System. The SAID Program collects addresses annually, while LUCA occurs once per decade. The SAID Program supports a reengineered address canvassing methodology for the 2020 Census and beyond, allowing the Census Bureau to limit expensive field operations to those areas of the country where housing unit change and growth is occurring. The SAID Program provides the Census Bureau with a continuous method to obtain current, accurate, and complete address, spatial, and imagery data. The SAID Program helps the Census Bureau maintain its geographic framework for data collection, tabulation, and dissemination between decennial censuses and to support ongoing programs, such as the American Community Survey and the Population Estimates Program. Over the past six years, the SAID Program, under the name of the Geographic Support System (GSS) Partnership Program, has enabled the Census Bureau to update addresses and street centerlines across the country, with participation covering nearly 89 percent of the housing units in the nation. Moving forward, the SAID Program will continue to focus on acquiring addresses, street centerlines, and imagery in targeted areas.

II. Method of Collection

Each year, the Census Bureau identifies areas to invite to participate in the SAID program through varios evaluation factors, such as address growth, address change, comparison with other Census Bureau statistics, and past SAID or GSS Partnership Program participation status. The Census Bureau contacts potential participants by telephone and email to request addresses, street centerlines, and imagery data that are no more than two years old, along with supporting metadata. When invitees agree to participate, the Census Bureau sends them instructions on creating a Secure Web Incoming Module (SWIM) account, which is used for secure file transfers to the Census Bureau. Participants then submit their data in a single submission through the SWIM at their convenience. If a participant submits files with inadequate metadata, the Census Bureau requests the appropriate metadata, such as date of last update, frequency of updates, and source description from the participant. The Census Bureau will only process the files with appropriate metadata.

III. Data

OMB Control Number: 0607–0795.

Form Number:

Type of Review: Regular submission.

Affected Public: Tribal, state, county, and local governments and other organizations.

Estimated Number of Respondents (Fiscal Year (FY) 2019):

Census Bureau Contact with Local Governments: 1,000.

Census Bureau Acquisition of Local Geographic Data and Content Clarification: 500.

Estimated Number of Respondents (FY 2020):

Census Bureau Contact with Local Governments: 1,000.

Census Bureau Acquisition of Local Geographic Data and Content Clarification: 500.

Estimated Number of Respondents (FY 2021):

Census Bureau Contact with Local Governments: 1,000.

Census Bureau Acquisition of Local Geographic Data and Content Clarification: 500.

Estimated Time per Response (all FYs):

Census Bureau Contact with Local Governments: 2 hours.

Census Bureau Acquisition of Local Geographic Data and Content Clarification: 10 hours.

Estimated Total Annual Burden Hours (FY 2019):

Census Bureau Contact with Local Governments: 2,000.

Census Bureau Acquisition of Local Geographic Data and Content Clarification: 5,000.

Estimated Total Annual Burden Hours (FY 2020):

Census Bureau Contact with Local Governments: 2,000.

Census Bureau Acquisition of Local Geographic Data and Content Clarification: 5,000.

Estimated Total Annual Burden Hours (FY 2021):

Census Bureau Contact with Local Governments: 2,000.

Census Bureau Acquisition of Local Geographic Data and Content Clarification: 5,000.

Calculation of total burden	Burden hours per contact	FY 2019	FY 2020	FY 2021	Total
Contact with Local Governments	2	2,000	2,000	2,000	6,000
Acquisition of Local Data	10	5,000	5,000	5,000	15,000
Total Burden	12	7,000	7,000	7,000	21,000

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 16, 141, and 193.

V. 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.

Summarization of comments submitted in response to this notice will be included in the request for OMB approval of this information collection. Comments will also become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–14695 Filed 7–9–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–071]

Sodium Gluconate, Gluconic Acid, and Derivative Products From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that sodium gluconate, gluconic acid, and derivative products from the People's Republic of China (China) are, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2017, through September 30, 2017. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable July 10, 2018.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Stephen Bailey, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–0193 respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 4, 2018.[1] On May 1, 2018, Commerce postponed the preliminary determination of this investigation.[2] Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018.[3] The revised deadline for the preliminary determination for this investigation is now July 2, 2018.

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are sodium gluconate, gluconic acid, and derivative products from China. For a complete description of the scope of this investigation, *see* Appendix I to this notice.

Scope Comments

In accordance with the preamble to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[6] On January 9, 2018, and January 19, 2018, Commerce received scope comments and rebuttal comments, respectively.[7] For further details, see the Preliminary Decision Memorandum accompanying this notice. However, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. The China-wide entity includes mandatory respondents Shandong Fuyang Biotechnology Co., Ltd./ Shandong Fuyang Biology Starch Co., Ltd. (Shandong Fuyang)[8] Qingdao

[1] *See Sodium Gluconate, Gluconic Acid, and Derivative Products from France and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 516 (January 4, 2018) (*Initiation Notice*).

[2] *See Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 83 FR 19050 (May 1, 2018).

[3] *See* Memorandum, for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government,'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Sodium Gluconate, Gluconic Acid, and Derivative Products from People's Republic of China (Preliminary Decision Memorandum), dated concurrently with, and hereby adopted by, this notice. *See also* Appendix I.

[5] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice.*

[7] *See* Letter from Jungbunzlauer S.A. to Commerce, ''Investigations Sodium Gluconate, Gluconic Acid, and Derivative Products from France and China—Junsbunzlauers Comments regarding Scope,'' dated January 9, 2018, and PMP's Letter to Commerce, ''Countervailing and Antidumping Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Petitioner's Rebuttal Comments on Scope Comments,'' dated January 19, 2018.

[8] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Respondent Selection,'' dated January 17, 2018 (Initial Respondent Selection Memorandum). *See also* Shandong Fuyang letter, ''Notice of Non-Participation in Investigation,'' dated March 30, 2018.

Dongxiao Enterprise Co., Ltd. (Qingdao Dongxiao),[9] Zhejiang Tianyi Food Additives Co., Ltd. (Tianyi Food) [10] and Dezhou Huiyang Biotechnology Co., Ltd. (Dezhou Huiyang).[11] These companies failed to respond to Commerce's requests for information and withdrew from participation in this investigation. For a full description of the methodology underlying Commerce's preliminary determination, see the Preliminary Decision Memorandum.

Separate Rate

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[12] Commerce's policy is to assign all exporters of subject merchandise that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[13] Commerce preliminarily finds that the evidence placed on the record of this investigation by Anhui Xingzhou Medicine Food Co., Ltd. (Xingzhou Medicine) [14] demonstrates an absence of *de jure* and *de facto* government control. Commerce assigned Xingzhou Medicine a separate rate, which is the petition rate, because it is the only rate available on the record of this proceeding. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[15] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[16] Because Commerce preliminarily determined that these mandatory respondents should be considered part of the China-wide entity, and assigned, as adverse facts available, the petition rate to the China-wide entity, Commerce did not calculate producer/exporter combination rates for those companies.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Anhui Xingzhou Medicine Food Co., Ltd	Xiwang Pharmaceutical Co., Ltd	213.15
Anhui Xingzhou Medicine Food Co., Ltd	Zhucheng Shuguang Biotech Co., Ltd	213.15
China-wide Entity [17]		213.15

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of China producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-country exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the China producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

As described in the Preliminary Decision Memorandum, in this preliminary determination, no adjustments pursuant to sections 777A(f) and 772(c)(1)(C) of the Act are being made for cash deposit purposes.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However,

[9] *See* Qingdao Dongxiao, see the Initial Respondent Selection Memorandum and Qingdao Dongxiao's Letter, ''Withdrawal from Participation,'' dated February 14, 2018.

[10] *See* Tianyi Food, see Commerce's Memorandum, ''Selection of Additional Respondent,'' dated March 5, 2018 and Tianyi Food's Letter, ''Withdrawal from Participation,'' dated March 8, 2018.

[11] *See* Dezhou Huiyang's Commerce's Memorandum, ''Selection of Additional Respondent,'' dated March 9, 2018 and Dezhou Huiyang's Letter, ''Dezhou Huiyang Biotechnology Co., Ltd. Withdrawal of Participation in Antidumping Duty Investigation,'' dated March 13, 2018.

[12] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008).

[13] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

[14] *See, e.g.,* Xingzhou Medicine's Letter, ''Xingzhou Medicine Separate Rate Application,'' dated February 5, 2018; Commerce's Letter, ''1st Supplemental Questionnaire Regarding the Separate Rate Application for Anhui Xingzhou Medicine Food Co., Ltd.,'' dated February 27, 2018; Xingzhou Medicine's Letter, ''Supplemental SRA Questionnaire Response,'' dated March 6, 2018; Commerce's Letter, ''2nd Supplemental Questionnaire regarding the Separate Rate Application for Anhui Xingzhou Medicine Food Co., Ltd.,'' dated March 22, 2018. and Xingzhou Medicine's Letter, ''Second Supplemental SRA Questionnaire Response,'' dated March 29, 2018.

[15] *See Initiation Notice* at 42652–53.

[16] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[17] The China-wide Entity includes Dezhou Huiyang, Qingdao Dongxiao, Shandong Fuyang, and Tianyi Food.

because Commerce preliminarily determined that the mandatory respondents should be considered to be part of the China-wide entity, and assigned the China-wide entity an AFA rate based solely on the petition, there are no calculations to disclose.

Verification

Because the mandatory respondents in this investigation did not provide information requested by Commerce and Commerce preliminarily determines in accordance with section 776(b) of the Act that each of the mandatory respondents to have been uncooperative, verification will not be conducted.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[18] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 2, 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 I

Scope of the Investigation

The scope of the investigation covers all grades of sodium gluconate, gluconic acid, liquid gluconate, and glucono delta lactone (GDL) (collectively GNA Products), regardless of physical form (including, but not limited to substrates; solutions; dry granular form or powders, regardless of particle size; or as a slurry). The scope also includes GNA Products that have been blended or are in solution with other product(s) where the resulting mix contains 35 percent or more of sodium gluconate, gluconic acid, liquid gluconate, and/or GDL by dry weight.

Sodium gluconate has a molecular formula of $NaC_6H_{11}O_7$. Sodium gluconate has a Chemical Abstract Service (CAS) registry number of 527–07–1, and can also be called ''sodium salt of gluconic acid'' and/or sodium 2, 3, 4, 5, 6 pentahydroxyhexanoate. Gluconic acid has a molecular formula of $C_6H_{12}O_7$. Gluconic acid has a CAS registry number of 526–95–4, and can also be called 2, 3, 4, 5, 6 pentahydroxycaproic acid. Liquid gluconate is a blend consisting only of gluconic acid and sodium gluconate in an aqueous solution. Liquid gluconate has CAS registry numbers of 527–07–1, 526–95–4, and 7732–18–5, and can also be called 2, 3, 4, 5, 6-pentahydroxycaproic acid-hexanoate. GDL has a molecular formula of $C_6H_{10}O_6$. GDL has a CAS registry number of 90–80–2, and can also be called d-glucono-1,5-lactone.

The merchandise covered by the scope of the investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 2918.16.1000, 2918.16.5010, and 2932.20.5020. Merchandise covered by the scope may also enter under HTSUS subheadings 2918.16.5050, 3824.99.2890, and 3824.99.9295. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Discussion of the Methodology
  A. Non-Market Economy Country
  B. Surrogate Country and Surrogate Value Comments
  C. Separate Rates
  D. China-Wide Entity
  E. Use of Facts Otherwise Available With an Adverse Inference
VII. Adjustment Under Section 777(A)(f) of the Act
VIII. Adjustments to Cash Deposit Rates for Export Subsidies
IX. Verification
X. Conclusion

[FR Doc. 2018–14729 Filed 7–9–18; 8:45 am]

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[18] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–978]

High Pressure Steel Cylinders From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on high pressure steel cylinders (steel cylinders) from the People's Republic of China (PRC) for the period of review January 1, 2016, through December 31, 2016. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 10, 2018.

FOR FURTHER INFORMATION CONTACT: Toby Vandall or Aimee Phelan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone:

(202) 482–1664 or (202) 482–0697, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2017, Commerce published a notice of opportunity to request an administrative review of the CVD order on steel cylinders from the PRC for the period January 1, 2016, through December 31, 2016.[1] On June 13, 2017, and June 30, 2017, we received review requests from Norris Cylinder Company (the petitioner) and Beijing Tianhai Industry Co., Ltd. (BTIC).[2] We published a notice of initiation for this administrative review on August 1, 2017.[3] On February 5, 2018, we postponed the deadline for issuing the preliminary results of this administrative review until July 3, 2018.[4] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The merchandise covered by this order is seamless steel cylinders designed for storage or transport of compressed or liquefied gas (''high pressure steel cylinders''). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (''DOT'')-approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT–E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by this order have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings.

Excluded from the scope of the order are high pressure steel cylinders manufactured to U–ISO–9809–1 and 2 specifications and permanently impressed with ISO or UN symbols. Also excluded from the order are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.

Merchandise covered by the order is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under subheading 7311.00.00.30. Subject merchandise may also enter under HTSUS subheadings 7311.00.00.60 or 7311.00.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Methodology

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[7]

In making these findings, we relied, in part, on facts available, and because we find that either the GOC or the respondent company did not act to the best of their ability to respond to our requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[8] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Preliminary Results of the Review

We preliminarily find that the following net countervailable subsidy rate exists for the mandatory respondent, BTIC, for the period January 1, 2016, through December 31, 2016:

Company	Subsidy Rate *Ad Valorem* (percent)
Beijing Tianhai Industry Co., Ltd.[9]	37.77

Assessment Rates

Upon issuance of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, we also intend, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above for BTIC, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 82 FR 26441 (June 7, 2017).

[2] *See* Letter from the petitioner, ''High Pressure Steel Cylinders from the People's Republic of China Request for Administrative Review and Entry of Appearance'' (June 13, 2017); *see also* Letter from BTIC, ''Request for the Fifth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China, C–570–978 (POR: 01/01/16–12/31/16)'' (June 30, 2017).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 35749 (August 1, 2017) (*Initiation Notice*).

[4] *See* Memorandum, ''High Pressure Steel Cylinders from the People's Republic of China: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review; 2016,'' February 5, 2018.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of 2016 Countervailing Duty Administrative Review of High Pressure Steel Cylinders from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] A list of topics discussed in the Preliminary Decision Memorandum can be found in Appendix I to this notice.

[8] *See* sections 776(a) and (b) of the Act.

[9] As discussed in the Preliminary Decision Memorandum, we have found the following companies to be cross-owned with BTIC: Tianjin Tianhai High Pressure Container Co., Ltd.; Langfang Tianhai High Pressure Container Co., Ltd.; Beijing Jingcheng Machinery Electric Holding Co., Ltd.; and Beijing Jingcheng Machinery Electric Co., Ltd.

administrative review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties in this review the calculations performed in reaching the preliminary results within five days of publication in the **Federal Register** of these preliminary results.[10] Unless Commerce instructs otherwise, interested parties may submit written comments (case briefs) on the preliminary results no later than 30 days from the date of publication of this **Federal Register** notice, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[11] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to the issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[13] Hearing requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[14] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice.

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 3, 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

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Application of the Countervailing Duty Law to Imports From the PRC
V. Subsidies Valuation Information
VI. Benchmarks and Interest Rates
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Analysis of Programs
IX. Disclosure and Public Comment
X. Conclusion

[FR Doc. 2018–14730 Filed 7–9–18; 8:45 am]

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[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(c)(1)(ii); 351.309(d)(1); and 19 CFR 351.303 (for general filing requirements).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the exporters of chlorinated isocyanurates subject to this administrative review made sales of subject merchandise at prices below normal value (NV). The period of review (POR) is June 1, 2016, through May 31, 2017. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable July 10, 2018.

FOR FURTHER INFORMATION CONTACT: Sean Carey, 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) 482–3964.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones.[1] Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). Export prices have been calculated in accordance with section 772 of the Act. Because China is a non-market economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum is available at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The administrative review covers three producers/exporters: (1) Heze Huayi Chemical Co. Ltd. (Heze Huayi); (2) Hebei Jiheng Chemical Co. Ltd. (Jiheng); and (3) Juancheng Kangtai

[1] For a complete description of the Scope of the Order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2017 Antidumping Duty Administrative Review: Chlorinated Isocyanurates from the People's Republic of China,'' dated concurrently with this notice (Preliminary Decision Memorandum).

Chemical Co. Ltd. (Kangtai). We preliminarily determine that Heze Huayi and Kangtai have demonstrated their eligibility for a separate rate, and have made sales in the United States at prices below normal value (NV). We also preliminarily determine that Jiheng has not demonstrated its eligibility for a separate rate. Because Jiheng did not submit a separate rate response, we preliminarily determine that Jiheng is part of the China-wide entity.[2]

For the companies subject to this review that have established their eligibility for a separate rate, Commerce preliminarily determines that the following weighted-average dumping margins exist for the period of June 1, 2016, through May 31, 2017:

Exporter	Weight-average dumping margin percentage
Heze Huayi Chemical Co. Ltd.	23.29
Juancheng Kangtai Chemical Co. Ltd	29.35

Disclosure and Public Comment

Commerce intends to disclose the calculations for these preliminary results within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review.[3] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[4] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[5]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, within 30 days of the date of publication of this notice.[6] Requests should contain: (1) The party's name, address and telephone number; (2) The number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[7] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*e.g.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.

Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuing the final results of this review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[8] Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales.[9] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, Commerce will instruct CBP to liquidate such entries at the China-wide rate. Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the China-wide rate.[10]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the existing producer/exporter-specific combination rate published for the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be eligible for a separate rate, the cash deposit rate will be the PRC-wide rate of 285.63 percent; [11] and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when

[2] Because no interested party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, we did not conduct a review of the China-wide entity. Thus, the rate for the China-wide entity is not subject to change as a result of this review. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

[3] *See* 19 CFR 351.309(c)(1)(ii).

[4] *See* 19 CFR 351.309(d)(1) and (2).

[5] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[6] *See* 19 CFR 351.310(c).

[7] *See* 19 CFR 351.310(d).

[8] *See* 19 CFR 351.212(b)(1).

[9] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[10] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[11] *See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502, 24505 (May 10, 2005).

imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: July 3, 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

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Non-Market Economy Country Status
5. Separate Rates
6. Surrogate Country
7. Date of Sale
8. Normal Value Comparisons
9. Factor Valuation Methodology
10. Surrogate Values
11. Comparisons to Normal Value
12. Adjustments for Countervailable Subsidies
13. Currency Conversion

[FR Doc. 2018–14728 Filed 7–9–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of Federal Advisory Committee meeting; cancellation.

SUMMARY: The Department of the Army published a Federal Advisory Committee meeting of the Advisory Committee on Arlington National Cemetery notice in the **Federal Register** on Tuesday, June 26, 2018. The meeting was to take place on July 26, 2018, but is now cancelled.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Keating; Alternate Designated Federal Officer for the Committee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *timothy.p.keating.civ@mail.mil,* or by phone at 1–877–907–8585.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–14713 Filed 7–9–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Renewal of federal advisory committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Defense Acquisition University Board of Visitors (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The charter and contact information for the Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/.* The Board provides independent advice on the organizational management, curricula, methods of instruction, facilities, and other matters of interest relating to the Defense Acquisition University. The Board shall be composed of no more than 14 members who are former senior Defense officials familiar with the acquisition process or are eminent authorities in academia, business, or the defense industry. Members of the Board who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Members of the Board who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. Each Board member is appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, Board members serve without compensation. The DoD, as necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Board and must report all recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Board's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Board/subcommittee meeting. The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Board meetings. All written statements must be submitted to the Board's DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: July 5, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–14714 Filed 7–9–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities—Center on Technology Systems in Local Educational Agencies

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2018 for Educational Technology, Media, and Materials for

Individuals with Disabilities—Center on Technology Systems in Local Educational Agencies, Catalog of Federal Domestic Assistance (CFDA) number 84.327T.

DATES:

Applications Available: July 10, 2018.

Deadline for Transmittal of Applications: August 9, 2018.

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: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW, Room 5175, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6595.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Educational Technology, Media, and Materials for Individuals with Disabilities Program are to: (1) Improve results for students with disabilities by promoting the development, demonstration, and use of technology; (2) support educational activities designed to be of educational value in the classroom for students with disabilities; (3) provide support for captioning and video description that is appropriate for use in the classroom; and (4) provide accessible educational materials to students with disabilities in a timely manner.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674(b)(2) and 681(d) of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1474(b) and 1481(d)).

Absolute Priority: For FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Center on Technology Systems in Local Educational Agencies.

Background: The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation.

Over 40 years of research and experience have demonstrated the benefits of assistive technology (AT) [1] and instructional technology (IT) [2] for the education and development of children with disabilities (see section 601(c)(5)(H) of IDEA). With the increased use of appropriate AT and IT, more children with disabilities will have access to the general education curriculum and be prepared to meet standards for academic success (Ahmad, 2015).

Despite these known benefits, teachers, related services personnel, and other professionals (collectively, ''providers'') vary greatly in their knowledge of evidence-based (as defined in this notice) practices (EBPs) for effective use [3] of AT and IT (Bausch, Ault, Evmenova, & Behrmann, 2008; Lee & Vega, 2005; Smith & Robinson, 2003; U.S. Department of Education, 2010; Zhou, Parker, Smith, & Griffin-Shirley, 2011). At the same time, local educational agencies (LEAs) vary greatly in their ability to implement systems [4] that support the effective use of AT and IT by children with disabilities and their families. Some LEAs have robust systems in place that ensure the acquisition and effective use of AT and IT by children with disabilities while others struggle to meet the AT and IT needs of children with disabilities. Moreover, the rapid evolution of technology often outstrips providers' efforts to effectively support the use of technology (Bausch, Ault, & Hasselbring, 2015).

Technology planning to develop comprehensive and sustainable systems for effective use of AT and IT should focus on sound frameworks [5] that provide a process for providers to understand and meet the AT and IT needs of children with disabilities and their families (Hartmann & Weismer, 2016). Comprehensive and sustainable systems in LEAs for the effective use of AT and IT must include: (1) A vision of how AT and IT can increase access to educational opportunities, improve outcomes, and lead to greater equity for children with disabilities; (2) practices rooted in strong knowledge of how children with disabilities can effectively use AT and IT even as the technology itself changes; (3) ongoing opportunities for professional development for providers, educators, administrators, and families in children's use of AT and IT; (4) funding sources for appropriate low- and high-tech AT and IT devices and services; and (5) coordinated programs to acquire, maintain, and reuse AT and IT devices (U.S. Department of Education, 2017).

This priority will fund a cooperative agreement to establish and operate a Center on Technology Systems in Local Educational Agencies (Center). The Center will increase the effective use of AT and IT by children with disabilities and their families by building the capacity of LEAs to implement comprehensive and sustainable systems for the effective use of AT and IT. This priority is consistent with the following Secretary's Supplemental Priorities: Priority 2—Promoting Innovation and Efficiency, Streamlining Education with an Increased Focus on Improving Student Outcomes, and Providing Increased Value to Students and Taxpayers; Priority 5—Meeting the Unique Needs of Students and Children With Disabilities and/or Those With Unique Gifts and Talents; Priority 7—Promoting Literacy; and Priority 8—Promoting Effective Instruction in Classrooms and Schools, published in the **Federal Register** on March 2, 2018 (83 FR 9096).

Priority: The purpose of this priority is to fund a cooperative agreement to establish and operate a Center on Technology Systems in Local Educational Agencies to achieve, at a minimum, the following expected outcomes:

(a) Development and refinement of a framework that incorporates theories, knowledge base, and effective practices, policies, and tools that LEAs can use to

[1] Section 602 of IDEA defines an ''assistive technology device'' as ''any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.''

[2] IDEA does not provide a definition for IT, but for the purposes of this priority, ''IT'' is defined as technology processes and resources that facilitate learning and improve student performance for all students.

[3] For purposes of this priority, ''effective use'' refers to active use of technology to enable learning through creation, production, and problem-solving (U.S. Department of Education, 2017).

[4] For purposes of this priority, ''systems'' refers to interrelated components (*e.g.,* funding, professional development, data collection, accountability, and quality improvement) that need to be in place to support the identification, procurement, deployment, and effective use of AT and IT by children with disabilities and their families.

[5] For purposes of this priority, ''frameworks'' refers to the theories, knowledge base, policies, and practices that form the basic conceptual structure of effective systems. A framework is a guide to increase the capacity of LEAs to understand, improve, and implement effective systems.

develop or enhance comprehensive and sustainable systems for the effective use of AT and IT;

(b) Increased knowledge of providers about evidence-based AT and IT practices for children with disabilities and their families;

(c) Increased capacity of LEAs to develop comprehensive and sustainable systems for the effective use of AT and IT; and

(d) Increased effective use of AT and IT by children with disabilities and their families in the LEAs that have comprehensive and sustainable systems for the effective use of AT and IT.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the project will—

(1) Address LEAs' needs regarding useful, relevant, and current information and training to build their capacity to develop and sustain systems for the effective use of AT and IT by children with disabilities and their families. To meet this requirement the applicant must—

(i) Present applicable national data demonstrating the extent to which LEAs have comprehensive and sustainable systems for the effective use of AT and IT by children with disabilities and their families, including gaps in the resources available to support LEAs in the development of these systems;

(ii) Demonstrate knowledge of current educational issues and policy initiatives relating to the effective use of AT and IT by children with disabilities and their families;

(iii) Present information about the current capacity of—

(A) Providers to implement EBPs to improve the effective use of AT and IT by children with disabilities and their families; and

(B) LEAs to implement components of comprehensive and sustainable systems for the effective use of AT and IT by children with disabilities and their families;

(2) Improve the effective use of AT and IT by children with disabilities and their families, and indicate the likely magnitude or importance of the improvements.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for technical assistance (TA) and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in this notice) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of EBPs. To meet this requirement, the applicant must describe—

(i) The current research on practices to support the effective use of AT and IT by children with disabilities;

(ii) The current research on components of LEA systems, including policies and practices, necessary to increase the effective use of AT and IT by children with disabilities and their families;

(iii) The current research about adult learning principles and implementation science that will inform the proposed TA;

(iv) How the proposed project will incorporate current research and EBPs in the development and dissemination of a framework of LEA policies and practices that are necessary for creating comprehensive and sustainable systems for the effective use of AT and IT by children with disabilities and their families; and

(v) How the proposed project will identify LEAs that have promising systems or policies and practices for supporting children's and families' effective use of AT and IT and incorporate that information into the development of the framework;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base related to children's and families' effective use of AT and IT and the development of comprehensive and sustainable systems in LEAs to support that use;

(ii) Its proposed approach to universal, general TA,[6] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach and should include, at minimum—

(A) A plan to disseminate the framework and develop professional learning activities for LEAs to enhance their understanding and implementation of the framework; and

(B) A plan to identify and disseminate other relevant

resources, including those currently housed by the Center on Technology and Disability, on evidence-based AT and IT practices for children with disabilities and their families;

(iii) Its proposed approach to targeted, specialized TA[7] to support LEAs in implementing the framework, which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a

[6] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[7] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[8] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of this notice;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the Annual Performance Report (APR) and at the end of Year 2 for the review process described under the heading, *Fourth and Fifth Years of the Project;*

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a ''third-party'' evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the Office of Special Education Programs (OSEP) project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period;

(iii) One annual two-day trip to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, during the last half of the second year of the project period;

(5) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(6) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility; and

(7) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products from the current Center for Technology and Disability and to maintain the continuity of services during the transition to this new Center and at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), as well as—

(a) The recommendation of a 3+2 review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and

[8] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

likely to result in the project achieving its intended outcomes.

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Definitions: The following definitions are from 34 CFR 77.1:

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Evidence-based means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $700,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2019 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding $700,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies; LEAs, including public charter schools that operate as LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs and private nonprofit organizations suitable to carry out the activities proposed in the application. The grantee may award subgrants to entities it has identified in an approved application.

4. *Other General Requirements:* (a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

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:* This competition is 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 an award by the end of FY 2018.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your

application. We recommend that you (1) limit the application narrative to no more than 70 pages, and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (15 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses;

(ii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies;

(iii) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population; and

(iv) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(b) *Quality of project services (30 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(ii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives;

(iii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs;

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services;

(v) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services; and

(vi) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) *Quality of the project evaluation (20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(v) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(d) *Adequacy of project resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources and quality of project personnel for the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In determining the adequacy of resources and quality of the project personnel for the proposed project, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator;

(ii) The qualifications, including relevant training and experience, of key project personnel;

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors;

(iv) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

(v) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(vi) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined

responsibilities, timelines, and milestones for accomplishing project tasks;

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project;

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project; and

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition 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.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Under the Government Performance and Results

Act of 1993, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Educational Technology, Media, and Materials for Individuals with Disabilities program. These measures are:

- Program Performance Measure #1: The percentage of Educational Technology, Media, and Materials Program products and services judged to be of high quality by an independent review panel of experts qualified to review the substantial content of the products and services.
- Program Performance Measure #2: The percentage of Educational Technology, Media, and Materials Program products and services judged to be of high relevance to improving outcomes for infants, toddlers, children, and youth with disabilities.
- Program Performance Measure #3: The percentage of Educational Technology, Media, and Materials Program products and services judged to be useful in improving results for infants, toddlers, children, and youth with disabilities.
- Program Performance Measure #4.1: The Federal cost per unit of accessible educational materials funded by the Educational Technology, Media, and Materials Program.
- Program Performance Measure #4.2: The Federal cost per unit of accessible educational materials from the National Instructional Materials Accessibility Center funded by the Educational Technology, Media, and Materials Program.
- Program Performance Measure #4.3: The Federal cost per unit of video description funded by the Educational Technology, Media, and Materials Program.

These measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: 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) by contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue SW, Room 5113, Potomac Center Plaza, Washington, DC 20202–2500. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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Dated: July 3, 2018.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2018–14692 Filed 7–9–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–556–001.
Applicants: Southern Natural Gas Company, L.L.C.
Description: Compliance filing Rate Case Settlement—Aphabetize GT&C Definitions & Remove Sec 33 Compliance to be effective 8/28/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5043.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–921–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to Negotiated Rate Agreement-Peoples Gas Light and Coke to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5001.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–922–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: TPC Section 4 Rate Case Filing to be effective 8/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5003.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–923–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: § 4(d) Rate Filing: MRT Rate Case 2018 to be effective 8/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5004.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–925–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: ANR TVA Negotiated Rate Amendment to be effective 6/29/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5033.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–926–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Update to Reservation of Capacity to be effective 7/30/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5050.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–927–000.
Applicants: Destin Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Destin Negotiated Rate to be effective 8/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5063.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–928–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—Direct Energy 8951931 eff 7–1–2018 to be effective 7/1/2018.

Filed Date: 6/29/18.
Accession Number: 20180629–5064.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–929–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2018 July Amendments to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5066.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–930–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Update Negotiated Rate Agreement—Volume 1A to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5073.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–931–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: NRA—NRG Release to Genon Holdco 10 K511042 to be effective 6/29/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5076.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–932–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (RE Gas 35433, 34955 to BP 37229, 37230) to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5080.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–933–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Neg Rate Agmt (Logan Aluminum 36809) to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5078.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–934–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (EM Energy Ohio 35451 to BP 37233) to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5079.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–935–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (PH 41455 to Texla 49716, Sequent 49722, Tenaska 49735) to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5081.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–936–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 to various shippers eff 7–1–2018) to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5082.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–937–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (XTO 1846 to SW Energy 2016) to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5090.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–938–000.
Applicants: Millennium Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Consent Agreements Filing to be effective 8/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5098.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–939–000.
Applicants: Millennium Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Service Agreement—CPV to be effective 8/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5103.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–940–000.
Applicants: Empire Pipeline, Inc.
Description: § 4(d) Rate Filing: Empire Rate Case—June 2018 to be effective 1/1/2019.
Filed Date: 6/29/18.
Accession Number: 20180629–5111.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–941–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Non-Conforming Agreement—ETG K400258 to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5155.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–942–000.
Applicants: North Baja Pipeline, LLC.
Description: § 4(d) Rate Filing: Service Agreement Recontracting Filing to be effective 8/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5157.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–943–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: § 4(d) Rate Filing: Global Engie Non-Conforming Agreement Filing to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5158.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–944–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—ConEd to East Coast Power 796838 to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5159.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–945–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20180629 Negotiated Rates to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5235.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–946–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreement Update (SWG 2018) to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5239.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–947–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates ConEd releases eff 7–1–18 to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5240.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–948–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Negotiated Rates—Pivotal Permt Rls to ETG to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5259.
Comments Due: 5 p.m. ET 7/11/18.

Docket Numbers: RP18–949–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Seven Generations Delivery Point Change to be effective 7/1/2018.
Filed Date: 6/29/18.
Accession Number: 20180629–5268.
Comments Due: 5 p.m. ET 7/11/18.

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: July 3, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–14711 Filed 7–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–1924–000]

Sanford Energy Associates, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Sanford Energy Associates, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 23, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 3, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–14712 Filed 7–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1529–004.

Applicants: Northern Iowa Windpower, LLC.

Description: Triennial Report of Northern Iowa Windpower, LLC.

Filed Date: 7/2/18.

Accession Number: 20180702–5298.

Comments Due: 5 p.m. ET 8/31/18

Docket Numbers: ER10–1836–010; ER10–1841–010; ER10–1843–010; ER10–1844–010; ER10–1845–010; ER10–1852–019; ER10–1897–010; ER10–1905–010; ER10–1907–009; ER10–1918–010; ER10–1925–010; ER10–1927–010; ER10–1950–010; ER10–1964–010; ER10–1965–010; ER10–1970–010; ER10–1972–010; ER10–1983–010; ER10–1984–010; ER10–1991–011; ER10–2005–010; ER10–2006–011; ER10–2078–011; ER10–2551–008; ER11–26–010; ER11–4462–028; ER12–1660–010; ER13–2458–005; ER13–2461–005; ER16–1872–001; ER16–2506–002; ER17–2270–002; ER17–838–003.

Applicants: Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Baldwin Wind, LLC, Butler Ridge Wind Energy Center, LLC, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, Crystal Lake Wind III, LLC, Florida Power & Light Company, FPL Energy Hancock County Wind, LLC, FPL Energy Mower County, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, Garden Wind, LLC, Hawkeye Power Partners, LLC, Lake Benton Power Partners II, LLC, Langdon Wind, LLC, Marshall Solar, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Marketing, LLC, NEPM II, LLC, Oliver Wind III, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Pheasant Run Wind, LLC, Story Wind, LLC, Stuttgart Solar, LLC, Tuscola Bay Wind, LLC, Tuscola Wind II, LLC, White Oak Energy LLC.

Description: Central Region Triennial Market Power Update of the NextEra Companies.

Filed Date: 7/2/18.

Accession Number: 20180702–5297.

Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER10–2042–027;ER10–1862–021; ER10–1863–005; ER10–1893–021; ER10–1933–004; ER10–1934–021; ER10–1938–022; ER10–1942–019; ER10–1945–007; ER10–2985–025; ER10–3049–026; ER10–3051–026; ER11–4369–006; ER16–2218–006; ER17–696–007.

Applicants: Calpine Energy Services, L.P., Auburndale Peaker Energy Center, LLC, Calpine Construction Finance Company, L.P., Calpine Energy Solutions, LLC, Calpine Power America—CA, LLC, CES Marketing IX, LLC, CES Marketing X, LLC, Champion Energy, LLC, Champion Energy Marketing LLC, Champion Energy Services, LLC, North American Power and Gas, LLC, North American Power Business, LLC, Pine Bluff Energy, LLC, Power Contract Financing, L.L.C., RockGen Energy, LLC.

Description: Updated Market Power Analysis of the Calpine Central MBR Sellers.

Filed Date: 7/2/18.

Accession Number: 20180702–5292.

Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER10–2822–013; ER12–2076–006; ER12–2077–006; ER12–2078–006; ER12–2081–006; ER12–2083–006; ER12–2084–006; ER12–2086–006; ER12–2097–006; ER12–2101–006; ER12–2102–007; ER12–2106–006; ER12–2107–006; ER12–2108–006; ER12–2109–006; ER16–1250 005.

Applicants: Atlantic Renewable Projects II LLC, Avangrid Renewables, LLC, Barton Windpower LLC, Buffalo Ridge I LLC, Buffalo Ridge II LLC, Elm

Creek Wind, LLC, Elm Creek Wind II LLC, Farmers City Wind, LLC, Flying Cloud Power Partners, LLC, MinnDakota Wind LLC, Moraine Wind LLC, Moraine Wind II LLC, New Harvest Wind Project LLC, Northern Iowa Windpower II LLC, Rugby Wind LLC, Trimont Wind I LLC.

Description: Updated Market Power Analysis of the Avangrid Central MBR Sellers.

Filed Date: 7/2/18.

Accession Number: 20180702–5296.

Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER17–194–002.

Applicants: Hartree Partners, LP.

Description: Notice of Non-Material Change in Status of Hartree Partners, LP.

Filed Date: 7/2/18.

Accession Number: 20180702–5291.

Comments Due: 5 p.m. ET 7/23/18.

Docket Numbers: ER12–1179–026.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Order No. 745 Compliance Filing in Response to June 2018 Order to be effective 6/5/2018.

Filed Date: 7/3/18.

Accession Number: 20180703–5090.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1943–000.

Applicants: Georgia Power Company.

Description: § 205(d) Rate Filing: Transition Services Agreement Filing to be effective 12/31/9998.

Filed Date: 7/3/18.

Accession Number: 20180703–5062.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1944–000.

Applicants: Mississippi Power Company.

Description: § 205(d) Rate Filing: Transition Services Agreement Filing to be effective 12/31/9998.

Filed Date: 7/3/18.

Accession Number: 20180703–5066.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1945–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Amendment of Southern's Tariff Volume No. 4 Relating to Sale of Gulf Power to be effective 12/31/9998.

Filed Date: 7/3/18.

Accession Number: 20180703–5075.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1946–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits Revised Interconnection Agreements SA Nos. 3994 and 3995 to be effective 9/1/2018.

Filed Date: 7/3/18.

Accession Number: 20180703–5076.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1947–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Southern Company System Intercompany Interchange Contact Amendment Filing to be effective 9/24/2010.

Filed Date: 7/3/18.

Accession Number: 20180703–5077.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1948–000.

Applicants: Georgia Power Company.

Description: § 205(d) Rate Filing: Southern Company System Intercompany Interchange Contract Amendment Filing to be effective 9/24/2010.

Filed Date: 7/3/18.

Accession Number: 20180703–5078.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1949–000.

Applicants: Gulf Power Company.

Description: § 205(d) Rate Filing: Southern Company Intercompany Interchange Contract Amendment Filing to be effective 9/24/2010.

Filed Date: 7/3/18.

Accession Number: 20180703–5079.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1950–000.

Applicants: Mississippi Power Company.

Description: § 205(d) Rate Filing: Southern Company System Intercompany Interchange Contract Amendment Filing to be effective 9/24/2010.

Filed Date: 7/3/18.

Accession Number: 20180703–5080.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1951–000.

Applicants: Southern Power Company.

Description: § 205(d) Rate Filing: Southern Company System Intercompany Interchange Contract Amendment to be effective 9/24/2010.

Filed Date: 7/3/18.

Accession Number: 20180703–5082.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1952–000.

Applicants: Gulf Power Company.

Description: Baseline eTariff Filing: Gulf Power Company Market-Based Rate Filing to be effective 7/5/2018.

Filed Date: 7/3/18.

Accession Number: 20180703–5083.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1953–000.

Applicants: Gulf Power Company.

Description: Baseline eTariff Filing: Baseline OATT to be effective 7/5/2018.

Filed Date: 7/3/18.

Accession Number: 20180703–5086.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1954–000.

Applicants: Gulf Power Company.

Description: Baseline eTariff Filing: Southern Companies NITSA to be effective 7/5/2018.

Filed Date: 7/3/18.

Accession Number: 20180703–5087.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1955–000.

Applicants: South Central MCN LLC.

Description: § 205(d) Rate Filing: SCMCN DX ADIT True-Up Revisions to be effective 10/1/2018.

Filed Date: 7/3/18.

Accession Number: 20180703–5088.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1956–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits Interconnection Agreements SA Nos. 3992 and 3993 and ECSA No. 4975 to be effective 9/1/2018.

Filed Date: 7/3/18.

Accession Number: 20180703–5089.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1957–000.

Applicants: Tracel Energy Marketing Limited Partnership.

Description: Baseline eTariff Filing: Baseline new to be effective 8/15/2018.

Filed Date: 7/3/18.

Accession Number: 20180703–5113.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1958–000.

Applicants: Appalachian Power Company.

Description: § 205(d) Rate Filing: OATT—Revise Attachment K, AEP Texas Inc. Rate Update to be effective 12/31/9998.

Filed Date: 7/3/18.

Accession Number: 20180703–5139.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1959–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–07–03_SA 2677 GRE–NSP 3rd Rev GIA (J278) to be effective 6/21/2018.

Filed Date: 7/3/18.

Accession Number: 20180703–5144.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1960–000.

Applicants: Tenaska Pennsylvania Partners, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 7/4/2018.

Filed Date: 7/3/18.

Accession Number: 20180703–5146.

Comments Due: 5 p.m. ET 7/24/18.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES18–44–000.
Applicants: Ameren Illinois Company.
Description: Application of Ameren Illinois Company for Short-Term Financing Authority.
Filed Date: 7/2/18.
Accession Number: 20180702–5293.
Comments Due: 5 p.m. ET 7/23/18.

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: July 3, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–14710 Filed 7–9–18; 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 rate filings:

Docket Numbers: ER10–2839–005.
Applicants: Midland Cogeneration Venture Limited Partnership.
Description: Updated Market Power Analysis of Midland Cogeneration Venture Limited Partnership.
Filed Date: 7/2/18.
Accession Number: 20180702–5281.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–1106–001.
Applicants: Kestrel Acquisition, LLC.
Description: Notice of Change in Status of Kestrel Acquisition, LLC.
Filed Date: 7/2/18.
Accession Number: 20180702–5287.
Comments Due: 5 p.m. ET 7/23/18.

Docket Numbers: ER18–1923–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1771R11 NPPD NITSA NOA to be effective 6/1/2018.
Filed Date: 7/2/18.
Accession Number: 20180702–5261.
Comments Due: 5 p.m. ET 7/23/18.

Docket Numbers: ER18–1924–000.
Applicants: Sanford Energy Associates, LLC.
Description: Baseline eTariff Filing: Powervine Energy Market Based Rate Tariff to be effective 7/3/2018.
Filed Date: 7/2/18.
Accession Number: 20180702–5263.
Comments Due: 5 p.m. ET 7/23/18.

Docket Numbers: ER18–1925–000.
Applicants: 62SK 8ME LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 9/2/2018.
Filed Date: 7/3/18.
Accession Number: 20180703–5002.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1926–000.
Applicants: 63SU 8ME LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 9/2/2018.
Filed Date: 7/3/18.
Accession Number: 20180703–5003.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1927–000.
Applicants: Cuyama Solar, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 9/2/2018.
Filed Date: 7/3/18.
Accession Number: 20180703–5004.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1928–000.
Applicants: Gray Hawk Solar, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 9/2/2018.
Filed Date: 7/3/18.
Accession Number: 20180703–5005.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1929–000.
Applicants: Portal Ridge Solar B, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 9/2/2018.
Filed Date: 7/3/18.
Accession Number: 20180703–5006.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1930–000.
Applicants: Portal Ridge Solar C, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 9/2/2018.
Filed Date: 7/3/18.
Accession Number: 20180703–5007.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1931–000.
Applicants: Red Horse III, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 9/2/2018.
Filed Date: 7/3/18.
Accession Number: 20180703–5011.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1932–000.
Applicants: TPE Alta Luna, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 9/2/2018.
Filed Date: 7/3/18.
Accession Number: 20180703–5016.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1933–000.
Applicants: Red Horse Wind 2, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 9/2/2018.
Filed Date: 7/3/18.
Accession Number: 20180703–5023.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1934–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: OATT Amendment Filing Relating to Sale of Gulf Power to be effective 12/31/9998.
Filed Date: 7/3/18.
Accession Number: 20180703–5051.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1935–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Gulf NITSA Filing to be effective 12/31/9998.
Filed Date: 7/3/18.
Accession Number: 20180703–5052.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1936–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Filing of Gulf PTP Transmission Service Agreements (Daniel 1&2 and Scherer 3) to be effective 12/31/9998.
Filed Date: 7/3/18.
Accession Number: 20180703–5053.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1937–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Filing of Gulf PTP Transmission Service Agreements (Kingfisher I and II) to be effective 12/31/9998.
Filed Date: 7/3/18.
Accession Number: 20180703–5054.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1938–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Transmission Facility Cost Allocation Tariff Amendment Filing to be effective 12/31/9998.
Filed Date: 7/3/18.
Accession Number: 20180703–5056.
Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1939–000.
Applicants: Georgia Power Company.

Description: § 205(d) Rate Filing: Transmission Facility Cost Allocation Tariff Amendment Filing to be effective 12/31/9998.

Filed Date: 7/3/18.

Accession Number: 20180703–5057.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1940–000.

Applicants: Gulf Power Company.

Description: § 205(d) Rate Filing: Transmission Facility Cost Allocation Tariff Amendment Filing to be effective 12/31/9998.

Filed Date: 7/3/18.

Accession Number: 20180703–5058.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1941–000.

Applicants: Mississippi Power Company.

Description: § 205(d) Rate Filing: Transmission Facility Cost Allocation Tariff Amendment Filing to be effective 12/31/9998.

Filed Date: 7/3/18.

Accession Number: 20180703–5059.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: ER18–1942–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Transition Services Agreement Filing to be effective 12/31/9998.

Filed Date: 7/3/18.

Accession Number: 20180703–5060.

Comments Due: 5 p.m. ET 7/24/18.

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: July 3, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–14709 Filed 7–9–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OW–2018–0270; FRL–9980–54–OW]

Announcement of the Per- and Polyfluoroalkyl Substances (PFAS) Pennsylvania Community Engagement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an event.

SUMMARY: The Environmental Protection Agency (EPA) will host a Per- and Polyfluoroalkyl Substances (PFAS) community engagement in Horsham, Pennsylvania. The goal of the event is to allow the EPA to hear directly from Pennsylvania communities to understand ways the Agency can best support the work that is being done at the state and local level. For more information on the event, visit the EPA's PFAS website: *https://www.epa.gov/pfas/pfas-community-engagement.* During the recent PFAS National Leadership Summit, the EPA announced plans to visit communities to hear directly from those impacted by PFAS. These engagements are the next step in the EPA's commitment to address challenges with PFAS. The EPA anticipates that the community engagements will provide valuable insight for the agency's efforts moving forward. For more information, go to the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The event will be held on July 25, 2018. A working session will be held on July 25 from 10:00 a.m. to 3:00 p.m., eastern time. A listening session will be held on July 25 from 4:00 p.m. to 9:00 p.m., eastern time.

ADDRESSES: The event will be held at the Keith Valley Middle School, 227 Meetinghouse Road, Horsham, Pennsylvania 19044. If you are unable to attend the Pennsylvania Community Engagement, you will be able to submit comments at *http://www.regulations.gov*: Enter Docket ID No. EPA–OW–2018–0270. Citizens, including those that attend and provide oral statements, are encouraged to send written statements to the public docket. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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, 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.*

FOR FURTHER INFORMATION CONTACT: Rick Rogers, USEPA Region 3, 1650 Arch Street (Mail Code 3WP20) Philadelphia, PA 19103–2029; telephone number: 215–814–5711; email address: *rogers.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Details about Participating in the Event: The public is invited to speak during the July 25 listening session. Those interested in speaking can sign up for a 3-minute speaking slot on EPA's website at *https://www.epa.gov/pfas/pfas-community-engagement.* Please check this website for event materials as they become available, including a full agenda, leading up to the event.

The PFAS National Leadership Summit: On May 22–23, 2018, the EPA hosted the PFAS National Leadership Summit. During the summit, participants worked together to share information on ongoing efforts to characterize risks from PFAS, develop monitoring and treatment/cleanup techniques, identify specific near-term actions (beyond those already underway) that are needed to address challenges currently facing states and local communities, and develop risk communication strategies that will help communities to address public concerns regarding PFAS.

The EPA wants to assure the public that their input is valuable and meaningful. Using information from the National Leadership Summit, public docket, and community engagements, the EPA plans to develop a PFAS Management Plan for release later this year. A summary of the Pennsylvania Community Engagement will be made available to the public following the event on the EPA's PFAS Community Engagement website at: *https://www.epa.gov/pfas/pfas-community-engagement.*

Dated: June 28, 2018.

Peter Grevatt,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2018–14738 Filed 7–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–9979–71]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel certain pesticide product registrations and to amend certain product registrations to terminate uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled and uses terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 7, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, 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 Confidential Business Information (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.*

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the agency taking?

This notice announces receipt by EPA of requests from pesticide registrants to cancel certain pesticide products and amend product registrations to terminate certain uses. The affected products and the registrants making the requests are identified in Tables 1, 2 and 3 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order in the **Federal Register** canceling and amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
264–736	264	Bayleton Technical Fungicide	Triadimefon.
264–740	264	Bayleton 50% Concentrate	Triadimefon.
264–743	264	Baytan Technical	Triadimenol.
2596–150	2596	Hartz Reference 118	Phenothrin & S-Methoprene.
2596–151	2596	Hartz Reference 119	Phenothrin.
50830–1	50830	The 10-Hour Insect Repellent	Diethyl toluamide.
52564–1	52564	Sodium Chlorite Technical 80 PCT	Sodium chlorite.
81964–4	81964	Tide Triadimefon Technical	Triadimefon.
91974–2	91974	Kangaroo Old Fashioned Moth Balls	Naphthalene.
AR–130010	352	DuPont Realm Q Herbicide	Mesotrione & Rimsulfuron.
AR–940002	59639	Valent Bolero 8 EC	Thiobencarb.
AR–940003	59639	Valent Bolero 8 EC	Thiobencarb.
AR–950004	59639	Valent Bolero 8 EC	Thiobencarb.
CO–990010	62719	Kerb 50W Herbicide in WSP	Propyzamide.
NC–170005	62719	GF–3335	2, 4–D, Choline salt.
OR–020029	62719	Kerb 50W Herbicide in WSP	Propyzamide.
OR–040029	62719	Kerb 50W Herbicide in WSP	Propyzamide.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Active ingredients
OR–950033	7969	Basagran Herbicide	Sodium bentazon.
OR–990008	62719	Kerb 50W Herbicide in WSP	Propyzamide.

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Company No.	Product name	Active ingredients	Uses to be terminated
92564–37	92564	Ant & Roach Killer Pump Spray B.	beta-Cyfluthrin & o-Phenylphenol, sodium salt.	Outdoors.

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 and Table 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company No.	Company name and address
264	Bayer CropScience, LP., 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
352	E. I. Du Pont De Nemours and Company, Attn: Manager, US Registration, DuPont Crop Protection, Chestnut Run Plaza (CRP 720/2E5), 974 Centre Rd., Wilmington, DE 19805.
2596	The Hartz Mountain Corporation, 400 Plaza Drive, Secaucus, NJ 07094.
7969	BASF Corporation, Agricultural Products, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
50830	Tec Laboratories, Inc., 7100 Tec Labs Way SW, Albany, OR 97321.
52564	Ercros, S.A., Agent Name: Laird's Regulatory Consultants, Inc., 17804 Braemar Place, Leesburg, VA 20175–7046.
59639	Valent U.S.A., LLC., 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596–8025.
62719	Dow Agrosciences, LLC., 9330 Zionsville Rd., Indianapolis, IN 46268–1054.
81964	Chemstarr, LLC., Agent Name: Pyxis Regulatory Consulting Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332.
91974	American Eagle Home Products, LLC., P.O. Box 691072, Orlando, FL 32869.
92564	SBM Life Science Corp., 1001 Winstead Drive, Suite 500, Cary, NC 27513.

III. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants listed in Table 3 of Unit II have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use termination should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation or termination action, the effective date of cancellation or termination and all other provisions of any earlier cancellation or termination action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Tables 1 and 2 of Unit II.

For the voluntary product cancellations, identified in Table 1 of Unit II, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to terminate uses, identified in Table 2 of Unit II, registrants will be permitted to sell or distribute products under the previously

approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 20, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–14734 Filed 7–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0489; FRL–9979–28–OAR]

Proposed Information Collection Request; Comment Request; Air Emissions Reporting Requirements (Renewal); EPA ICR No. 2170.07, OMB Control No. 2060–0580

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Air Emissions Reporting Requirements (Renewal)'' (EPA ICR No. 2170.07, OMB Control No. 2060–0580) 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 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.

DATES: Comments must be submitted on or before September 10, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0489, online using *www.regulations.gov* (our preferred method), by email to *houyoux.marc@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: Marc Houyoux, Air Quality Assessment Division, Office of Air Quality Planning and Standards, (C339–02), Environmental Protection Agency, 109 TW Alexander Drive, RTP, NC 27711; telephone number: (919) 541–3649; email address: *houyoux.marc@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 *http://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: The EPA promulgated the Air Emissions Reporting Requirements (AERR) (40 CFR part 51, subpart A) to coordinate emissions inventory reporting requirements with existing requirements of the Clean Air Act and 1990 Amendments. Under this reporting, 55 state and territorial air quality agencies, including the District of Columbia, as well as an estimated 49 local air quality agencies, must submit emissions data every 3 years for all point, non-point, on-road mobile, and non-road mobile sources of volatile organic compounds, oxides of nitrogen, carbon monoxide, sulfur dioxide, particulate matter less than or equal to 10 micrometers in diameter, particulate matter less than or equal to 2.5 micrometers in diameter, ammonia, and lead.

In addition, the air quality agencies must submit annually emission data for point sources with the potential to emit at greater than specified levels of those pollutants. The data supplied to the emission reporting requirement is needed so that the EPA can compile and make available a national inventory of air pollutant emissions. A comprehensive inventory updated at regular intervals is essential to allow the EPA to fulfill its mandate to monitor and plan for the attainment and maintenance of the national ambient air quality standards established for criteria pollutants.

The number and frequency of data collection and submittal is expected to remain the same for 2019–2021.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are generally state, territorial and local government air quality managements programs. Tribal governments are not affected unless they have sought and obtained treatment as state status under the Tribal Authority Rule and on that basis, are authorized to implement and enforce the AERR rule.

Respondent's obligation to respond: This information is collected under 23 U.S.C. 101; 42 U.S.C 7401–7671q, and the authority of the AERR. This information is mandatory and, as specified, cannot be treated as confidential by the EPA.

Estimated number of respondents: 104 (total).

Frequency of response: Annual.

Total estimated burden: 58,740 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $5,446,444 (per year), includes $116,480 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change in hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: June 6, 2018.

Richard A. Wayland,

Director, Air Quality Assessment Division, Office of Air Quality Planning and Standards.

[FR Doc. 2018–14741 Filed 7–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[9980–35–Region 6]

Notice of Proposed Administrative Settlement Agreement and Order on Consent for De Minimis Share of Reimbursement for Removal Action for the Ector Drum Site, Odessa, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given that the Environmental Protection Agency (''EPA''), has entered into a proposed settlement, embodied in an Administrative Settlement Agreement and Order on Consent for Removal Action (''Settlement Agreement''), with Nexeo Solutions, LLC and Ashland, LLC. Under the Settlement Agreement, Nexeo Solutions, LLC on behalf of Nexeo Solutions, LLC and on behalf of Ashland, LLC will pay EPA $31,111.71. Nexeo Solutions, LLC is paying a *de minimis* share of the costs incurred for a removal action and cleanup involving the removal of waste drums, containers, totes, etc. and associated chemicals and contaminated soil from an abandoned drum recycling facility located in Odessa, Texas. Total costs of the removal action was approximately $3,345,345.11.

For thirty (30) days beginning the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before August 9, 2018.

ADDRESSES: The Settlement Agreement is available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling 214–665–6529. Comments should reference the Ector Drum Superfund Site, d/b/a Lone Star Drum Superfund Site (''Site''), located in the city of Odessa, Ector County, Texas and be addressed to David Eppler, Enforcement Officer, Superfund Division (6SF–TE), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733; or email: *eppler.david@epa.gov;* and should reference EPA CERCLA Docket Number 06–01–17. EPA's response to any comments received will be available for public inspection at the same address.

FOR FURTHER INFORMATION CONTACT: James E. Costello, Practice Group Leader, 1445 Ross Avenue, Dallas, Texas 75202–2733; or call (214) 665–8045.

Dated: June 19, 2018.

David Gray,

Deputy Regional Administrator (6RA).

[FR Doc. 2018–14742 Filed 7–9–18; 8:45 am]

BILLING CODE 6560–50–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 July 25, 2018.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *John D. Anderson, Malvern, Pennsylvania, Mark E. Anderson, Bolingbrook, Illinois, and Thomas M. Anderson III, Leeds, Alabama, together as a group acting in concert;* to retain voting shares of NBE Bancshares, Inc., and thereby indirectly retain shares of Pioneer State Bank, both of Earlville, Illinois.

Board of Governors of the Federal Reserve System, July 5, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–14720 Filed 7–9–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 application also will 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). 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 August 1, 2018.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *Jamestown Trust #1, the Jamestown Trust #2, the Jamestown Trust #3, the*

Jamestown Trust #4, the Geesala Trust #1, the Geesala Trust #2, the Geesala Trust #3, and the Geesala Trust #4; to become savings and loan holdings companies and retain voting shares of Prospect Financial Corporation, and thereby retain shares of Home Loan Investment Bank, F.S.B., both of Warwick, Rhode Island.

Additionally, the Jamestown Trust #3 and the Geesala Trust #3 have applied to acquire all of the shares of Prospect Financial Corporation's from the other Jamestown Trusts and Geesala Trusts Warwick, Rhode Island.

Board of Governors of the Federal Reserve System, July 5, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–14719 Filed 7–9–18; 8:45 am]

BILLING CODE 6210–01–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 August 1, 2018.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *VBT Financial Corporation, San Antonio, Texas;* to acquire 100 percent of the voting shares of Inter National Bank, McAllen, Texas.

Board of Governors of the Federal Reserve System, July 5, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–14721 Filed 7–9–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970–0323]

Submission for OMB Review; Comment Request; Child Care Development Fund (CCDF)—Reporting Improper Payments—Instructions for States

Section 2 of the Improper Payments Information Act of 2002 (IPIA) provides for estimates and reports of improper payments by Federal agencies. Subpart K of 45 CFR, Part 98 of the Child Care and Development Fund requires States to prepare and submit a report of errors occurring in the administration of CCDF grant funds once every three years.

The Office of Child Care (OCC) is completing the fourth 3-year cycle of case record reviews to meet the requirements for reporting under IPIA. The current data collection forms and instructions expire August 31, 2018. As part of the renewal process, OCC has revised the document with minor changes that do not change the methodology, but which provide respondents with additional guidance, clarification, and support to facilitate the completeness and accuracy of the required data submissions. In addition, questions regarding state processes that previously existed in Section III Creating the Sampling Decisions, Assurances, and Fieldwork Preparation Plan on page 5, have been reformatted into a template to facilitate the submission of this information. Two questions added are a description of the process for determining the annual amount of payments and the projected start date for conducting the case record reviews.

OCC is particularly interested in feedback regarding the ease and accuracy with which respondents that pool or combine funds can provide data regarding the pooled funds. Items addressing pooled funds are located primarily in Section VII Completing and Submitting the State Improper Payments Report on pages 43–45 and in the State Improper Payments Report template (Attachment 3) beginning on page 65.

Respondents: State grantees, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sampling Decisions, Assurances, and Fieldwork Preparation Plan	17	1	106	1802
Record Review Worksheet	17	276	6.33	29,700.36
State Improper Payments Report	17	1	639	10,863
Corrective Action Plan	8	1	156	1248

Estimated Total Annual Burden Hours: 43,613.36.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the

proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–14705 Filed 7–9–18; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2018–0020]

Commercial Customs Operations Advisory Committee (COAC) Charter Renewal

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Charter Renewal.

SUMMARY: The Secretaries of the Department of the Treasury and the Department of Homeland Security approved the renewal of the charter for the Commercial Customs Operations Advisory Committee (COAC). The committee's charter is effective May 15, 2018, and expires May 15, 2020. Section 109 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) established the COAC. The committee operates in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), except as otherwise provided for in section 109 of TFTEA. The COAC is a statutory advisory committee that provides the Department of the Treasury and the Department of Homeland Security with the perspectives and advice of the private sector.

ADDRESSES: If you desire to submit comments on this action, they must be submitted by September 10, 2018. Comments must be identified by (Docket No. USCBP–2018–0020) and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* (*Tradeevents@dhs.gov*). Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290.
- *Mail:* Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229.
- *Instructions:* All submissions received must include the words ''Department of Homeland Security'' and USCBP–2018–0020, the docket number for this action. Comments received will be posted without alteration at *https://www.regulations.gov* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and search for Docket Number USCBP–2018–0020. To submit a comment, see the link on the *Regulations.gov* website for ''How do I submit a comment?'' located on the right hand side of the main site page.

FOR FURTHER INFORMATION CONTACT: Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290.

Purpose and Objective: In accordance with section 109 of TFTEA, the COAC provides advice to the Secretary of the Treasury and the Secretary of Homeland Security with respect to all matters involving the commercial operations of U.S. Customs and Border Protection (CBP), including advising with respect to significant changes that are proposed with respect to regulations, policies, or practices of CBP; provides recommendations to the Secretary of the Treasury and the Secretary of Homeland Security on improvements to the commercial operations of CBP; collaborates in developing the agenda for Advisory Committee meetings; and performs such other functions relating to the commercial operations of CBP as prescribed by law or as the Secretary of the Treasury and the Secretary of Homeland Security jointly direct.

The COAC charter can be found at *http://www.cbp.gov/sites/default/files/documents/COAC%20Charter%20Filed%203.23.15.pdf.*

Responsible CBP Officials: Mr. Bradley F. Hayes, Executive Director, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; telephone (202) 344–1440.

Dated: July 3, 2018.

Bradley F. Hayes,

Executive Director, Office of Trade Relations.

[FR Doc. 2018–14715 Filed 7–9–18; 8:45 am]

BILLING CODE 9111–16–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 18XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW087880, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW087880 from Samson Resources Company for land in Converse County, Wyoming. The lessee filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003; phone 307–775–6176; email *chite@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hite during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee voluntarily agreed to one additional lease stipulation to protect cultural and scenic values of the Bozeman Trail. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM proposes to reinstate the lease effective April 1, 2016, under the amended terms and conditions of the lease and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v).

Christopher Hite,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2018–14724 Filed 7–9–18; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 18XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW174754, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW174754 from Hot Springs Resources Ltd for land in Natrona County, Wyoming. The lessee filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Erik Norelius, Acting Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003; phone 307–775–6176; email *enoreliu@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Norelius during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM proposes to reinstate the lease effective October 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188(e)(4) and 43 CFR 3108.2–3(b)(2)(v).

Erik Norelius,

Acting Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2018–14733 Filed 7–9–18; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 18XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW176517, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW176517 from Chesapeake Exploration LLC., Khody Land & Minerals Company and OOGC America Inc. for land in Converse County, Wyoming. The lessees filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Erik Norelius, Acting Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003; phone 307–775–6176; email *enoreliu@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Norelius during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM proposes to reinstate the lease effective August 1, 2013, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188(e)(4) and 43 CFR 3108.2–3(b)(2)(v).

Erik Norelius,

Acting Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2018–14731 Filed 7–9–18; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 18XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW178348, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW178348 from Wold Energy Partners LLC, Samson Resources Company, and GasCo LP for land in Converse County, Wyoming. The lessees filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Erik Norelius, Acting Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003; phone 307–775–6176; email *enoreliu@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Norelius during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act

of 1920 (30 U.S.C. 188). The BLM proposes to reinstate the lease effective December 1, 2015 under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188(e)(4) and 43 CFR 3108.2–3(b)(2)(v).

Erik Norelius,

Acting Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2018–14727 Filed 7–9–18; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 18XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW096788, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW096788 from Bearcat Energy LLC (Colorado), Elly B Beard 2007 Trust and Leeman Minerals LLC for land in Converse County, Wyoming. The lessees filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003; phone 307–775–6176; email *chite@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hite during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: The lessees agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM proposes to reinstate the lease effective July 1, 2015, under the amended terms and conditions of the lease and the increased rental and royalty rates cited above. 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v)

Christopher Hite,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2018–14725 Filed 7–9–18; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 18XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW178259, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW178259 from RKI Exploration and Production LLC, Chesapeake Exploration LLC, and OOGC America Inc. for land in Converse County, Wyoming. The lessees filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003; phone 307–775–6176; email *chite@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Norelius during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM proposes to reinstate the lease effective August 1, 2013, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188(e)(4) and 43 CFR 3108.2–3(b)(2)(v).

Erik Norelius,

Acting Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2018–14732 Filed 7–9–18; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 18XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW180628, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW180628 from Kirkwood Oil & Gas LLC for land in Converse County, Wyoming. The lessee filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Erik Norelius, Acting Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003; phone 307–775–6176; email *enoreliu@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Norelius during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16

⅔ percent, respectively. The lessee also agreed to the amended stipulations as required by the Casper Approved Resource Management Plan. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM proposes to reinstate the lease effective April 1, 2016, under the revised terms and conditions of the lease and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v).

Erik Norelius,

Acting Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2018–14726 Filed 7–9–18; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 18XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW087867, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW087867 from Charger Resources LLC, EOG Resources Inc., G F Collins JR Trust, L W Moncrief Trust, Michael J Moncrief Grantor Trust, Mindyanne E Moncrief Trust, Moncrief C B, Moncrief Oil & gas Master LLC, Monty Brennan Moncrief Trust, Muirfield Resources Company, R B C Exploration Company, Richard J Moncrief 1988 Trust, RWM 1988 Trust, Ryder Stilwell Oil, T O Moncrief Trust, and W A Moncrief III Trust for land in Converse County, Wyoming. The lessee filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Erik Norelius, Acting Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003; phone 307–775–6176; email *enoreliu@blm.gov*.

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Norelius during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: The lessees agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM proposes to reinstate the lease effective May 1, 2015 under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188(e)(4) and 43 CFR 3108.2–3(b)(2)(v).

Erik Norelius,

Acting Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2018–14723 Filed 7–9–18; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1057]

Certain Robotic Vacuum Cleaning Devices and Components Thereof Such as Spare Parts; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a final initial determination and a recommended determination on remedy and bond in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, namely: (1) A limited exclusion order against certain robotic vacuum cleaning devices and components thereof, which are imported, sold for importation, and/or sold after importation by respondents Hoover, Inc. of Glenwillow, Ohio; Royal Appliance Manufacturing Co., Inc. d/b/a TTI Floor Care North America, Inc. of Glenwillow, Ohio; BObsweep, Inc. of Toronto, Canada; BObsweep USA of Henderson, Nevada; Shenzhen ZhiYi Technology Co., Ltd., d/b/a iLife of Shenzhen, China; and Shenzhen Silver Star Intelligent Technology Co., Ltd. of Shenzhen, China; and (2) cease and desist orders against respondents Hoover, Inc.; Royal Appliance Manufacturing Co., Inc.; and Shenzhen ZhiYi Technology Co., Ltd. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative

law judge's Recommended Determination on Remedy and Bond issued in this investigation on June 25, 2018. Comments should address whether issuance of the limited exclusion order (''LEO'') and cease and desist orders (''CDOs'') in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainants, their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainants, complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the LEO and CDO would impact consumers in the United States.

Written submissions from the public must be filed no later than close of business on Friday, August 3, 2018.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1057'') in a prominent place on the cover page and/or the first page. *See* Handbook on Filing Procedures, *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf.* Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Issued: July 5, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–14722 Filed 7–9–18; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (18–055)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Gatrie Johnson, Mail Code JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001 or *Gatrie.Johnson@NASA.gov.*

FOR FURTHER INFORMATION CONTACT: Gatrie Johnson, 202–358–1013.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information submitted by the public is a license application for those companies and individuals who wish to obtain a patent license for a NASA patented technology. Information needed for the license application in ATLAS may include supporting documentation such as a certificate of incorporation, a financial statement, a business and/or commercialization plan, a projected revenue/royalty spreadsheet and a company balance sheet. At a minimum, all license applicants must submit a satisfactory plan for the development and/or marketing of an invention. The collected information is used by NASA to ensure that companies that seek to commercialize NASA technologies have a solid business plan for bringing the technology to market.

II. Method of Collection

NASA is participating in Federal efforts to extend the use of information technology to more Government processes via internet. NASA encourages recipients to use the latest computer technology in preparing documentation. Companies and individuals submit license applications by completing the automated form by way of the Automated Technology Licensing Application System (ATLAS). NASA requests all license applications to be submitted via electronic means.

III. Data

Title: Automated Technology Licensing Application System (ATLAS).

OMB Number: 2700–XXXX.

Type of review: New.

Affected Public: Public and companies.

Estimated Number of Respondents: 360.

Estimated Time Per Response: 8.0 hours.

Estimated Total Annual Burden Hours: 2880 hours.

Estimated Total Annual Cost: $169,920.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the

[1] All contract personnel will sign appropriate nondisclosure agreements.

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 automated collection techniques or the use of other forms of information technology. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gatrie Johnson,

NASA PRA Clearance Officer.

[FR Doc. 2018–14703 Filed 7–9–18; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0116]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

Correction

In notice document 2018–12919, appearing on pages 31190–31197 in the Issue of Tuesday, July 3, 2018, make the following correction:

On page 31180, in the third column, under the heading ''**DATES:**'', the entry ''September 3, 2018'' is corrected to read ''September 4, 2018''.

[FR Doc. C1–2018–12919 Filed 7–9–18; 8:45 am]

BILLING CODE 1301–00–D

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0053, NRC–2014–0119, and NRC–2016–0158]

Program-Specific Guidance About Possession Licenses for Manufacturing and Distribution, Program-Specific Guidance About Well Logging, Tracer, and Field Flood Study Licenses, and Program-Specific Guidance About Possession Licenses for Production of Radioactive Material Using an Accelerator

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Revision 1 to NUREG–1556, Volume 12, ''Consolidated Guidance About Materials Licenses: Program Specific Guidance About Possession Licenses for Manufacturing and Distribution;'' NUREG–1556, Volume 14, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Well Logging, Tracer, and Field Flood Study Licenses;'' and NUREG–1556, Volume 21, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Possession Licenses for Production of Radioactive material Using an Accelerator.'' NUREG–1556, Volumes 12, 14, and 21 have been revised to include information on updated regulatory requirements, safety culture, security of radioactive materials, protection of sensitive information, and changes in regulatory policies and practices. These volumes are intended for use by applicants, licensees, and the NRC staff.

DATES: NUREG–1556, Volume 14, Revision 1, was published in April 2018, and NUREG–1556, Volumes 12 and 21, Revision 1, were published in May 2018.

ADDRESSES: Please refer to Docket ID NRC–2016–0053 (NUREG–1556, Vol. 12, Rev. 1), Docket ID NRC–2014–0119 (NUREG–1556, Vol. 14, Rev. 1) and NRC–2016–0158 (NUREG–1556, Vol. 21, Rev. 1) when contacting the NRC about the availability of information regarding these documents. You may obtain publicly-available information related to these documents using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0053, NRC–2014–0119, or NRC–2016–0158. 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.* NUREG–1556, Volumes 12, 14, and 21, Revision 1, are located in ADAMS under Accession Numbers ML18136A704, ML18120A129, and ML18143A670, respectively. These documents are also available on the NRC's public website at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/* under ''Consolidated Guidance about Materials Licenses (NUREG–1556).''
- *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: Anthony McMurtray, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2746; email: *Anthony.McMurtray@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC issued revisions to NUREG–1556, Volumes 12, 14, and 21, to provide guidance to existing materials licensees covered under these types of licenses and to applicants preparing an application for one of these types of materials licenses. These NUREG volumes also provide the NRC staff with criteria for evaluating these types of license applications. The purpose of this notice is to notify the public that the NUREG–1556 volumes listed in this **Federal Register** notice were issued as final reports.

II. Additional Information

The NRC published notices of the availability of the draft report for comment in the **Federal Register** for NUREG–1556, Volume 12, Revision 1 on July 13, 2016 (81 FR 45308), NUREG–1556, Volume 14, Revision 1 on June 11, 2014 (79 FR 33600), and NUREG–1556, Volume 21, Revision 1 on December 16, 2016 (81 FR 91206). Each of these volumes were published for a public comment period that was at least 30 days. The public comment period for Volume 12 closed on August 26, 2016, for Volume 14 on July 11, 2014, and for Volume 21 on February 24, 2017. Public comments and the NRC staff responses to the public comments for NUREG–1556, Volume 12, Revision 1 are available under ADAMS Accession No. ML18010B155. Public comments and the NRC staff responses to the public comments for NUREG–1556, Volume 14, Revision 1 are available under ADAMS Accession No. ML18023B550. Public comments and the NRC staff responses to the public comments for NUREG–1556, Volume 21, Revision 1 are available under ADAMS Accession No. ML17334A206.

III. Congressional Review Act

These NUREG volumes are rules as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found these NUREG revisions to be major rules as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 3rd day of July 2018.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Director, Division of Materials Safety, Security, State and Tribal Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–14696 Filed 7–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4, Class 1E Motor-Operated Valve Terminal Voltage Testing

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic AP1000 design control document (DCD) and is issuing License Amendment Nos. 121 and 120 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information that is requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on April 18, 2018.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Jennifer Borges; 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 access publicly available documents online in the NRC Library 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 that document is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption was submitted by letter dated August 30, 2017 (ADAMS Accession No. ML17242A279) and supplemented by letter dated January 12, 2018 (ADAMS Accession No. ML18012A704).
- *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: Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NRC is granting exemptions from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment Nos. 121 and 120 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemptions are required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee proposes changes to the Updated Final Safety Analysis Report (UFSAR) and the COL Appendix C (and associated plant-specific Tier 1) Inspections, Tests, Analyses, and Acceptance Criteria information to prescribe voltage tests in conjunction with an analysis, rather than voltage testing only.

Part of the justification for granting the exemptions was provided by the review of the amendments. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemptions and issued the amendments concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemptions met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendments were found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17320A798.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML18072A054 and ML18072A055, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML18072A056 and ML18072A058, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP, Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated August 30, 2017, and supplemented by letter dated January 12, 2018, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, appendix D, section III.B, as part of license amendment request (LAR) 17–018, ''Class 1E Motor-Operated Valve Terminal Voltage Testing.''

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's safety evaluation, which can be found in ADAMS under Accession No. ML17320A798, the Commission finds that:

A. The exemption is authorized by law;

B. The exemption presents no undue risk to public health and safety;

C. The exemption is consistent with the common defense and security;

D. Special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. The special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. The exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated August 30, 2017, as supplemented by letter dated January 12, 2018. This exemption is related to, and necessary for, the granting of License Amendment Nos. 121 and 120, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's safety evaluation (ADAMS Accession No. ML17320A798), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. These exemptions are effective as of the date of its issuance.

III. License Amendment Request

By letter dated August 30, 2017, and supplemented by letter dated January 12, 2018, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on October 24, 2017 (82 FR 49239). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on August 30, 2017, and supplemented on January 12, 2018.

The exemptions and amendments were issued on April 18, 2018, as part of a combined package to the licensee (ADAMS Accession No. ML18072A051).

Dated at Rockville, Maryland, this 5th day of July, 2018.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2018–14698 Filed 7–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0124]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Correction

In notice document 2018–13758, appearing on pages 31180–31190 in the Issue of Tuesday, July 3, 2018, make the following correction:

On page 31180, in the second column, under the heading ''**DATES:**'', the entry ''September 3, 2018'' is corrected to read ''September 4, 2018''.

[FR Doc. C1–2018–13758 Filed 7–9–18; 8:45 am]

BILLING CODE 1301–00–D

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0104]

State of Wyoming: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed state agreement; request for comment.

SUMMARY: By letter dated November 14, 2017, Governor Matthew H. Mead of the State of Wyoming requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of Wyoming as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (AEA).

Under the proposed Agreement, the Commission would discontinue, and the State of Wyoming would assume, regulatory authority over the management and disposal of byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material associated with uranium or thorium milling within the State. Pursuit to Commission direction, the proposed Agreement would state that the NRC will retain regulatory authority over the American Nuclear Corporation (ANC) license.

As required by Section 274e. of the AEA, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of a draft assessment by the NRC staff of the State of Wyoming's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the draft staff assessment, the adequacy of the State of Wyoming's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities in the State of Wyoming from portions of the Commission's regulatory authority. Radioactive materials not covered by the proposed Agreement will continue to be subject to the Commission's regulatory authority. Section 274e. of the AEA requires that the NRC publish these exemptions. Notice is hereby given that the pertinent exemptions have been previously

published in the **Federal Register** and are codified in the NRC's regulations.

The NRC is giving notice once each week for four consecutive weeks of the proposed Agreement. This is the second notice that has been published.

DATES: Submit comments by July 26, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by the following method:

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0104. 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.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stephen Poy, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7135, email: *Stephen.Poy@nrc.gov;* or Paul Michalak, telephone: 301–415–5804, email: *Paul.Michalak@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0104 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0104.

• *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, at 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft application for a Section 274 Atomic Energy Act Agreement from the State of Wyoming, the final Wyoming Agreement State application, and the Draft Assessment of the Proposed Wyoming Program for the Regulation of Agreement Materials documents are available in ADAMS under Accession Nos. ML16300A294, ML17319A921, and ML18094B074.

• 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.

B. Submitting Comments

Please include Docket ID NRC–2018–0104 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information on Agreements entered under Section 274 of the AEA

Since Section 274 of the AEA was added in 1959, the Commission has entered into Agreements with 37 States (Agreement States). The 37 Agreement States currently regulate approximately 16,500 Agreement material licenses, while the NRC regulates approximately 2,800 licenses. Under the proposed Agreement, 14 NRC uranium mill licenses will transfer to the State of Wyoming. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e. of the AEA requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of that requirement.

III. Proposed Agreement With the State of Wyoming

Background

(a) Section 274b. of the AEA provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of these materials. The radioactive materials, sometimes referred to as ''Agreement materials,'' are byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the AEA; source material as defined in Section 11z. of the AEA; and special nuclear material as defined in Section 11aa. of the AEA, restricted to quantities not sufficient to form a critical mass.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the State of Wyoming requests authority over are the possession and use of byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (source material associated with milling activities).

(b) The proposed Agreement contains articles that

(i) Specify the materials and activities over which authority is transferred;

(ii) Specify the materials and activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard special nuclear material, and restricted data and protect common defense and security;

(iv) Commit the State of Wyoming and the NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the Agreement; and

(vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the proposed Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Wyoming.

(c) The regulatory program is authorized by law under the State of Wyoming Statute Section 35–11–2001, which provides the Governor with the authority to enter into an Agreement

with the Commission. The State of Wyoming law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. In a letter dated November 14, 2017, Governor Mead certified that the State of Wyoming has a program for the control of radiation hazards that is adequate to protect public health and safety within the State of Wyoming for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State of Wyoming licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC draft staff assessment finds that the Wyoming Department of Environmental Quality, Land Quality Division, Uranium Recovery Program, is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials. Pursuant to Commission direction, the proposed Agreement includes a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A), or the Agreement will terminate without further NRC action. The proposed Agreement also explicitly states that, prior to the requisite amendment of Wyoming Statute Section 35–11–2004(c), the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the Federal government. Pursuant to Commission direction, the Agreement contains a provision that requires the State of Wyoming to revise Statute Section 35–11–2004(c) during the next legislative session to be compatible with AEA Section 83b.(1)(A). If the Wyoming Statute Section 35–11–2004(c) is not amended by the end of the 2019 legislative session, the Agreement will terminate.

Summary of the Draft NRC Staff Assessment of the State of Wyoming's Program for the Regulation of Agreement Materials

The NRC staff has examined the State of Wyoming's request for an Agreement with respect to the ability of the State's radiation control program to regulate Agreement materials. The examination was based on the Commission's Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981, and at 48 FR 33376; July 21, 1983) (Policy Statement), and the Office of Nuclear Material Safety and Safeguards Procedure SA–700, ''Processing an Agreement'' (available at *https://scp.nrc.gov/procedures/sa700.pdf* and *https://scp.nrc.gov/procedures/sa700_hb.pdf*). The Policy Statement has 36 criteria that serve as the basis for the NRC staff's assessment of the State of Wyoming's request for an Agreement. The following section will reference the appropriate criteria numbers from the Policy Statement that apply to each section.

(a) Organization and Personnel. These areas were reviewed under Criteria 1, 2, 20, 24, 33, and 34 in the draft staff assessment. The State of Wyoming's proposed Agreement materials program for the regulation of radioactive materials is the Uranium Recovery Program. The Uranium Recovery Program will be located within the existing Land Quality Division of the Wyoming Department of Environmental Quality.

The educational requirements for the Uranium Recovery Program staff members are specified in the State of Wyoming's personnel position descriptions and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a Bachelor of Science Degree or Master's Degree in one of the following subject areas: Environmental science, health physics, nuclear engineering, geology, or ecology. All have training and work experience in radiation protection. Supervisory level staff have at least 5 years of working experience in radiation protection, with most having more than 10 years of experience.

The State of Wyoming performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State of Wyoming's analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the proposed Agreement. The State of Wyoming will employ the equivalent of 7.2 full-time professional and technical staff to support the Uranium Recovery Program.

The State of Wyoming has indicated that the Uranium Recovery Program has an adequate number of trained and qualified staff in place. The State of Wyoming has developed qualification procedures for license reviewers and inspectors that are similar to the NRC's procedures. The Uranium Recovery Program staff is accompanying the NRC staff on inspections of NRC licensees in Wyoming. The Uranium Recovery Program staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with the NRC licensees in the State of Wyoming and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the Uranium Recovery Program staff identified by the State of Wyoming to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. These areas were reviewed under Criteria 1–14, 17, 19, 21, and 23–33 in the draft staff assessment. The Wyoming Statutes Sections 35–11–2001(a) through (c) provide the authority to enter into the Agreement and establish the Wyoming Department of Environmental Quality as the lead agency for the State's Uranium Recovery Program. The Department has the requisite authority to promulgate regulations under Wyoming Statute Section 35–11–2002(b) for protection against radiation. The Wyoming Statutes Sections 35–11–2001 through 2005 also provide the Uranium Recovery Program the authority to issue licenses and orders; conduct inspections; and enforce compliance with regulations, license conditions, and orders. The Wyoming Statute Section 35–11–2003(d) requires licensees to provide access to inspectors.

The Wyoming Statute Section 35–11–2001(e) does not provide the State of Wyoming with authority over independent or commercial laboratories. Under the proposed Agreement, the NRC would retain regulatory authority over laboratory facilities that are not located at facilities licensed under the State of Wyoming's regulatory authority. The State of Wyoming would only regulate laboratory facilities located at uranium or thorium mills. The NRC staff verified that the State of Wyoming adopted the relevant NRC regulations in parts 19, 20, 40, 71, and 150 of title 10 of the *Code of Federal Regulations* (10 CFR), into the Wyoming Uranium Recovery Program Rules Chapters 1 through 9. Therefore, on the proposed effective date of the Agreement, the State of Wyoming will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct materials as defined in Section 11e.(2) of the AEA and source

material associated with milling activities. The NRC staff also verified that the State of Wyoming will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. These areas were reviewed under Criteria 8, 9a, 11, 29, 30, 31, and 32 in the draft staff assessment. The State of Wyoming has adopted NRC compatible requirements for the handling and storage of radioactive material. The State of Wyoming has adopted an adequate and compatible set of radiation protection regulations that apply to byproduct material as defined in Section 11e.(2) of the AEA and source material associated with milling activities.

As a result of the class of byproduct material it will be regulating (Section 11e.(2) of the AEA), the State of Wyoming is not required to have regulations compatible to 10 CFR part 61 for waste disposal. Rather, the State of Wyoming is required to have regulations that are compatible with 10 CFR part 40 for the disposal of byproduct material as defined in Section 11e.(2) of the AEA and source material associated with milling activities. The NRC staff confirmed that the State of Wyoming has adopted regulations that are compatible with the NRC regulations in 10 CFR part 40 for the disposal of byproduct material and source material associated with milling activities, which are equivalent to the applicable standards contained in 10 CFR part 61.

These regulations address the general requirements for waste disposal and are applicable to all licensees covered under this proposed Agreement.

The NRC staff identified one portion of the Wyoming Statute that is potentially not compatible with NRC requirements. Section 83b.(1)(A) of the AEA ensures that ownership of the byproduct material itself is inseparable from the site on which it is disposed. Consequently, the State of Wyoming has the option of taking title to the material and its disposal site, but the Uranium Mill Tailings Radiation Control Act (UMTRCA) does not permit a State to bifurcate ownership of the disposed byproduct material and the property rights necessary to ensure its safe disposal. The Wyoming Statute Section 35–11–2004(c), enacted in anticipation of the State of Wyoming's assumption of the NRC's regulatory authority for uranium and thorium milling, could permit the bifurcation of the disposed byproduct material and its disposal site by the State. As discussed in Criterion 30c. of the draft staff assessment, this bifurcation of the land and the disposed byproduct material could conflict with the AEA (as amended by UMTRCA), and Article II.B.2.b. in the proposed Agreement.

Based on Commission direction, the NRC staff concluded that Criterion 30c. is satisfied in the following manner: The Commission could complete the process for the final application package for the Agreement, including publishing the proposed Agreement for comment, by noting that the Commission's finding of compatibility is contingent on the State of Wyoming revising this provision, during the next legislative session, to be compatible with AEA Section 83b.(1)(A). Thus, an Agreement could be executed, but it would include a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A), or the Agreement will terminate without further NRC action. The Agreement would also explicitly state that the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the federal government. The NRC staff determined that there is little practical risk that the State of Wyoming's current statutory provisions would result in the bifurcation of the 11e.(2) byproduct material from the land since the NRC is required to review and approve any State-proposed termination of a uranium mill license.

(d) Transportation of Radioactive Material. This area was reviewed under Criteria 10 and 35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport.

Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials.

(e) Recordkeeping and Incident Reporting. These areas were reviewed under Criteria 1, 11, and 35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the sections of the NRC regulations that specify requirements for licensees to keep records and to report incidents or accidents involving the State's regulated Agreement materials.

(f) Evaluation of License Applications. This area was reviewed under Criteria 1, 7, 8, 9a, 13, 14, 20, 23, 25, and 29–35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State of Wyoming has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. These areas were reviewed under Criteria 1, 16, 18, 19, 23, 35, and 36 in the draft staff assessment. The State of Wyoming has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The State of Wyoming's Uranium Recovery Program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Additionally, the State of Wyoming has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. This area was reviewed under Criterion 23 in the draft staff assessment. The State of Wyoming is bound by requirements specified in its State law for rulemaking, issuing licenses, and taking enforcement actions. The State of Wyoming has also adopted administrative procedures to assure fair and impartial treatment of license applicants. The State of Wyoming law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. This area was reviewed under Criteria 25, 26, and 27 in the draft staff assessment. The State of Wyoming law provides for the recognition of existing NRC and Agreement State licenses and the State has a process in place for the transition of active NRC licenses. Upon the effective date of the Agreement, all active uranium recovery NRC licenses issued to facilities in the State of Wyoming, with the exception of the ANC license, will be recognized as Wyoming Department of Environmental Quality licenses.

The State of Wyoming also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

The State of Wyoming regulations, in Chapter 4, Section 6(d), provide exemptions from the State's requirements for the NRC and the U.S. Department of Energy contractors or subcontractors; the exemptions must be authorized by law and determined not

to endanger life or property and to otherwise be in the public interest. The proposed Agreement commits the State of Wyoming to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement specifies the desirability of reciprocal recognition of licenses, and commits the Commission and the State of Wyoming to use their best efforts to accord such reciprocity. The State of Wyoming would be able to recognize the licenses of other jurisdictions by order or specific license.

There are six UMTRCA Title II sites in the State of Wyoming (ADAMS Accession No. ML16300A294) undergoing decommissioning. These sites are: (1) Anadarko Bear Creek, Powder River Basin; (2) Pathfinder, Lucky Mc, Gas Hills; (3) Umetco Minerals Corporation, Gas Hills; (4) Western Nuclear Inc., Split Rock, Jeffrey City; (5) Exxon Mobile, Highlands, Converse County; and (6) ANC, Gas Hills.

The State of Wyoming indicated it was opposed to assuming regulatory authority over the ANC site because the licensee is insolvent. To address the State of Wyoming's proposed exclusion of the ANC site from the proposed Agreement, the NRC staff provided SECY–17–0081 ''Status and Resolution of Issues Associated with the Transfer of Six Decommissioning Uranium Mill Sites to the State of Wyoming'' (ADAMS Accession No. ML17087A355) to the Commission. In SRM–SECY–17–0081 (ADAMS Accession No. ML17277A783), the Commission approved the NRC staff's recommendation for the NRC to retain regulatory authority over the ANC site and stated that the Commission's retention of the ANC site ''is not a change to the Commission's current Agreement State policy, but is instead an exception to that policy based on case-specific facts.'' Article II.A.14. of the proposed Agreement specifies that the Commission retains regulatory authority over the ANC license.

With regard to the five other decommissioning UMTRCA sites, the NRC staff has developed a draft Memorandum of Understanding (MOU) between the NRC and the State of Wyoming as a separate document from the proposed Agreement. The objective of the MOU is to delineate specific actions that the NRC and the State of Wyoming would take to verify completion of the decommissioning of these sites. The MOU has been drafted and the NRC staff is currently working with the State of Wyoming to delineate how license termination will be addressed for each of the five sites. An assessment of the decommissioning status of the five UMTRCA sites and the activities that need to be completed prior to license termination (ADAMS Accession No. ML17040A501) has been completed. Once the MOU is completed and signed by both the NRC and the State of Wyoming, it will be published in the **Federal Register**.

Staff Conclusion

Section 274d. of the AEA provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o. and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification of Wyoming Governor Mead, and the supporting information provided by the Uranium Recovery Program of the Wyoming Department of Environmental Quality and Wyoming's Office of the Attorney General. Based upon this review, the NRC staff concludes that the State of Wyoming Uranium Recovery Program satisfies the Section 274d. criteria as well as the criteria in the Commission's Policy Statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.'' As noted above, the proposed Agreement includes a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A) or the Agreement will terminate without further NRC action. The proposed Agreement also explicitly states that the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the Federal government. Pursuant to Commission direction, the NRC staff finding of compatibility is contingent on the State of Wyoming revising Wyoming Statute Section 35–11–2004(c) during the next legislative session to be compatible with AEA Section 83b.(1)(A). The proposed State of Wyoming program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the Commission's program and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Therefore, the proposed Agreement meets the requirements of Section 274 of the AEA.

Dated at Rockville, Maryland, this 27th day of June, 2018.

For the Nuclear Regulatory Commission.

Andrea L. Kock,

Acting Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards.

Appendix A

An Agreement Between the United States Nuclear Regulatory Commission and the State of Wyoming for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as ''the Commission'') is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 *et seq.* (hereinafter referred to as ''the Act''), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct material as defined in Section 11e.(2) of the Act and source material involved in the extraction or concentration of uranium or thorium in source material or ores at milling facilities; and,

Whereas, The Governor of the State of Wyoming is authorized under Wyoming Statute Section 35–11–2001 to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Wyoming certified on November 14, 2017, that the State of Wyoming (hereinafter referred to as ''the State'') has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [**DATE**] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State of Wyoming acting on behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(2) of the Act; and,

B. Source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (hereinafter referred to as ''source material associated with milling activities'').

Article II

A. This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:

1. Byproduct material as defined in Section 11e.(1) of the Act;

2. Byproduct material as defined in Section 11e.(3) of the Act;

3. Byproduct material as defined in Section 11e.(4) of the Act;

4. Source material except for source material as defined in Article I.B. of this Agreement;

5. Special nuclear material;

6. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons, excluding 11e.(2) byproduct material or source material described in Article I.A. and B. of this Agreement;

7. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

8. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

9. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

10. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in the regulations or orders of the Commission;

11. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission;

12. The regulation of activities not exempt from Commission regulation as stated in 10 CFR part 150;

13. The regulation of laboratory facilities that are not located at facilities licensed under the authority relinquished under Article I.A. and B. of this Agreement; and,

14. Notwithstanding this Agreement, the Commission shall retain regulatory authority over the American Nuclear Corporation license.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as its disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission and with ownership requirements for such material and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the United States Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

3. The Commission retains the authority to reject any State request to terminate a license that proposes to bifurcate the ownership of 11e.(2) byproduct material and its disposal site between the State and the Federal government. Upon passage of a revised Wyoming Statute Section 35–11–2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of this Agreement.

Article III

With the exception of those activities identified in Article II, A.8 through A.11, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, A.1 through A.7, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption for licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b. or 161i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the

Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

Article VIII

A. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

1. This Agreement will terminate without further NRC action if the State does not amend Wyoming Statute Section 35–11–2004(c) to be compatible with Section 83b.(1)(A) of the Act by the end of the 2019 Wyoming legislative session. Upon passage of a revised Wyoming Statute Section 35–11–2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of the Agreement.

B. The Commission may also, pursuant to Section 274j. of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity that results in production of such material, the State shall comply with the provisions of Section 274o. of the Act, if in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material.

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity that results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article X

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [location] this [date] day of [month], 2018.

For the Nuclear Regulatory Commission.

Kristine L. Svinicki, Chairman.

Done at [location] this [date] day of [month], 2018.

For the State of Wyoming.

Matthew H. Mead, Governor

[FR Doc. 2018–14175 Filed 7–9–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, July 12, 2018.

PLACE: Closed Commission Hearing Room 10800.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: July 5, 2018.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2018–14790 Filed 7–6–18; 11:15 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2018–0030]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–

966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2018–0030].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than September 10, 2018. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Medical Source Opinion of Patient's Capability to Manage Benefits—20 CFR 404.2015 and 416.615—0960–0024. SSA appoints a representative payee in cases where we determine beneficiaries are not capable of managing their own benefits. In these instances, we require medical evidence to determine the beneficiaries' capability of managing or directing their benefit payments. SSA collects medical evidence on Form SSA–787 to: (1) Determine beneficiaries' capability or inability to handle their own benefits; and (2) assist in determining the beneficiaries' need for a representative payee. The respondents are the beneficiary's physicians, or medical officers of the institution in which the beneficiary resides.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–787	131,556	1	20	43,852

2. Work Activity Report—Employee—20 CFR 404.1520(b), 404.1571–404.1576, 404.1584–404.1593, and 416.971–404.976—0960–0059. SSA uses Form SA–821–BK to collect recipient employment information to determine whether recipients worked after becoming disabled and, if so, whether the work is substantial gainful activity. SSA uses Form SSA–821–BK to obtain work information during the initial claims process, the continuing disability review process, post-adjudicative work issue actions, and for Supplemental Security Income (SSI) claims involving work issues. SSA reviews and evaluates the data to determine if the applicant or recipient meets the disability requirements of the law. The respondents are applicants and recipients of Title II Social Security and Title XVI SSI disability payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–821–BK	300,000	1	30	150,000

3. Appointment of Representative—20 CFR 404.1707, 404.1720, 408.1101, 416.1507, and 416.1520—0960–0527. Individuals claiming rights or benefits under the Social Security Act (Act) must notify SSA in writing when they appoint an individual to represent them in dealing with SSA. In addition, SSA requires representatives to sign the notice of appointment, or submit the equivalent in writing, if the representative is not an attorney. Recipients use Form SSA–1696–U4 to appoint a representative to handle their claim before SSA, and their appointed representative uses the SSA–1696–U4 to indicate whether they will charge a fee, and to show their eligibility for direct fee payment. In addition, representatives also use the SSA–1696–U4 to inform SSA of their disbarment; suspension from a court or bar in which they previously admitted to practice; or their disqualification from participating in or appearing before a Federal program or agency. Finally, SSA requires non-attorney appointed representatives to sign the SSA–1696–U4, or an equivalent written statement. SSA uses the information on the SSA–1696–U4 to document the appointment of the representative. Respondents are applicants for, or recipients of, Social Security disability benefits (SSDI) or SSI payments who are notifying SSA they have appointed a person to represent them in their dealings with SSA, and their non-attorney representatives who need to sign the form.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1696–U4	800,000	1	13	173,333

4. Representative Payee Report of Benefits and Dedicated Account—20 CFR 416.546, 416.635, 416.640, and 416.665—0960–0576. SSA requires representative payees (RPs) to submit a written report accounting for the use of money paid to Social Security or SSI recipients, and to establish and maintain a dedicated account for these payments. SSA uses Form SSA–6233 to: (1) Ensure the RPs use the payments for the recipient's current maintenance and personal needs; and (2) confirm the expenditures of funds from the dedicated account remain in compliance with the law. Respondents are RPs for SSI and Social Security recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–6233	36,228	1	20	12,076

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than August 9, 2018. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Claimant's Medication—20 CFR 404.1512, 416.912—0960–0289. In cases where claimants request a hearing after denial of their disability claim for Social Security, SSA uses Form HA–4632 to request information from the claimant regarding the medications they use. This information helps the administrative law judge overseeing the case to fully investigate: (1) The claimant's medical treatment and (2) the effects of the medications on the claimant's medical impairments and functional capacity. The respondents are applicants (or their representatives) for Old Age, Survivors, and Disability Insurance (OASDI) benefits or SSI payments who request a hearing to contest an agency denial of their claim.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4632 (paper)	20,000	1	15	5,000
Electronic Records Express	180,000	1	15	45,000
Total	200,000			50,000

2. Representative Payee Report—Special Veterans Benefits—20 CFR 408.665—0960–0621. Title VIII of the Act allows for payment of monthly Social Security benefits to qualified World War II veterans residing outside the United States. An SSA-appointed representative payee may receive and manage the monthly payment for the beneficiary's use and benefit. SSA uses the information on Form SSA–2001–F6 to determine whether the representative payee used the certified payments properly, and continues to demonstrate strong concern for the beneficiary's best interests.

Representative payees who receive Special Veterans Benefits (SVB) on behalf of beneficiaries residing outside the United States must complete the SSA–2001–F6 annually. We also require these representative payees to complete the form any time we have reason to believe they could be misusing the benefit payments. The respondents are individuals or organizations serving as representative payees who receive SVB on behalf of beneficiaries living outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–2001–F6	16	1	20	5

3. Data Exchange Request Form—20 CFR 401.100—0960–0802. SSA maintains approximately 3,000 data exchange agreements and regularly receives new requests from Federal, State, local, and foreign governments, as well as private organizations, to share data electronically. SSA engages in various forms of data exchanges from Social Security number verifications to computer matches for benefit eligibility, depending on the requestor's business needs. Section 1106 of the Act requires we consider the requestor's legal authority to receive the data, our disclosure policies, systems' feasibility, systems' security, and costs before entering into a data exchange agreement. We use Form SSA–157, Data Exchange Request Form, for this purpose. Requesting agencies, governments, or private organizations use the SSA–157 when voluntarily initiating a request for data exchange from SSA. Respondents are Federal, State, local, and foreign governments, as well as private organizations seeking to share data electronically with SSA.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
State, local, and tribal governments	114	1	30	57
Private sector organizations	32	1	30	16

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Totals	146			73

Dated: July 3, 2018.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2018–14689 Filed 7–9–18; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on Monday and Tuesday, July 30–31, 2018, to consider various matters. The RRSC was established to advise TVA on its natural resources and stewardship activities and the priority to be placed among competing objectives and values. Notice of this meeting is given under the Federal Advisory Committee Act (FACA).

DATES: The meeting will be held on Monday–Tuesday, July 30–31, 2018, from 8:30 a.m. to 12 p.m., EDT.

ADDRESSES: The meeting will be held at The Westin Chattanooga, 801 Pine Street, Chattanooga, Tennessee 37402. An individual requiring special accommodation for a disability, should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Barbie Perdue, 865–632–6113, *baperdue@tva.gov*.

SUPPLEMENTARY INFORMATION: The meeting agenda includes the following items:

1. Introductions
2. Update on Floating Cabins Regulations
3. Presentation on the Proposed Natural Resource Plan Refresh and the scoping of the accompanying Environmental Impact Statement
4. Tennessee Water Supply Update Report
5. Public Comments
6. Council Discussion and Advice

The meeting is open to the public. Verbal comments from the public will be accepted Tuesday, July 31 starting at 9:30 a.m., EDT, for no more than one hour. Registration to speak is from 8:00 a.m. to 9:00 a.m., EDT, at the door. Handout materials should be limited to one printed page. Written comments may be sent by mailing to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT–9–D, Knoxville, Tennessee 37902.

Dated: July 3, 2018.

Joseph J. Hoagland,

Vice President, Enterprise Relations and Innovation, Tennessee Valley Authority.

[FR Doc. 2018–14700 Filed 7–9–18; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2018–0016]

Minority Depository Institutions Advisory Committee

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

ACTION: Notice.

SUMMARY: The OCC has determined that the renewal of the charter of the OCC Minority Depository Institutions Advisory Committee (MDIAC) is necessary and in the public interest. The OCC hereby gives notice of the renewal of the charter.

DATES: The charter of the OCC MDIAC has been renewed for a two-year period that began on June 25, 2018.

FOR FURTHER INFORMATION CONTACT: Beverly F. Cole, Deputy Comptroller for Compliance Supervision and Designated Federal Officer, (202) 649–7260, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Notice of the renewal of the MDIAC charter is hereby given, with the approval of the Secretary of the Treasury, pursuant to section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. The Comptroller of the Currency has determined that the renewal of the MDIAC charter is necessary and in the public interest to provide advice and information about the current circumstances and future development of minority depository institutions, in accordance with the goals established by section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, Title III, 103 Stat. 353, 12 U.S.C. 1463 note, which are to preserve the present number of minority depository institutions, preserve the minority character of minority depository institutions in cases involving mergers or acquisitions, provide technical assistance, and encourage the creation of new minority depository institutions.

Dated: July 3, 2018.

Joseph M. Otting,

Comptroller of the Currency.

[FR Doc. 2018–14690 Filed 7–9–18; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL REGISTER

Vol. 83 Tuesday,
No. 132 July 10, 2018

Part II

Securities and Exchange Commission

17 CFR Parts 210, 229, 230, *et al.*
Smaller Reporting Company Definition; Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 230, 239, 240, and 249

[Release Nos. 33–10513; 34–83550; File No. S7–12–16]

RIN 3235–AL90

Smaller Reporting Company Definition

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: We are adopting amendments to the definition of ''smaller reporting company'' as used in our rules and regulations. The amendments expand the number of registrants that qualify as smaller reporting companies and are intended to reduce compliance costs for these registrants and promote capital formation, while maintaining appropriate investor protections. We are amending the definition of ''smaller reporting company'' to include registrants with a public float of less than $250 million, as well as registrants with annual revenues of less than $100 million for the previous year and either no public float or a public float of less than $700 million. We also are amending other rules and forms in light of the new definition of ''smaller reporting company,'' including amendments to the definitions of ''accelerated filer'' and ''large accelerated filer'' to preserve the existing thresholds in those definitions. Qualifying as a ''smaller reporting company'' will no longer automatically make a registrant a non-accelerated filer. The Chairman, however, has directed the staff to formulate recommendations to the Commission for possible additional changes to the ''accelerated filer'' definition that, if adopted, would have the effect of reducing the number of registrants that qualify as accelerated filers.

DATES: The final rules are effective September 10, 2018.

FOR FURTHER INFORMATION CONTACT: Amy Reischauer or Jennifer Riegel, Office of Small Business Policy, Division of Corporation Finance, at (202) 551–3460, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to 17 CFR 230.405 (''Rule 405'') and Forms S–1,[1] S–3,[2] S–4,[3] S–8,[4] and S–11 [5] under the Securities Act of 1933 (''Securities Act''); [6] 17 CFR 240.12b–2 (''Rule 12b–2'') and Forms 10,[7] 10–Q,[8] and 10–K [9] under the Securities Exchange Act of 1934 (''Exchange Act''); [10] 17 CFR 210.3–05 (''Rule 3–05'' of Regulation S–X); [11] and 17 CFR 229.10(f) (''Item 10(f)'' of Regulation S–K).[12]

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I. Introduction

On June 27, 2016, the Commission proposed amendments that would increase the financial thresholds in the ''smaller reporting company'' (''SRC'') definition and would have the effect of expanding the number of companies that benefit from the scaled disclosure accommodations available to SRCs.[13] In developing final rules, we considered comment letters received in response to the Proposing Release,[14] as well as recommendations made by the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies (''ACSEC'') [15] and the SEC Government-Business Forum on Small Business Capital Formation (''Small Business Forum'').[16] The

[1] 17 CFR 239.11.

[2] 17 CFR.239.13.

[3] 17 CFR 239.25.

[4] 17 CFR 239.16b.

[5] 17 CFR 239.18.

[6] 15 U.S.C. 77a *et seq.*

[7] 17 CFR 249.210.

[8] 17 CFR 249.308a.

[9] 17 CFR 249.310.

[10] 15 U.S.C. 78a *et seq.*

[11] 17 CFR 210.1–01 through 210.12–29.

[12] 17 CFR 229.10 through 229.1208.

[13] *See* Amendments to Smaller Reporting Company Definition, Release No. 33–10107 (Jun. 27, 2016) [81 FR 43130 (Jul. 1, 2016)] (''Proposing Release''). As the Commission noted in the Proposing Release, raising the financial thresholds in the SRC definition would be responsive to the Fixing America's Surface Transportation Act of 2015 (''FAST Act'') because it would reduce the burden on the specified registrants by increasing the number of registrants eligible for scaled disclosure. *See* Public Law 114–94, 129 Stat. 1312 (2015).

[14] The comment letters received in response to the Proposing Release are available at *https://www.sec.gov/comments/s7-12-16/s71216.htm.*

[15] In September 2015 and March 2013, the ACSEC recommended revising the SRC definition to include registrants with a public float of up to $250 million. The recommendations made by ACSEC in March 2013 also included a recommendation to revise the SRC definition for registrants that are unable to calculate their public float to include registrants with less than $100 million in annual revenues. ACSEC Recommendations about Expanding Simplified Disclosure for Smaller Issuers (Sept. 23, 2015), available at *https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-expanding-simplified-disclosure-for-smaller-issuers.pdf* and ACSEC Recommendations Regarding Disclosure and Other Requirements for Smaller Public Companies (Mar. 21, 2013), available at *https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-smaller-public-co-ltr.pdf.* Both of these recommendations also included a recommendation that the Commission revise the ''accelerated filer'' definition to include registrants with a public float of $250 million or more, but less than $700 million. The accelerated filer definition currently includes registrants with a public float of $75 million or more, but less than $700 million. *See* Exchange Act Rule 12b–2. *See* Section II.C for a discussion of the accelerated filer definition.

[16] The 2017 Small Business Forum recommended that the SRC definition be revised to include registrants with a public float of less than $250 million or registrants with annual revenues of less than $100 million, excluding large accelerated filers. *See* Final Report of the 2017 SEC Government Business Forum on Small Business Capital Formation (Mar. 2018), available at *https://www.sec.gov/files/gbfor36.pdf.* Registrants with a public float of $700 million or more generally qualify as large accelerated filers. *See* Exchange Act Rule 12b–2. Prior Small Business Forums made the same or similar recommendations. Final Small Business Forum reports are available at *https://*

Commission last revised the SRC definition in 2008.[17] Our amendments reflect the need to solicit input and retrospectively review our rules in order to determine whether they are outdated or are not functioning as intended. Today, we are amending the SRC definition in an effort to promote capital formation and reduce compliance costs for specified registrants by expanding the number of registrants that are eligible to provide scaled disclosure while maintaining appropriate investor protections.

We are adopting the amendments generally as proposed with two changes. As proposed, we are amending the SRC definition to include registrants with a public float of less than $250 million, as well as registrants with annual revenues of less than $100 million for the previous year and no public float. In a change from the proposal, the SRC definition in the final rules also includes registrants with annual revenues of less than $100 million for the previous year and a public float of less than $700 million. Specifically, we are amending Securities Act Rule 405, Exchange Act Rule 12b–2, and Item 10(f) of Regulation S–K to effect these changes. In another change from the proposal, we are amending Rule 3–05(b)(2)(iv) of Regulation S–X to increase the revenue threshold under which certain acquirers may omit the earliest of the three fiscal years of audited financial statements of certain targets. Finally, we are adopting amendments to the ''accelerated filer'' and ''large accelerated filer'' definitions in Exchange Act Rule 12b–2, as proposed, to preserve the application of the current public float thresholds in those definitions.[18] The Chairman, however, has directed the staff to formulate recommendations to the Commission for possible additional changes to the ''accelerated filer'' definition that, if adopted, would have the effect of reducing the number of registrants that qualify as accelerated filers in order to promote capital formation by reducing compliance costs for certain registrants, while maintaining appropriate investor protections. As part of the staff's consideration of possible recommended amendments, the Chairman has directed the staff to consider, among other things, the historical and current relationship between the SRC and ''accelerated filer'' definitions. The staff has begun work to prepare these recommendations.

Consistent with the proposal, we are not amending any of the scaled disclosure accommodations available to SRCs in Regulation S–K and Regulation S–X.[19] SRCs may comply with the scaled disclosure requirements available to them on an item-by-item basis.[20] The following table summarizes these scaled disclosure accommodations.[21]

Item	Scaled disclosure accommodation
Regulation S–K	
101—Description of Business	May satisfy disclosure obligations by describing the development of the registrant's business during the last three years rather than five years. Business development description requirements are less detailed than disclosure requirements for non-SRCs.
201—Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.	Stock performance graph not required.
301—Selected Financial Data	Not required.
302—Supplementary Financial Information	Not required.
303—Management's Discussion and Analysis of Financial Condition and Results of Operations (''MD&A'').	Two-year MD&A comparison rather than three-year comparison. Two year discussion of impact of inflation and changes in prices rather than three years. Tabular disclosure of contractual obligations not required.
305—Quantitative and Qualitative Disclosures About Market Risk.	Not required.
402—Executive Compensation	Three named executive officers rather than five. Two years of summary compensation table information rather than three. Not required: • Compensation discussion and analysis. • Grants of plan-based awards table. • Option exercises and stock vested table. • Pension benefits table. • Nonqualified deferred compensation table. • Disclosure of compensation policies and practices related to risk management. • Pay ratio disclosure.

www.sec.gov/info/smallbus/sbforumreps.htm. Information about the Small Business Forum is available at *http://www.sec.gov/info/smallbus/sbforum.shtml.* These recommendations also included a recommendation that the Commission revise the ''accelerated filer'' definition consistent with the recommended changes to the SRC definition. *See* Section II.C for a discussion of the accelerated filer definition.

[17] *See* Smaller Reporting Company Regulatory Relief and Simplification, Release No. 33–8876 (Dec. 19, 2007) [73 FR 934 (Jan. 4, 2008)] (''SRC Adopting Release'').

[18] The definitions of accelerated filer and large accelerated filer are based on public float, but currently contain a provision excluding registrants that are eligible to use the SRC requirements in Regulation S–K for their annual and quarterly reports. As a result, raising the SRC public float threshold without eliminating that provision effectively would raise the accelerated filer public float threshold. *See* Section II.C for a discussion of the amendments to the accelerated filer and large accelerated filer definitions.

[19] Several of these scaled disclosure accommodations, such as the scaled executive compensation disclosures under Item 402(l) through (r) of Regulation S–K [17 CFR 229.402(l) through (r)], are similar to the disclosure accommodations available to an emerging growth company (''EGC''). *See* Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 12b–2 [17 CFR 240.12b–2]. EGCs also are exempt from the Sarbanes-Oxley Act Section 404(b) auditor attestation of internal control over financial reporting. For a discussion of scaled disclosure accommodations available to EGCs, *see* Business and Financial Disclosure Required by Regulation S–K, Release No. 33–10064 (Apr. 13, 2016) [81 FR 23915 (April 22, 2016)] (''Regulation S–K Concept Release'').

[20] *See* SRC Adopting Release, 73 FR at 940. Where a disclosure requirement applicable to SRCs is more stringent than the corresponding requirement for non-SRCs, however, SRCs must comply with the more stringent standard. The SRC Adopting Release identified Item 404 of Regulation S–K [17 CFR 229.404] as the only instance in Regulation S–K in which the disclosure requirements applicable to SRCs could be more stringent.

[21] In addition to the accommodations itemized in the table, SRCs using Form S–1 may incorporate by reference information filed prior and subsequent to the effectiveness of the registration statement if they meet the eligibility requirements in General Instruction VII of Form S–1. *See* Item 12(b) of Form S–1; *see also* Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S–1 for Smaller Reporting Companies, Release No. 33–10003 (Jan. 19, 2016) [81 FR 2743 (Jan. 19, 2016)].

Item	Scaled disclosure accommodation
404—Transactions With Related Persons, Promoters and Certain Control Persons[22].	Description of policies/procedures for the review, approval or ratification of related party transactions not required.
407—Corporate Governance	Audit committee financial expert disclosure not required in first annual report. Compensation committee interlocks and insider participation disclosure not required. Compensation committee report not required.
503—Prospectus Summary, Risk Factors and Ratio of Earnings to Fixed Charges.	No ratio of earnings to fixed charges disclosure required. No risk factors required in Exchange Act filings.
601—Exhibits	Statements regarding computation of ratios not required.

Regulation S–X

Rule	Scaled disclosure
8–02—Annual Financial Statements	Two years of income statements rather than three years. Two years of cash flow statements rather than three years. Two years of changes in stockholders' equity statements rather than three years.
8–03—Interim Financial Statements	Permits certain historical financial data in lieu of separate historical financial statements of equity investees.
8–04—Financial Statements of Businesses Acquired or to Be Acquired.	Maximum of two years of acquiree financial statements rather than three years.
8–05—Pro forma Financial Information	Fewer circumstances under which pro forma financial statements are required.
8–06—Real Estate Operations Acquired or to Be Acquired.	Maximum of two years of financial statements for acquisition of properties from related parties rather than three years.
8–08—Age of Financial Statements	Less stringent age of financial statements requirements.

II. Final Amendments

A. Amendments to Smaller Reporting Company Definition

We are adopting amendments to the SRC definition to expand the number of registrants that qualify as SRCs and thereby benefit from scaled disclosure requirements. These amendments will enable a registrant to qualify as a SRC based on a public float test or a revenue test.[23]

Under the final rules, SRCs generally[24] are registrants with:

- A public float of less than $250 million; [25] or
- annual revenues of less than $100 million [26] and either no public float [27] or a public float of less than $700 million.[28]

As proposed, the final rules increase the threshold for determining SRC status based on public float from $75 million to $250 million. A registrant that qualifies as a SRC under the public float test would qualify regardless of its revenues.[29] In a change from the proposal, the final rules will expand the SRC definition to include registrants with a public float of less than $700 million, if they also have annual revenues of less than $100 million.[30] The following table summarizes the amendments to the SRC definition for a registrant making an initial determination under the amendments [31]

[22] Item 404 also contains the following *expanded* disclosure requirements applicable to SRCs: (1) Rather than a flat $120,000 disclosure threshold, the threshold is the lesser of $120,000 or 1% of total assets, (2) disclosures are required about underwriting discounts and commissions where a related person is a principal underwriter or a controlling person or member of a firm that was or is going to be a principal underwriter, (3) disclosures are required about the issuer's parent(s) and their basis of control, and (4) an additional year of Item 404 disclosure is required in filings other than registration statements.

[23] *See* Item 10(f)(1)(i) and (ii) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

[24] Consistent with the current definition, the SRC definition in the final rules specifically excludes investment companies, asset-backed issuers (as defined in Item 1101 of Regulation AB [17 CFR 229.1101]) and majority-owned subsidiaries of a parent that is not a SRC. *See* Item 10(f)(1) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2. Lower public float and revenue thresholds apply to registrants that determined that they did not qualify as SRCs in the prior year, but are eligible to transition to SRC status. *See* Item 10(f)(2)(iii) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2. *See also* Section II.A for a discussion of the amendments to these thresholds.

[25] Consistent with the current definition, public float is computed under the final rules by multiplying the aggregate worldwide number of shares of a registrant's voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity. *See* Item 10(f)(1)(i) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2. The determination of public float is premised on the existence of a public trading market for the issuer's equity securities. Therefore, an entity with equity securities outstanding but not trading in any public trading market would not be able to qualify on the basis of a public float test. In contrast to public float, market capitalization reflects the value of a registrant's voting and non-voting common equity held by all holders, whether affiliates or non-affiliates.

A reporting registrant calculates its public float as of the last business day of its most recently completed second fiscal quarter. *See* Item 10(f)(2)(i) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2. A registrant filing its initial registration statement under the Securities Act or Exchange Act calculates its public float as of a date within 30 days of the date the registration statement is filed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares. *See* Item 10(f)(2)(ii)(A) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

[26] Consistent with the current definition, annual revenues are as of the most recently completed fiscal year for which audited financial statements are available. Item 10(f)(2)(i)(B) and (f)(2)(ii)(B) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

[27] *See* Item 10(f)(1)(ii)(A) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2. A registrant may have no public float because it has no public common equity outstanding or no market price for its common equity exists. Based on data compiled by our Division of Economic and Risk Analysis (''DERA''), in calendar year 2016, approximately 21.5% of registrants that qualified as SRCs (and 7.7% of all registrants) had no public float. The estimated number of registrants with no public float here and elsewhere in this release may be over-inclusive due to the difficulty of ascertaining this status based on data extracted from registrants' filings. *See* note 141 for a discussion of the methodology used by the staff to obtain this data.

[28] *See* Item 10(f)(1)(ii)(B) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

[29] *See* Instruction to Paragraph (f) of Item 10 of Regulation S–K; Instruction to definition of ''smaller reporting company'' in Securities Act Rule 405; Instruction to definition of ''smaller reporting company'' in Exchange Act Rule 12b–2.

[30] *See* Item 10(f)(1)(ii)(B) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

[31] For purposes of the first fiscal year ending after effectiveness of the amendments, a registrant will qualify as a SRC if it meets one of the initial qualification thresholds in the revised definition as of the date it is required to measure its public float or revenues (the ''measurement date''), even if such

or a current SRC seeking to continue to qualify.

Criteria	Current definition	Revised definition
Public Float	Public float of less than $75 million	Public float of less than $250 million.
Revenues	Less than $50 million of annual revenues and no public float.	Less than $100 million of annual revenues and • no public float, or • public float of less than $700 million.

Consistent with the current definition, and as proposed, under the final rules, a registrant that determines that it does not qualify as a SRC under the initial qualification thresholds will remain unqualified unless and until it determines that it meets one or more lower qualification thresholds. The subsequent qualification thresholds, set forth in the table below, are set at 80% of the initial qualification thresholds.[32]

Criteria [33]	Current definition	Revised definition
Public Float	Public float of less than $50 million	Public float of less than $200 million, if it previously had $250 million or more of public float.[34]
Revenues	Less than $40 million of annual revenues and no public float.	Less than $80 million of annual revenues, if it previously had $100 million or more of annual revenues; and Less than $560 million of public float, if it previously had $700 million or more of public float.

1. Public Float Test

a. Proposed Amendments

As proposed, a registrant with a public float of less than $250 million would qualify as a SRC.[35] Consistent with the current definition, the Commission proposed that once a registrant does not qualify as a SRC,[36] it would remain unqualified until its public float falls below another, lower threshold. Specifically, the Commission proposed amending the rules to provide that a registrant that previously did *not* qualify as a SRC would qualify as a SRC if it has a public float of less than $200 million as of its most recently completed second fiscal quarter.[37]

b. Comments

Most commenters addressed the overall costs and benefits of expanding the pool of registrants eligible for SRC status. Many of these commenters expressed general support for the proposed amendments to the SRC definition.[38] Several of these commenters stated that the proposed definition appropriately considers the objectives of capital formation and investor protection [39] and promotes capital formation or liquidity for smaller registrants.[40]

On the other hand, three commenters generally opposed the proposed amendments to the SRC definition or generally opposed accommodations based on company size.[41] One of these commenters stated that the accommodations for SRCs exist solely for the expedience of issuers and must be balanced against the cost to market participants who have less information from which to draw conclusions.[42] Another of these commenters stated that it was concerned that the scaled disclosure regime for SRCs may prevent investors from receiving all of the material information needed to conduct a thorough analysis.[43] This commenter

registrant previously did not qualify as a SRC. *See* Item 10(f)(2)(i) and (ii) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2 for additional information about the measurement date. For example, a registrant with a September 30 fiscal year end that previously was not a SRC and that had a public float of $220 million as of March 30, 2018 (the last business day of its most recently completed second quarter) will qualify as a SRC for the fiscal year ending September 30, 2018.

[32] *See* Item 10(f)(2)(iii) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

[33] A registrant that does not qualify as a SRC may subsequently seek to qualify under either test.

[34] A registrant that previously was not a SRC that subsequently qualifies based on a public float of less than $200 million will qualify as a SRC regardless of its revenues. *See* Instruction to Paragraph (f) of Item 10 of Regulation S–K; Instruction to definition of ''smaller reporting company'' in Securities Act Rule 405; Instruction to definition of ''smaller reporting company'' in Exchange Act Rule 12b–2.

[35] *See* Proposed Item 10(f)(1)(i) and (ii) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2.

[36] This applies either upon an initial determination in the case of registrants filing an initial registration statement, or as of an annual determination in the case of reporting registrants.

[37] The proposed $200 million subsequent qualification threshold represents 80% of the proposed $250 million initial qualification threshold. Under the current definition, a registrant that previously determined that it did not qualify as a SRC because its public float exceeded the current $75 million threshold may qualify based on a subsequent determination if it has a public float of less than $50 million. That registrant would then remain a SRC until its public float again exceeded $75 million. Consistent with the current definition, under the proposed definition, a registrant that subsequently qualifies under the $200 million public float threshold would remain qualified until its public float exceeds $250 million.

[38] *See* Letter from Acorda Therapeutics, Inc. et al., August 23, 2016 (''Acorda, et al.''); Letter from Advanced Medical Technology Association, August 20, 2016 (''AMTA''); Letter from Biotechnology Innovation Organization, August 30, 2016 (''BIO''); Letter from BDO USA, LLP, August 29, 2016 (''BDO''); Letter from Center for Audit Quality and Counsel of Institutional Investors, August 30, 2016 (''CAQ/CII''); Letter from CONNECT, August 4, 2016 (''CONNECT''); Letter from Corporate Governance Coalition for Investor Value, August 30, 2016 (''Coalition''); Letter from Independent Community Bankers of America, August 29, 2016 (''ICBA''); Letter from MidSouth Bancorp, Inc., August 24, 2016 (''MidSouth''); Letter from Nasdaq, August 30, 2016 (''Nasdaq''); Letter from NYSE Group, July 25, 2016 (''NYSE''); Letter from National Venture Capital Association, August 25, 2016 (''NVCA''); Letter from Seneca Foods Corporation, August 2, 2016 (''Seneca''); and Letter from The Small Business Financial and Regulatory Affairs Committee of the Institute of Management Accountants, August 24, 2016 (''IMA'').

[39] *See* AMTA; BDO; BIO; Coalition; ICBA.

[40] *See* AMTA; BDO; BIO; Coalition; ICBA; NVCA; and NYSE. *See also* CONNECT (supporting the proposal to amend the SRC definition to encompass a wider range of emerging businesses for which regulatory costs present a significant burden to growth).

[41] *See* Letter from Cable Car Capital LLC, June 28, 2016 (''Cable Car''); Letter from CFA Institute, August 30, 2016 (''CFA Institute''); Letter from Ernst & Young LLP, September 8, 2016 (''EY'').

[42] *See* Cable Car.

[43] *See* CFA Institute (noting that ''the pension benefits table and a disclosure of compensation policies and practices related to risk management (both of which can be deleted under scaled disclosure) are more vital than certain other disclosures'').

also noted that allowing different sized entities to use different disclosure regimes would signal to investors that the entities lack comparable quality.[44] The third commenter recommended that the Commission consider adopting disclosure objectives that would mitigate the need to scale disclosure requirements based on the size or nature of a reporting entity.[45]

Two commenters stated that the proposed amendments would potentially provide only marginal cost savings.[46] One of these commenters did not support the proposal and instead encouraged the Commission to continue its review of scaled disclosure to determine which disclosures are repetitive and should be deleted and which should be retained.[47] The other commenter stated that the proposed change and the resulting reduced disclosure requirements for additional registrants would have a minimal effect on its annual compliance costs.[48]

Many commenters expressed support for the proposed increases in both the public float and revenue thresholds.[49] One commenter supported the amendments and viewed them as an acknowledgement that the current public float threshold is overly restrictive.[50] Another commenter specifically stated that it supported the proposed approach to adjusting the thresholds rather than simply relying on inflation adjustments.[51]

Two commenters recommended that the Commission review the SRC definition periodically to determine whether the thresholds being used remain appropriate.[52] One of these commenters specifically recommended that the Commission revisit the thresholds after three years.[53]

c. Final Amendments

After considering the comments received, as well as the recommendations made by the ACSEC[54] and the Small Business Forum,[55] consistent with the proposal, we are adopting amendments to the SRC definition that will permit registrants with a public float of less than $250 million to qualify as SRCs.[56] As is the case with the current definition, once a registrant determines that it does not qualify as a SRC under the applicable thresholds,[57] it will not subsequently qualify until its public float falls below another, lower threshold, set at 80% of the initial qualification threshold. While we did not receive any comments on the subsequent qualification thresholds, we continue to believe that these thresholds are necessary to avoid situations in which registrants frequently enter and exit SRC status due to small fluctuations in their public float and that the thresholds do not impose an undue burden on registrants seeking to qualify for SRC status. Accordingly, we are amending the rules to permit a registrant that previously did not qualify as a SRC because its public float was $250 million or more to qualify as a SRC if it has a public float of less than $200 million, regardless of its revenues.[58]

We are not revising the method of calculating public float, as suggested by one commenter.[59] The staff is not aware of significant incidence of manipulation or stock price volatility affecting qualification under the public float test. In addition, the method of calculating public float is consistent with the existing rules and with the method of determining eligibility to use Form S–3 or Form F–3 to register a primary offering.[60] This consistency will avoid additional burdens or confusion for registrants and investors that may result if registrants were required to calculate their public float in one manner for determining SRC status and in another manner for Form S–3 or Form F–3 eligibility.

We believe that these amendments will promote capital formation through a modest reduction in compliance costs for newly eligible SRCs while maintaining appropriate investor protections.[61] In 2016, approximately 28% of registrants had less than $75 million in public float,[62] compared to approximately 42% of registrants when the SRC definition was established.[63] Increasing the public float threshold to $250 million would have resulted in approximately 39% of registrants qualifying as SRCs in 2016 based on their public float.[64]

We believe the existing scaled disclosure accommodations have reduced compliance costs for SRCs.[65] These amendments will extend those benefits to a broader pool of registrants, consistent with the intent of the Commission when it adopted the SRC definition in 2007.[66] Although the amendments will permit a broader group of registrants to make scaled disclosure to their investors, we do not believe that this scaling of disclosure

[44] *See* CFA Institute.

[45] *See* EY (noting that it ''previously recommended that the Commission consider adopting disclosure objectives that would mitigate the need for scaling disclosure requirements based on the size or nature of a reporting entity'' and citing to its letter dated July 21, 2016 responding to the SEC's concept release on business and financial disclosures required by Regulation S–K (Release No. 33–10064; File No. S7–06–16)).

[46] *See* CFA Institute; and Seneca.

[47] *See* CFA Institute.

[48] *See* Seneca.

[49] *See* Acorda et al; AMTA; BDO; BIO; CAQ/CII; CONNECT; Coalition; ICBA; MidSouth; Nasdaq; NVCA; NYSE; Seneca; and IMA.

[50] *See* Letter from Council of State Bioscience Associations, August 26, 2016 (''CSBA'') (stating that the Commission should similarly reform the accelerated filer definition and institute an alternative revenue test for both the SRC and accelerated filer definitions).

[51] *See* NYSE.

[52] *See* CFA Institute; and Letter from Kermit Kubitz, August 31, 2016 (''Kubitz'').

[53] *See* Kubitz.

[54] *See* note 19.

[55] *See* note 20.

[56] *See* Item 10(f)(1)(i) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

[57] This applies either upon an initial determination in the case of registrants filing an initial registration statement, or as of an annual determination in the case of reporting registrants.

[58] *See* Item 10(f)(2)(iii)(A) and Instruction to Paragraph (f) of Item 10 of Regulation S–K; Securities Act Rule 405 and Instruction to definition of ''smaller reporting company'' in Securities Act Rule 405; Exchange Act Rule 12b–2 and Instruction to definition of ''smaller reporting company'' in Exchange Act Rule 12b–2. Consistent with the current definition, under the amended definition, a registrant that subsequently qualifies under the $200 million public float threshold would remain qualified until its public float exceeds $250 million.

[59] *See* Letter from Paul W. Zeller, July 18, 2016 (''Zeller'') (suggesting that the Commission, in the calculation of public float, adopt a revenue test for thinly traded registrants to address price manipulation and volatility concerns).

[60] *See* Instructions I.B.1 and I.B.6 of Form S–3; Instructions I.B.1 and I.B.5 of Form F–3. Certain newly eligible SRCs under the new definition will continue to be eligible to rely on Instruction I.B.1 of Form S–3 and Form F–3 to register primary offerings.

[61] *See* Section IV.B.

[62] Based on public float values disclosed by registrants in their Form 10–K filings, 2,072, or 28.0%, of the 7,395 registrants that filed a Form 10–K in 2016 reported having a public float of less than $75 million.

[63] Approximately 4,976, or 41.8%, of the 11,898 registrants that filed Exchange Act annual reports in 2006 had a public float of less than $75 million. *See* SRC Adopting Release. The release cites data from the Commission's EDGAR filing system and Thomson Financial (''Datastream''). The Datastream data included all registered public firms trading on the New York Stock Exchange, the American Stock Exchange, the Nasdaq, the Over-the-Counter Bulletin Board and the Pink Sheets and excluded closed end funds, exchange traded funds, American depositary receipts and direct foreign listings.

[64] Based on public float values disclosed by registrants in their Form 10–K filings, 2,851, or 38.6%, of the 7,395 registrants that filed a Form 10–K in 2016 reported having a public float of less than $250 million.

[65] *See* Section IV.B.3.a.

[66] *See* SRC Adopting Release, 73 FR at 934 and 942 (stating that the Commission was ''adopting amendments to its disclosure and reporting requirements . . . to expand the number of companies that qualify for its scaled disclosure requirements for smaller reporting companies;'' and ''[w]e believe this standard is appropriately scaled in that it reduces costs to smaller companies caused by unnecessary information requirements, consistent with investor protection.'').

will detract substantially from the investor protection objectives of our disclosure regime in light of the other protections available under current law and regulations. First, the additional registrants that will qualify for scaled disclosure, like all registrants, will remain liable for their disclosures [67] and, in addition to the disclosure expressly required by the rules, will continue to be required to provide such further material information, if any, as may be necessary to make any required statements, in the light of the circumstances under which they are made, not misleading.[68] Moreover, their disclosure also will continue to be subject to the Division of Corporation Finance's filing review process. These measures of investor protection will remain unchanged.

2. Revenue Test

a. Proposed Amendments

As proposed, a registrant with no public float would qualify as a SRC if it had annual revenues of less than $100 million during its most recently completed fiscal year.[69] Consistent with the current definition, the Commission proposed that once a registrant determines that it does not qualify as a SRC,[70] it would not subsequently qualify until its revenues fall below another, lower threshold. Specifically the Commission proposed amending the rules to provide that a registrant with no public float that previously determined that it did not qualify as a SRC would qualify as a SRC if it had annual revenues of less than $80 million as of the relevant measurement date.[71] The proposed $80 million subsequent qualification threshold would maintain the 80% ratio that exists between the $50 million initial qualification threshold and $40 million subsequent qualification threshold in the current SRC definition.

The Proposing Release noted that the 2015 Small Business Forum recommended that the SRC definition be revised to include, in addition to registrants with a public float of less than $250 million, registrants with a public float of less than $700 million and annual revenues of less than $100 million.[72] The Proposing Release also solicited comment on whether the Commission should revise the SRC definition to include an alternative revenue test.

b. Comments

Many commenters recommended that the Commission add a revenue test to the SRC definition for companies with a public float.[73] Several commenters stated that businesses below $100 million in revenue are viewed by reasonable observers as ''small.'' [74] One commenter believed that a revenue test would stimulate innovation and drive business growth.[75] Another commenter stated that a revenue test would ensure that pre-revenue companies are not ''forced to divert investment funds . . . from science to compliance.'' [76] Another commenter supported an alternative revenue test for highly valued pre-revenue companies ''to avoid stifling the advancement'' of these companies with costly compliance.[77] Two commenters suggested that we adopt a revenue test without a limitation on the public float or market capitalization of the company.[78] Another two commenters specifically recommended that the Commission adopt a definition based on revenues of less than $100 million and a public float of less than $700 million, as recommended by the Small Business Forum.[79]

c. Final Amendments

After considering the comments received as well as the recommendations made by the ACSEC [80] and the Small Business Forum,[81] we are adopting the proposed amendments to the revenue test of the SRC definition and expanding the revenue test to include certain registrants with a public float. The definition in the final rules will include, in addition to registrants with a public float of less than $250 million, registrants with annual revenues of less than $100 million during their most recently completed fiscal year and either no public float (calculated as discussed in Section II.A.1) or a public float of less than $700 million.[82] We are persuaded by commenters' suggestions that it is appropriate to provide a measure by which a registrant with a public float but limited revenues may qualify as a SRC.[83] This amended revenue test expands the proposed revenue threshold for companies with no public float to permit registrants with a public float that is less than $700 million to qualify based on their revenues. The $700 million public float threshold included in this amended revenue test was recommended by two commenters [84] and the Small Business Forum.[85] This change from the proposal

[67] *See, e.g.,* Sections 11, 12, and 17 of the Securities Act, Sections 10(b) and 18 of the Exchange Act, and Exchange Act Rule 10b–5 [17 CFR 240.10b–5].

[68] *See* Securities Act Rule 408 [17 CFR 230.408] and Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[69] *See* Proposed Item 10(f)(1)(ii)(A) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2.

[70] This applies either upon an initial determination in the case of registrants filing an initial registration statement, or as of an annual determination in the case of reporting registrants.

[71] Under the current definition, a registrant that previously determined that it did not qualify as a SRC because it had no public float and its revenues exceeded the current $50 million threshold may qualify based on a subsequent determination if it had annual revenues of less than $40 million. That registrant would then remain a SRC until its revenues exceeded $50 million. Consistent with the current definition, under the proposed definition, a registrant with no public float that subsequently qualifies under the $80 million revenue threshold would remain qualified until its revenue exceeds $100 million.

[72] *See* Proposing Release at text accompanying note 22.

[73] *See* Acorda, et al. (recommending a revenue test, stating that public float is largely a marker of future value but paints an inaccurate picture of small businesses in the present); AMTA; BIO (stating that the Commission should move away from its reliance on public float as the ultimate arbiter of company size); Letter from Calithera Biosciences, August 8, 2016 (''Calithera''); CONNECT; CSBA; Nasdaq (recommending a well-crafted revenue only threshold); NYSE (recommending a simple revenue test without a limitation on market capitalization); and Zeller (recommending a revenue test for any issuers that are thinly traded). *See also* Section II.A.1.b for a discussion of comments addressing the overall costs and benefits of expanding the pool of registrants eligible for SRC status, including the proposed revision to expand the revenue threshold for registrants with no public float.

[74] *See* Acorda, et al.; BIO; and Calithera.

[75] *See* BIO (stating that pre-revenue small businesses should remain focused on innovation and do not have the capital to pay for expensive compliance requirements, and therefore allowing them to qualify as SRCs until they generate revenue would stimulate innovation and drive business growth).

[76] *See* Acorda, et al.

[77] *See* AMTA.

[78] *See* NYSE; and Nasdaq.

[79] *See* BIO; and Calithera.

[80] *See* note 19.

[81] *See* note 20.

[82] *See* Item 10(f)(1)(ii) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2. Under the public float test discussed in Section II.A.1., a registrant with public float of less than $250 million will qualify as a SRC regardless of its revenues. *See* Instruction to Paragraph (f) of Item 10 of Regulation S–K; Instruction to definition of ''smaller reporting company'' in Securities Act Rule 405; Instruction to definition of ''smaller reporting company'' in Exchange Act Rule 12b–2.

[83] *See* Acorda, et al.; AMTA; BIO; Calithera; CONNECT; and CSBA.

[84] *See* BIO and Calithera.

[85] *See* note 20. In 2016 and 2017, the Small Business Forum recommended that the SRC definition be revised to include registrants with a public float of less than $250 million or registrants with annual revenues of less than $100 million, excluding large accelerated filers. Registrants with a public float of $700 million or more generally qualify as large accelerated filers. *See* Exchange Act Rule 12b–2. In prior years, the Small Business Forum recommended that the Commission revise the SRC definition to include registrants with a public float of less than $250 million or registrants with a public float of less than $700 million and annual revenues of less than $100 million. *See, e.g.,* Final Report of the 2015 SEC Government Business

Continued

permits some additional registrants to qualify as SRCs,[86] and we believe that these low-revenue registrants would benefit from the cost savings of scaled disclosure accommodations and could redirect those savings into growing their businesses without significantly detracting from investor protections. For example, these registrants will remain liable for their disclosures, will continue to be required to provide all material information necessary to make any required statements not misleading, and will continue to be subject to the Division of Corporation Finance's filing review process.

The amended revenue test that we are adopting is consistent with the position expressed by several commenters [87] that it is not necessary to subject capital-intensive, low-revenue registrants with larger public floats or market capitalizations to the same reporting requirements as registrants with larger public floats and more well-established, revenue-generating businesses. Although two commenters suggested that we adopt a revenue test without a limitation on the public float or market capitalization of the company,[88] we believe that it is appropriate to include a public float limitation because, as a registrant's business and public float grows, investors should benefit from greater disclosure. The additional information provided by the registrant in these circumstances will assist a growing investor base in making informed investment decisions and also should lead to a lower cost of capital for the business as it grows. In this way, the amended revenue test in the final rules will enable some additional capital-intensive, low-revenue registrants to benefit from the cost-savings of scaled reporting, while continuing to require larger registrants to comply with the disclosure requirements applicable to non-SRCs.

In 2016, approximately 7.7% of registrants qualified as SRCs by having no public float and less than $50 million in annual revenues.[89] The number of registrants that would qualify as SRCs would have increased by 26, or 0.4%, under the new $100 million annual revenue threshold for registrants with no public float.[90] Expanding the definition further to include registrants with annual revenues of less than $100 million and public float of less than $700 million would have increased the number of eligible registrants by an additional 161, or 2.2%.[91]

Under the current definition, and as proposed, once a registrant with no public float determines that it does not qualify as a SRC,[92] it cannot subsequently qualify based on revenues until its revenues fall below another, lower threshold. As discussed above with respect to the public float test, while we did not receive any comments on the subsequent qualification thresholds, we believe that a separate, lower revenue threshold for these registrants helps to avoid situations in which registrants enter and exit SRC status due to small fluctuations in their revenues and does not impose an undue burden on registrants seeking to qualify for SRC status. Therefore, consistent with the proposal, once an issuer with no public float determines that it does not qualify for SRC status because its annual revenues exceeded $100 million, it will remain unqualified unless and until its annual revenues are less than $80 million as of the measurement date.[93]

Consistent with the 80% ratio we are adopting for the other subsequent qualification thresholds, under the amended revenue test, once a registrant with public float determines that it does not qualify as a SRC because it exceeds either or both of the $100 million annual revenue and $700 million public float thresholds, it will remain unqualified unless and until it meets a lower threshold for the criteria on which it previously failed to qualify ($80 million of annual revenue and $560 million of public float) and continues to meet any threshold it previously satisfied ($100 million of annual revenue or $700 million of public float).[94] By requiring that a registrant satisfy a lower threshold only with respect to a threshold it previously exceeded, we are attempting to strike a balance between avoiding situations in which registrants frequently enter and exit SRC status due to small fluctuations and not imposing an undue burden on registrants seeking to qualify for SRC status. A registrant that exceeded both the public float threshold and the revenue threshold, however, would not qualify unless and until it met both lower thresholds in order to avoid situations in which registrants enter and exit SRC status due to small fluctuations in either their revenues or public float. The table below sets forth the thresholds for qualification as of the respective measurement date under the amended revenue test after one or both thresholds have been exceeded:

Prior annual revenues	Prior public float	
	None or less than $700 million	$700 million or more
Less than $100 million	Neither threshold exceeded	Public float—Less than $560 million; and Revenues—Less than $100 million.
$100 million or more	Public float—None or less than $700 million; and Revenues—Less than $80 million	Public float—Less than $560 million; and Revenues—Less than $80 million.

Forum on Small Business Capital Formation (Apr. 2016), available at *https://www.sec.gov/info/smallbus/gbfor34.pdf.*

[86] Excluding the 2,851 registrants that based on their 2016 data would qualify under the public float test described in Section II.A.1 and the 594 registrants that would qualify under the proposed no public float and less than $100 million in annual revenues test, we estimate that this change would permit an additional 161 registrants to qualify as a SRC.

[87] *See* Acorda, et al.; AMTA; BIO; Calithera; CONNECT; CSBA; NYSE; and Nasdaq.

[88] *See* NYSE; and Nasdaq.

[89] Based on public float values and revenues disclosed by registrants in their Form 10–K filings in 2016, 568, or 7.7%, of the 7,395 registrants that filed a Form 10–K in 2016 reported having no public float and less than $50 million in annual revenues.

[90] Based on public float values and revenues disclosed by registrants in their Form 10–K filings in 2016, 26, or 0.4%, of the 7,395 registrants that filed a Form 10–K in 2016 had no public float and $50 million or more but less than $100 million in annual revenues.

[91] Based on public float values and revenues disclosed by registrants in their Form 10–K filings in 2016, 161, or 2.2%, of the 7,395 registrants that filed a Form 10–K in 2016 had $250 million or more but less than $700 million of public float and less than $100 million in annual revenues.

[92] This applies either upon an initial determination in the case of registrants filing an initial registration statement, or as of an annual determination in the case of reporting registrants.

[93] *See* Item 10(f)(2)(iii)(B) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2. Consistent with the current definition, under the amended definition, a registrant with no public float that subsequently qualifies under the $80 million revenue threshold remains qualified until its revenue exceeds $100 million.

[94] *Id.* Consistent with the current definition, under the amended definition, a registrant that subsequently qualifies under the $560 million public float threshold or $80 million revenue threshold remains qualified until its public float exceeds $700 million or its revenue exceeds $100 million.

B. Amendments to Rule 3–05(b)(2)(iv) of Regulation S–X

In the Proposing Release, the Commission asked whether, if the revenue threshold in the SRC definition is increased, the threshold in Rule 3–05 of Regulation S–X also should increase. Rule 3–05 of Regulation S–X provides the requirements for financial statements of businesses acquired or to be acquired in certain registration statements and current reports. Current paragraph (b)(2)(iv) allows certain registrants to omit such financial statements for the earliest of the three fiscal years required if the net revenues of the business to be acquired are less than $50 million.[95] The $50 million threshold is based on the revenue threshold in the SRC definition.[96]

Two commenters recommended amending Rule 3–05 to increase the revenue threshold in paragraph (b)(2)(iv) to $100 million to maintain the alignment between Rule 3–05 and the definition of a SRC.[97] One commenter noted that this alignment should be retained to ''maintain the objective the Commission expressed when it adopted the 2007 S–X Rule 3–05 relief.'' [98] The other commenter noted that this amendment would avoid having the financial statement requirements for a SRC-sized target company exceed those of a similarly sized registrant.[99]

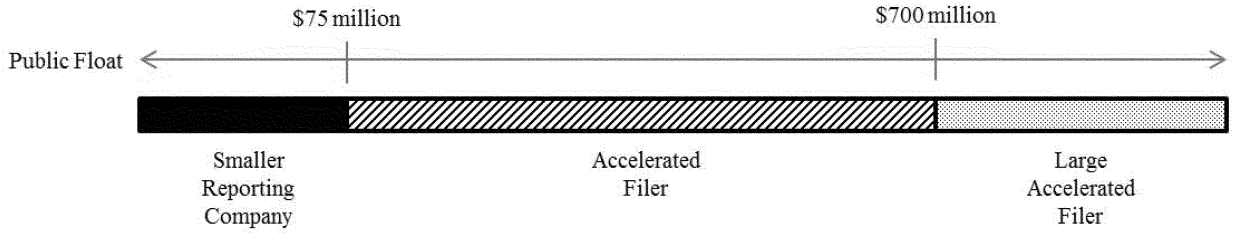
Consistent with these comments, we are amending Rule 3–05 to increase the net revenue threshold in Rule 3–05(b)(2)(iv) of Regulation S–X to $100 million.[100] Given that the current $50 million revenue threshold in Rule 3–05(b)(2)(iv) was based on the revenue threshold in the SRC definition, and in light of our decision to increase the revenue threshold in the SRC definition from $50 million to $100 million, we are raising the net revenue threshold in Rule 3–05(b)(2)(iv) of Regulation S–X from $50 million to $100 million.

C. Amendments to Accelerated Filer and Large Accelerated Filer Definitions

1. Proposed Amendments

The Commission proposed amending the definitions of ''accelerated filer'' and ''large accelerated filer'' to remove the automatic exclusion from these definitions of any registrant that qualifies as an SRC [101] and solicited comment on a number of questions related to this issue.[102] Among other requirements,[103] being an accelerated filer or a large accelerated filer triggers the requirement contained in Section 404(b) of the Sarbanes-Oxley Act [104] to have the auditor provide an attestation report on internal control over financial reporting. Currently, the accelerated filer and large accelerated filer definitions include a provision that specifically excludes registrants that are eligible to use the SRC requirements under Regulation S–K for their annual and quarterly reports.[105] As a result, the existing public float threshold in the accelerated filer definition aligns with the current public float threshold in the SRC definition.[106]

Figure 1: Current Definitions of SRC, Accelerated Filer, and Large Accelerated Filer



[95] Rule 3–05(b)(2) sets forth the requirements for financial statements of an acquired business or to be acquired business to be provided other than when registering securities to be offered to the security holders of the business to be acquired.

[96] In 1996, the Commission revised Rule 3–05 to streamline the requirements for financial statements of significant business acquisitions in filings made under the Securities Act and the Exchange Act, stating:

''The threshold at which audited financial statements of an acquired business are required for three years, as required for the issuer itself (except for small business issuers), has been raised from 40% to 50% in recognition of the significant burden imposed by the lower threshold. In addition, consistent with the criteria for small business issuers, financial statements for periods preceding the most recent two fiscal years would not be required for acquired businesses reporting revenues below $25 million.'' *See* Streamlining Disclosure Requirements Relating to Significant Business Acquisitions. Release No. 33–7355 (Oct. 10, 1996) [61 FR 54509 (Oct. 18, 1996)] (''1996 Rule 3–05 Adopting Release'').

When the Commission adopted the SRC definition (which replaced the small business issuer definition) in 2007, it noted:

''Several comment letters noted that in light of the $50 million in revenues threshold proposed for determining a company's qualification as a SRC if a company is unable to calculate public float, the Commission should consider revising [Rule 3–05(b)(2)(iv)] to raise to $50 million the $25 million threshold currently used to limit to two the periods required for audited financial statements of an acquired business. The $25 million threshold was based on the $25 million in revenues standard in Regulation S–B that we are rescinding. We are amending this standard to increase the threshold to $50 million in revenues, as suggested by the commenters.'' *See* SRC Adopting Release.

[97] *See* EY; and BDO. No other commenters addressed whether to amend Rule 3–05 of Regulation S–X.

[98] *See* EY; *see also* SRC Adopting Release.

[99] *See* BDO.

[100] *See* Rule 3–05(b)(2)(iv) of Regulation S–X.

[101] *See* Proposing Release, 81 FR at 43136.

[102] *See* Proposing Release, 81 FR at 43137. As discussed in the Proposing Release, the ACSEC and the Small Business Forum have recommended increasing the thresholds in both the SRC and the accelerated filer definitions. *See* notes 19 and 20.

[103] Accelerated and large accelerated filers are subject to accelerated periodic report filing deadlines. In addition, they must provide their internet address and disclosure regarding the availability of their filings required by Items 101(e)(3) and (4) of Regulation S–K [17 CFR 229.101(e)(3) and (4)], as well as disclosure required by Item 1B of Form 10–K about unresolved staff comments on their periodic or current reports.

[104] Public Law 107–204, Sec. 404(b) 116 Stat. 745 (2002).

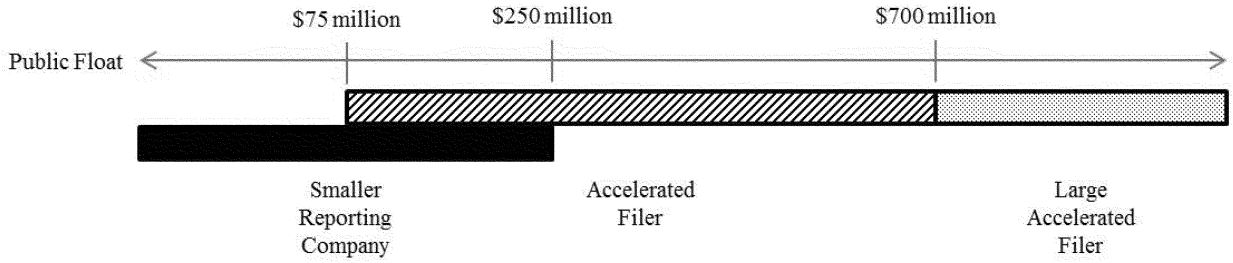
[105] Paragraphs (1)(iv) of the accelerated filer definition and (2)(iv) of the large accelerated filer definition in Exchange Act Rule 12b–2.

[106] The public float thresholds for exiting SRC status and entering accelerated filer status currently are both $75 million, and the determinations are both made as of the last business day of a registrant's most recently completed second fiscal quarter for purposes of the following fiscal year.

Increasing the SRC public float threshold to $250 million without eliminating the SRC provision from the accelerated filer definition would exclude from the definition of accelerated filer those registrants that are newly eligible to use the SRC disclosure requirements, keeping the thresholds for both definitions linked as they have been historically.

The Commission proposed to eliminate the provision in the accelerated filer definition that excludes SRCs to maintain the current thresholds at which registrants are subject to the accelerated filer disclosure and filing requirements. As a result, as illustrated in Figure 2, some registrants would qualify as both SRCs and accelerated filers.

Figure 2: Proposed Definitions of SRC, Accelerated Filer and Large Accelerated Filer



As discussed in the Proposing Release, the public float threshold for entering large accelerated filer status currently is $700 million, so newly eligible SRCs under the proposed increased public float threshold of $250 million would not include any registrants that currently qualify as large accelerated filers. Nevertheless, the Commission proposed to eliminate this provision because it currently does not capture any registrants, would not have captured any registrants under the proposed amendments, and could lead to confusion if retained.

2. Comments

Some commenters responded to the Commission's solicitation of comment on this issue by supporting the elimination of the provisions in the accelerated filer and large accelerated filer definitions that specifically exclude registrants that are eligible to use the SRC disclosure requirements for their annual or quarterly reports.[107] One commenter stated that it found no compelling argument to support what it sees as a weakening of investor protections, particularly in light of the 2011 Staff Section 404(b) Study [108] finding that accelerated filers subject to Section 404(b) had a lower restatement rate compared to non-accelerated filers not subject to Section 404(b).[109] Another commenter recommended that the Commission undertake a separate rulemaking before deciding whether to change the Section 404(b) requirements.[110] A third commenter recommended that the Commission provide more time for registrants with a public float of less than $250 million to file their periodic reports.[111]

In contrast, many commenters responded to the Commission's solicitation of comment on this issue by recommending that the Commission increase the thresholds in the accelerated filer definition, consistent with the changes to the SRC definition.[112] Commenters recommended increasing the public float threshold in the accelerated filer definition to reduce compliance costs [113] and to maintain uniformity across our rules.[114] Many of these commenters stated that Section 404(b) is particularly costly for SRCs and emerging businesses [115] and that audit costs associated with Section 404(b) divert capital from core business needs.[116]

Several commenters addressed the costs associated with complying with the requirements of Section 404(b).[117] A few commenters stated that, for many growing biotechnology companies, the Section 404(b) audit represents over $1 million of capital diversion.[118] One commenter indicated that Section 404(b) compliance imposes a significant burden on emerging biotech companies, citing the 2011 Staff Section 404(b) Study that estimated that companies with a public float between $75 million and $250 million spend, on average, $840,276 to comply with Section 404(b).[119] Another commenter estimated that it will spend more than $400,000 annually on compliance with Section 404(b).[120] One commenter that

[107] *See* BDO; CAQ/CII; CFA Institute; Letter from Deloitte, August 23, 2016 (''Deloitte''); and EY.

[108] Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 For Issuers With Public Float Between $75 and $250 Million (Apr. 2011), available at *https://www.sec.gov/news/studies/2011/404bfloat-study.pdf.*

[109] *See* CFA Institute, citing 2011 Staff Section 404(b) Study.

[110] *See* EY.

[111] *See* BDO.

[112] *See* Acorda, et al.; AMTA; BIO; Calithera; CONNECT; Coalition; CSBA; ICBA; Letter from The Dixie Group, Inc., July 11, 2016 (''Dixie''); MidSouth; Nasdaq; NVCA; NYSE; and Seneca.

[113] *See* Acorda, et al.; AMTA; BIO; Calithera; CONNECT; Coalition; CSBA; ICBA; Dixie; MidSouth; Nasdaq; NVCA; NYSE; and Seneca.

[114] *See* BIO (stating that uniformity alone is a sufficiently compelling argument to align the two definitions, that avoiding investor confusion is an important responsibility of the SEC, and that issuers and investors alike are used to having one standard for small company status); Coalition; Nasdaq; NVCA; and NYSE.

[115] *See* Acorda, et al.; AMTA; BIO; Calithera; Coalition; CONNECT; CSBA; and Seneca. *See also* Dixie.

[116] *See* Acorda, et al.; BIO; CSBA; ICBA; and NVCA.

[117] *See* Acorda, et al.; BIO; Calithera; CONNECT; CSBA (stating that ''accelerated filers spend, on average, more than $1 million complying with Section 404(b)''); Dixie; and Seneca.

[118] *See* Acorda, et al.; and CONNECT. *See also* CSBA.

[119] *See* BIO.

[120] *See* Calithera. This estimate is generally consistent with the estimate set forth by a presenter at a recent ACSEC meeting. The presenter stated that some biotechnology companies that anticipate losing their status as EGCs in the next few years ''believe they will incur somewhere between $150,000 to $350,000 in additional audit fees, $50,000 to $150,000 in other consulting costs and either $40,000 or as much as $200,000 for internal

stated that its public float was more than $75 million but less than $250 million estimated that relief from Section 404(b) would result in a 35% reduction in compliance costs whereas there would be no material change in such costs from the proposed amendments.[121] Another commenter noted that, while most firms already take an integrated accounting approach to Section 404(b) requirements that includes a complete internal control review, if smaller companies were exempt from Section 404(b), they would avoid the added legal liability of the auditor attestation, providing a savings opportunity and lowering the cost of being public for those companies.[122]

A few commenters stated that the market does not value the audit of such internal control [123] or that the costs of Section 404(b) outweigh the benefits.[124] Another commenter stated that expanding relief from Section 404(b) to registrants with a public float of less than $250 million would encourage capital formation because reduced audit and disclosure requirements may encourage companies that have been hesitant to go public to do so.[125]

A number of commenters recommended that the Commission allow a revenue test for the accelerated filer definition, similar to the amended revenue test being adopted by the Commission in the SRC definition.[126]

3. Final Amendments

As proposed, we are adopting amendments to the ''accelerated filer'' and ''large accelerated filer'' definitions in Exchange Act Rule 12b–2 to preserve the application of the current thresholds contained in those definitions.[127] Specifically, we are eliminating from the definitions of accelerated filer and large accelerated filer the exclusions for registrants that are eligible to use the SRC requirements under Regulation S–K for their annual and quarterly reports. After the amendments to the SRC definition become effective, some SRCs will exceed the public float thresholds for initial or subsequent qualification in the accelerated filer definition, and a few of these registrants also may exceed the public float threshold for subsequent qualification in the large accelerated filer definition.[128]

Although we are not raising the accelerated filer public float threshold or modifying the Section 404(b) requirements for registrants with a public float between $75 million and $250 million in this release, as stated above, the Chairman has directed the staff to formulate recommendations to the Commission for possible changes to reduce the number of registrants that our rules define as accelerated filers. Eliminating the SRC provision in the accelerated filer and large accelerated filer definitions will maintain the current thresholds at which registrants are subject to the accelerated filer and large accelerated filer disclosure and filing requirements. In 2007, the Commission noted that aligning the SRC public float threshold based on the levels established for non-accelerated filers [129] was practical and avoided regulatory complexity.[130] These amendments will change the current relationship between the SRC and ''accelerated filer'' definitions by allowing a registrant to qualify as both a SRC and an accelerated filer.[131] We acknowledge the regulatory complexity created by this potential overlap between the SRC and ''accelerated filer'' definitions.[132] As part of the staff's consideration of possible recommended amendments to the ''accelerated filer'' definition, the Chairman has directed the staff to consider, among other things, the historical and current relationship between the SRC and ''accelerated filer'' definitions.

III. Other Matters

If any of the provisions of these amendments, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

IV. Economic Analysis

As discussed above, we are adopting amendments to the definition of SRC as used in our rules and regulations. The amendments expand the number of registrants that are eligible to provide scaled disclosure to their investors and are intended to reduce compliance costs for these registrants and promote capital formation, while maintaining appropriate investor protections. Registrants with a public float of less than $250 million (an increase from the current $75 million threshold) will qualify as SRCs, as will registrants with no public float if their revenues are less than $100 million (an increase from the current $50 million threshold).[133] In addition, registrants with a public float of less than $700 million will qualify as SRCs if their revenues are less than $100 million.[134]

We also are making corresponding amendments to other rules in light of the new SRC definition. As proposed, we are adopting amendments to the ''accelerated filer'' and ''large accelerated filer'' definitions in Exchange Act Rule 12b–2 to preserve the application of the public float thresholds in those definitions. In addition, we are amending Rule 3–05(b)(2)(iv) of Regulation S–X to increase the revenue threshold under which certain registrants may omit the earliest of the three fiscal years of

labor.'' *See* Transcript of Presentation by William Newell at September 13, 2017 ACSEC Meeting available at *https://www.sec.gov/info/smallbus/acsec/acsec-transcript-091317.pdf* (pages 49 to 54); *see also* Newell, William J., ''Sarbanes-Oxley Section 404(b): Costs of Compliance and Proposed Reforms'', presentation at ACSEC meeting on Sept. 13, 2017 available at *https://www.sec.gov/info/smallbus/acsec/william-newell-acsec-091317.pdf.*

[121] *See* Seneca.

[122] *See* Dixie.

[123] *See* Acorda, et al. (stating that the market does not demand a Section 404(b) audit as a prerequisite for investing in emerging, innovative companies and that virtually no EGCs are voluntarily forgoing their exemption from Section 404(b)). *See also* Dixie.

[124] *See* MidSouth.

[125] *See* ICBA (citing a 2005 ICBA study that estimated that audit fees for publicly held bank holding companies would drop dramatically—some by as much as 50%—if they were exempted from Section 404(b)).

[126] *See* Acorda, et al.; AMTA; BIO; CONNECT; Calithera; CSBA; Nasdaq; and NYSE.

[127] *See* ''accelerated filer'' and ''large accelerated filer'' definitions in Exchange Act Rule 12b–2.

[128] The only registrants that would qualify as both SRCs and large accelerated filers would be those companies (1) that previously qualified as large accelerated filers because at one time their public float was $700 million or more, (2) whose revenues for the most recent fiscal year were less than $100 million, and (3) whose public float as of the end of the most recent second quarter was less than $560 million, such that they now qualify as SRCs, but not less than $500 million, such that they are not eligible to exit large accelerated filer status.

[129] A non-accelerated filer is a filer that is not an ''accelerated filer'' or a ''large accelerated filer.'' *See* subpart (3) of the accelerated filer and large accelerated filer definitions in Exchange Act Rule 12b–2 [17 CFR 240.12b–2].

[130] *See* SRC Adopting Release 73 FR at 942.

[131] In conjunction with these amendments, we also are adopting technical revisions to Securities Act Forms S–1, S–3, S–4, S–8, and S–11 and Exchange Act Forms 10, 10–Q and 10–K. These amendments modify the cover page of the specified forms to remove the parenthetical next to the ''non-accelerated filer'' definition that states ''(Do not check if a smaller reporting company).'' After these amendments, a registrant should check all applicable boxes on the cover page addressing, among other things, non-accelerated, accelerated, and large accelerated filer status, SRC status, and emerging growth company status.

[132] Several commenters specifically recommended increasing the public float threshold in the accelerated filer definition to, among other things, maintain uniformity across our rules. *See* BIO; Coalition; Nasdaq; NVCA; and NYSE.

[133] *See* note 29 and related text for a discussion of how and when public float is calculated and when revenues are measured.

[134] The Commission received a number of comments in support of expanding the definition of SRC to include a revenue test for registrants with a public float. *See* Section II.A.1.b.

audited financial statements of an acquired business or business to be acquired.

We are mindful of the costs and benefits of the amendments. In this economic analysis, we examine the existing baseline, which consists of the current regulatory framework and market practices, and discuss the potential costs and benefits of the amendments, relative to this baseline, and their potential effects on efficiency, competition, and capital formation.[135] We also consider the potential costs and benefits of reasonable alternatives to the amendments. Where practicable, we have attempted to quantify the economic effects of the amendments; however, in certain cases, we are unable to do so because either the necessary data are unavailable or the economic effects are not quantifiable. In these cases, we provide a qualitative assessment of the likely economic effects.

A. Baseline

In calendar year 2016, 7,395 registrants filed a Form 10–K with the Commission. Excluding investment companies, business development companies, and ABS issuers, which are not eligible for SRC status, 6,739 registrants filed a Form 10–K in calendar year 2016. Of these registrants, 2,592 (35.1% of all registrants) claimed SRC status by checking the box on the cover page of their Forms 10–K indicating that the registrant was a SRC. Under the current definition, a registrant with a public float may qualify as a SRC if its public float is less than $75 million or a registrant with no public float may qualify as a SRC if its annual revenues are less than $50 million. An additional 232 filers in calendar year 2016 reported public float of less than $75 million or no public float and revenues of less than $50 million, but did not check the box on the cover page of their Forms 10–K indicating that they were SRCs.[136] Of the 2,592 registrants that claimed SRC status in 2016, 1,899 registrants (25.7% of all registrants) reported having a public float that was less than $75 million and 509 registrants (6.9% of all registrants) reported having no public float and revenues of less than $50 million.[137] Of the 2,592 SRCs, 833 (11.3% of all registrants) also indicated in their filings that they were EGCs.[138]

Table 1 summarizes the number and percentage of registrants that claimed SRC status in each calendar year over the 2013–2016 period.

TABLE 1—SRCs IN 2013–2016 PERIOD

Filing year	Total # of registrants	# of SRCs	% of total	Qualified based on public float <$75 million (% of Total)	Qualified based on no public float and revenue <$50 million (% of Total)
2013	7,624	3,380	44.3	33.5	10.8
2014	7,642	3,179	41.6	32.7	8.9
2015	7,557	2,900	38.4	29.7	8.7
2016	7,395	2,592	35.1	25.7	6.9

Table 2 shows that, while registrants claiming SRC status with available data account for a substantial percentage of the total number of registrants in calendar year 2016, they account for less than one percent of the entire public float, market value and revenue of all registrants.[139]

TABLE 2—SIZE PROXIES FOR SRCs IN 2016

	Public float	Market value	Revenue
Mean	$14.7 million	$57.2 million	$42.8 million.
Median	4.3 million	14.1 million	1.9 million.
Aggregate size	40.1 billion	98.7 billion	96.2 billion.
% of the aggregate size of all registrants.	0.15%	0.34%	0.66%.

[135] Section 23(a)(2) of the Exchange Act requires us, when adopting rules, to consider the impact that any new rule would have on competition. In addition, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act direct us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[136] There are two potential explanations for why the number of registrants meeting the SRC thresholds exceeds the number of reported SRCs. First, the public float and revenue thresholds establish eligibility for SRC status, but do not require eligible registrants to take advantage of the scaled disclosure requirements. Thus, some registrants may be opting out of SRC status if they do not find the reduced compliance costs to be net beneficial. Second, some registrants that appear to be eligible may not be if they previously exceeded the SRC threshold and were required to meet the lower eligibility threshold (*i.e.,* public float of less than $50 million or revenues of less than $40 million) to subsequently qualify as a SRC.

[137] Based on analysis by DERA of available data. Staff obtained the SRC status and public float data from information extracted from exhibits to corporate financial reports filed with the Commission using eXtensible Business Reporting Language (''XBRL''), available at: *http://www.sec.gov/dera/data/financial-statement-data-sets.html.* Staff also extracted the SRC status and public float directly from Forms 10–K using a computer program. For robustness, staff compared the SRC status and public float information between the two sources and corrected discrepancies using data from Ives Group Audit Analytics. Staff extracted annual revenue data from the Compustat database and XBRL data in Form 10–K filings.

[138] Staff determined whether a registrant claimed EGC status by parsing several types of filings (for example, Forms S–1, S–1/A, 10–K, 10–Q, 8–K, 20–F/40–F, and 6–K) filed by that registrant with supplemental data drawn from Ives Group Audit Analytics.

[139] Compustat data on market value is obtained for calendar year 2016 filings. Staff obtained revenue data either from XBRL data in Form 10–K filings or directly from the filing itself. The summary statistics presented in Table 2 represent those registrants for which information on public float and revenue is concurrently available. Market value, as used throughout this Economic Analysis, is equivalent to market capitalization and presented for registrants with available data (described in footnote 25).

Table 3 shows the distribution of registrants that were eligible for SRC status based on available data in calendar year 2016 using the Fama-French 49-industry classification.[140] The ''Business Services'' industry accounts for 10.6% of all SRCs, followed by ''Financial Trading'' (9.8%), ''Pharmaceutical Products'' (8.5%), ''Banking'' (7.1%), ''Petroleum and Natural Gas'' (5.6%), and ''Computer Software'' (5.2%).[141] We note that industries with a larger fixed component of operating costs, such as shipping, defense, and aircraft, tend to have fewer SRCs.

TABLE 3—INDUSTRY DISTRIBUTION OF SRCS IN 2016

Industry ID	Industry	# of SRCs	% of all SRCs	Industry ID	Industry	# of SRCs	% of all SRCs
1	Agriculture	26	1.0	26	Defense	2	0.1
2	Food Products	35	1.3	27	Precious Metals	38	1.4
3	Candy & Soda	3	0.1	28	Non-Metallic and Industrial Metal Mining.	76	2.9
4	Beer & Liquor	18	0.7	29	Coal	3	0.1
5	Tobacco Products.	9	0.3	30	Petroleum and Natural Gas.	149	5.6
6	Recreation	23	0.8	31	Utilities	15	0.6
7	Entertainment	55	2.0	32	Communication	45	1.7
8	Printing and Publishing.	8	0.3	33	Personal Services.	37	1.4
9	Consumer Goods	40	1.6	34	Business Services.	281	10.7
10	Apparel	17	0.6	35	Computers	22	0.8
11	Healthcare	37	1.4	36	Computer Software.	136	5.2
12	Medical Equipment.	116	4.4	37	Electronic Equipment.	102	3.9
13	Pharmaceutical Products.	225	8.5	38	Measuring and Control Equipment.	41	1.6
14	Chemicals	54	2.1	39	Business Supplies.	6	0.2
15	Rubber and Plastic Products.	20	0.8	40	Shipping Containers.	2	0.1
16	Textiles	4	0.2	41	Transportation	24	0.9
17	Construction Materials.	29	1.1	42	Wholesale	78	3.0
18	Construction	22	0.8	43	Retail	82	3.1
19	Steel Works	9	0.3	44	Restaurants, Hotels, Motels.	28	1.1
20	Fabricated Products.	5	0.2	45	Banking	187	7.1
21	Machinery	54	2.0	46	Insurance	20	0.8
22	Electrical Equipment.	39	1.5	47	Real Estate	96	3.6
23	Automobiles and Trucks.	21	0.8	48	Financial Trading	258	9.8
24	Aircraft	8	0.3		Other and Unknown.	30	1.1
25	Shipbuilding, Railroad Equipment.	3	0.1				

As discussed above, we are amending Rule 3–05(b)(2)(iv) of Regulation S–X to increase the revenue threshold under which certain registrants may omit the earliest of the three fiscal years of audited financial statements of an acquired business or business to be acquired. Rule 3–05 applies to registrants that are not SRCs.[142] Rule 3–05(b)(2)(iv) provides that, if the acquired business is large enough relative to the registrant (*i.e.,* any of the significant subsidiary tests for the acquired business exceed 50%), the registrant must file three years of historical financial statements of the acquired business unless the acquired business has revenues of less than $50 million, in which case only two years of the acquired business's most recent financial statements need to be filed. Given the difficulty in accurately identifying registrants that have acquisitions (1) that meet any of the significant subsidiary tests at the 50% level and (2) where the acquired business has revenues of less than $50 million, we are unable to estimate the number of registrants that were affected by the $50 million revenue threshold in

[140] The standard Fama-French classification sorts Standard Industry Classification codes into 49 main industrial categories; available at: *http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/Data_Library/det_49_ind_port.html.*

[141] In 2016, SRCs accounted for 57% of all Form 10–K filers in ''Business Services,'' 37% in ''Financial Trading,'' 20% in ''Banking,'' 39% in ''Pharmaceutical Products,'' 50% in ''Petroleum and Natural Gas'' and 47% in ''Computer Software,'' suggesting that these industries all have a fairly high concentration of small registrants.

[142] Rule 8–04 of Regulation S–X [17 CFR 210.8–04] applies to financial statements of business acquired or to be acquired by SRCs.

Rule 3–05(b)(2)(iv) in 2016. We do not believe the disclosure accommodation in Rule 3–05(b)(2)(iv) is frequently used because the acquired business not only would need to meet one of the significant subsidiary thresholds at the 50% level compared to the non-SRC acquirer, but also would need to have less than $50 million of revenues in its most recent fiscal year.

B. Potential Economic Effects

1. Introduction

The primary benefit stemming from the amendments is a reduction in compliance costs for the registrants that will newly qualify for SRC status. To the extent that the reduced compliance costs have a fixed cost component,[143] which typically burdens smaller registrants disproportionately, the cost savings may be particularly helpful for those registrants.

As a secondary effect of the amendments, a lower disclosure burden could spur growth in the registrants that will newly qualify for SRC status to the extent that the compliance cost savings and other resources (*e.g.,* managerial effort) otherwise devoted to disclosure and compliance are productively deployed in alternative ways. It also could encourage capital formation because companies that may have been hesitant to go public may choose to do so if they face reduced disclosure requirements.

With respect to costs, we expect that the amendments to the SRC definition will result in a modest change in some indicators of the overall quality of the information environment. Generally, a decrease in the amount of direct disclosure could increase the information asymmetry between investors and company insiders, leading to lower liquidity and higher costs of capital for the affected registrants. For example, one study found that, during the three-month period following the establishment of the SRC definition, registrants with public floats of $25 million or more and less than $75 million that claimed SRC status experienced a significant reduction in liquidity relative to comparable registrants.[144] In addition, one of the sources of information asymmetry under the amendments will be that the newly eligible SRCs will not be required to provide certain executive compensation disclosures, potentially lowering corporate governance transparency of these registrants.[145] Furthermore, by introducing overlap between the SRC and the accelerated filer definitions, the amendments we are adopting would increase regulatory complexity.[146]

The number of affected registrants that will make scaled disclosures will ultimately depend on the choices of those registrants. That is, the SRC definition establishes eligibility for, but does not mandate reliance on, any of the scaled disclosure accommodations.[147] We identified 232 registrants in 2016 that met either the $75 million public float threshold or the $50 million revenue threshold for SRC status but did not claim SRC status. While some of these registrants may not have been eligible (for example, a registrant that previously did not qualify as a SRC because it exceeded the thresholds and is now subject to a lower threshold), it is possible that some elected not to avail themselves of the scaled disclosure requirements.[148]

Under the amendments, we expect registrants will weigh their own costs and benefits of scaled disclosure and decide whether to take advantage of any of the scaled disclosure accommodations for which they are newly eligible. Some registrants may determine that the costs of potentially reduced liquidity for their securities and higher cost of capital exceed the benefits of the lower compliance costs. Those registrants may elect not to rely on the scaled disclosure accommodations available to them. On the other hand, expanding SRC eligibility could provide opportunities for adverse selection in a greater number of registrants. For example, registrants whose outside investors would have benefited from more disclosure might choose the less burdensome disclosure requirement once becoming eligible. The net benefit or cost for each newly eligible registrant and its investors will ultimately depend on the specific facts and circumstances.

Expanding the pool of registrants eligible for SRC status to include registrants with revenues of less than $100 million and a public float of $250 million or more and less than $700 million will increase the cost savings, information asymmetries, and other effects of scaled disclosure in proportion to the increase in the number of registrants that become newly eligible at those higher thresholds and choose to avail themselves of the scaled disclosure accommodation. This number is likely to be small, as indicated by the evidence that 161 (2.2%) of the registrants that filed a Form 10–K in 2016 would have met the thresholds in the amended revenue test for registrants with public float.

The effects of scaled disclosure for registrants with a public float of $250 million or more and less than $700 million and revenues of less than $100 million may be different from the effects of scaled disclosure for registrants with public float nearer to the current threshold of $75 million. This is because the characteristics of registrants eligible for SRC status under the final rules may be different from those of registrants close to the current threshold. For example, differences in the relationships between management and outside investors in registrants with higher public float could affect the level of information asymmetries between those registrants and investors. This may cause those registrants to make different decisions about how much information they choose to disclose and whether to rely on the scaled disclosure accommodations, leading to differences in the observed use of scaled disclosure by different registrants of the same size. The 161 additional registrants had an average public float of $396 million, while those that qualify under the current definition had an average public float of $15 million, and those that would have qualified under the proposed rules had an average public

[143] *See, e.g.,* William A. Brock & David S. Evans, *The Economics of Small Businesses: Their Role and Regulation in the U.S. Economy* 65 at 70 (1986); C. Steven Bradford, *Does Size Matter? An Economic Analysis of Small Business Exemptions from Regulation,* College of Law, Faculty Publications. 72 (2004). *See also* Cindy R. Alexander et al., *Economic Effects of SOX Section 404 Compliance: A Corporate Insider Perspective,* 56 J. Account. & Econ. 267–290 at 285 (2013) (noting, among other things, that they found ''evidence of fixed costs that weigh disproportionately on smaller firms'').

[144] *See* Lin Cheng, Scott Liao, and Haiwen Zhang, *Commitment Effect versus Information Effect of Disclosure: Evidence from Smaller Reporting Companies,* 88 Account. Rev. 1239 (Jul. 2013).

[145] For a review of the effects of executive compensation disclosures on compensation practices, *see* Kevin J. Murphy, ''Executive compensation: Where we are, and how we got there,'' Handbook of the Economics of Finance, Vol. 2. Elsevier (2013) 211–356. *See also* Benjamin E. Hermalin and Michael S. Weisbach, *Information Disclosure and Corporate Governance,* 67 J. Fin. 195 (2012), and Anya Kleymenova and Irem A. Tuna, Regulation of Compensation (June 21, 2017), Chicago Booth Research Paper No. 16–07, *available at* SSRN: *https://ssrn.com/abstract=2755621.*

[146] *See* SRC Adopting Release 73 FR at 942.

[147] If a disclosure requirement applicable to SRCs is more stringent than for non-SRCs, however, SRCs must comply with the more stringent standard. Item 404 is the only Regulation S–K disclosure requirement that could be more stringent.

[148] Data from 2008 show that registrants do not always take advantage of scaled disclosure. In a sample of 283 registrants that were newly eligible for scaled disclosure in 2008, the evidence from Form 10–K and proxy filings by those registrants shows that 109 of the registrants chose to maintain their disclosure level for all ten eligible items, while 174 of the registrants reduced the disclosure level for at least one eligible item. *See* Lin Cheng, Scott Liao, and Haiwen Zhang, *Commitment Effect versus Information Effect of Disclosure: Evidence from Smaller Reporting Companies,* 88 Account. Rev. 1239 (Jul. 2013) at 1247.

float of $55 million. These differences can affect whether a registrant decides to rely on scaled disclosure and how that decision affects the registrant's investors. We do not have sufficient information about the experiences of registrants at the higher public float levels with lower revenues implementing scaled disclosure to estimate the frequency with which these registrants will implement scaled disclosure, if available.

Similarly, increasing the revenue threshold below which registrants are eligible to provide two rather than three years of certain acquired businesses' historical financial statements under Rule 3–05(b)(2)(iv) from $50 million to $100 million will increase the cost savings, information asymmetries, and other effects of the reduced historical financial statement disclosure that investors receive at or around the time of the acquisition in proportion to the increase in the number of registrants that acquire businesses with revenues below the higher threshold and choose to avail themselves of this disclosure accommodation.

Overall, we expect the effect of raising the revenue threshold in Rule 3–05(b)(2)(iv) of Regulation S–X from $50 million to $100 million on information disclosed by registrants and its consequences for registrants and investors to be modest. This reflects our appraisal that few registrants are eligible to provide two rather than three years of an acquired business's historical financial statements under Rule 3–05(b)(2)(iv), because the acquired business not only would need to meet one of the significant subsidiary thresholds at the 50% level compared to the non-SRC acquirer, but the acquired business also would need to have less than the $50 million of revenues in its most recent fiscal year.[149] The amendments we are adopting will have two potentially countervailing effects on the number of registrants that are eligible for the disclosure accommodation in Rule 3–05(b)(2)(iv). First, they will increase the number of registrants that are eligible to provide two rather than three years of an acquired business's historical financial statements under Rule 3–05(b)(2)(iv) by raising the revenue threshold for eligibility. Second, they will reduce the number of registrants that are required to comply with Rule 3–05, because Rule 3–05 is only applicable to registrants that are not SRCs, and our final rules are likely to increase the number of SRCs. Thus, the net effect may be to increase the number of registrants eligible to provide two rather than three years of an acquired business's historical financial statements under Rule 3–05(b)(2)(iv), but we do not expect the net increase to be significant.

2. Impact on Eligibility for Smaller Reporting Company Status

By increasing the public float threshold from $75 million to $250 million, increasing the annual revenue threshold for registrants with no public float from $50 million to $100 million, and expanding the revenue test to include registrants with a public float of less than $700 million and revenues of less than $100 million in the SRC definition, the amendments will permit more registrants to qualify as SRCs. To estimate the number of additional registrants that are likely to be affected by the amendments, we use public float data and revenue data from Form 10–K filings.[150] Our estimate of the number of registrants likely to be eligible in the first year under the new definition that would not have qualified under the current definition is the number that would have been eligible had the rule been in effect. We use evidence on the composition of those registrants from the 2016 data to estimate the likely composition of the registrants that would be eligible in the first year under the new definition.

We estimate that 966 additional registrants will be eligible for SRC status in the first year under the new definition. These registrants estimated to be eligible in the first year comprise 779 registrants with a public float of $75 million or more and less than $250 million, 26 registrants with no public float and revenues of $50 million or more and less than $100 million, and 161 registrants with a public float of $250 million or more and less than $700 million and revenues of less than $100 million.

The 966 registrants that we estimate will be newly eligible for SRC status are characterized by an average public float of $191 million (median $162 million), an average market value of $279 million (median $201 million), and average revenues of $196 million (median $68 million). Of these registrants, 365 currently are EGCs and are eligible for certain scaled disclosure under Title I of the JOBS Act, including the scaled executive compensation disclosures available to SRCs under Item 402 of Regulation S–K. The newly eligible registrants with available data in 2016 were concentrated in the following industries: ''Pharmaceutical Products'' (17.3%), ''Banking'' (15.2%), ''Financial Trading'' (11.8%), ''Business Services'' (5.2%), and ''Electronic Equipment'' (3.7%). If the distribution of eligible registrants does not change over time, and if all of them claim SRC status, the amendments will lead to a noticeable increase in the presence of ''Pharmaceutical Products'' and ''Banking'' registrants in the pool of SRCs.

Registrants eligible for SRC status with available data using the public float threshold of less than $250 million represent approximately 38.6% of all registrants, while only 28.0% of all registrants qualify under the existing public float threshold of less than $75 million. The 38.6% of all registrants that will qualify under the public float threshold would be more in line with the 42% of registrants that qualified under the public float threshold when the Commission first established the definition of SRC.[151] An additional 8.0% of registrants will qualify based on having no public float and revenues of less than $100 million, while currently 7.7% of registrants reported having no public float and less than $50 million in revenues.[152] Finally, based on the 2016 data, 2.2% of registrants had a public float of $250 million or more and less than $700 million and revenues of less than $100 million.

Increasing the percentage of registrants that will qualify under the public float threshold to align more closely with the 2007 level is consistent with the rise in market capitalization of public companies that has occurred

[149] *See* text accompanying note 146.

[150] Float and revenue values are from data in Form 10–K filings filed in calendar year 2016 and extracted from XBRL exhibits.

[151] These percentages reflect the estimated number of registrants that qualify under the respective public float tests and do not include any registrants that are estimated to qualify under the respective revenue tests.

[152] Using 2016 data, we estimate that, of the 7,395 total registrants that filed Forms 10–K with available data, 3,606 registrants will meet one of the SRC thresholds under the amendments. In particular, we estimate that 2,851 registrants reported public float below $250 million and greater than zero in 2016, resulting in a percentage of 38.6% (2,851/7,395) of registrants potentially qualifying as SRCs under the amended public float threshold, and 2,072 registrants reported a public float below $75 million in 2016, resulting in a percentage of 28.0% (2,072/7,395). Also, we estimate that 594 registrants reported no public float and annual revenues below $100 million in 2016, resulting in a percentage of 8.0% (594/7,395) of registrants potentially qualifying as SRCs under the amended revenue threshold, and 568 registrants reported no public float and annual revenues below $50 million in 2016, resulting in a percentage of 7.7% (568/7,395). Finally, we estimate that 161 registrants reported public float of $250 million or more and less than $700 million and annual revenues below $100 million in 2016, resulting in an additional 2.2% (161/7,395) of registrants potentially qualifying as SRCs.

since that time.[153] We do not have sufficient data to be able to compare the percentage of registrants qualifying under the revenue threshold when the Commission first established the definition of SRC to the estimated 8.0% that will qualify using a revenue threshold of $100 million. Table 4 summarizes the size of the potential SRCs in terms of public float, market value, and annual revenue under the amendments.

TABLE 4—SIZE PROXIES FOR SRCS ELIGIBLE UNDER THE AMENDMENTS

	Public float	Market value	Revenue
Mean	$59.9 million	$480.1 million	$317.7 million.
Median	$12.1 million	$40.9 million	$10.3 million.
Aggregate size	$202.6 billion	$1,220.5 billion	$1,074.0 billion.
% of the aggregate size of all registrants.	0.9%	4.8%	8.7%.

As discussed above, we are amending Rule 3–05(b)(2)(iv) of Regulation S–X to increase the revenue threshold under which certain registrants may omit the earliest of the three fiscal years of audited financial statements of an acquired business or business to be acquired. Similar to the baseline discussion of Rule 3–05, given the difficulty in accurately identifying registrants that have acquisitions (1) that meet any of the significant subsidiary tests at the 50% level and (2) where the acquired business has revenues of less than $100 million, we are unable to estimate the number of registrants that will be affected by raising the revenue threshold in Rule 3–05(b)(2)(iv) from $50 million to $100 million. The amendments we are adopting today increase the number of registrants that qualify as SRCs (which will likely decrease the application of Rule 3–05) but also increase the revenue threshold in Rule 3–05(b)(2)(iv) (which may offset the decreased number of companies affected by Rule 3–05). Therefore, we do not expect that the amendments will significantly alter the number of registrants that will be eligible to omit the earliest of three years of financial statements of an acquired business pursuant to Rule 3–05(b)(2)(iv).

3. Estimation of Potential Costs and Benefits

In this section, we estimate the incremental costs and benefits associated with SRC-related scaled disclosures, using a multivariate empirical analysis. We cannot isolate the costs and benefits associated with scaled disclosures using available data from SRCs, because we cannot with the data isolate the effects of scaled disclosures from the effects of some other accommodations, such as the exemption from Section 404(b) that is currently available to all SRCs through their status as non-accelerated filers.[154] Under the final rules, some newly eligible SRCs will be able to provide scaled disclosures but will continue to be subject to Section 404(b) as accelerated filers.

It is possible, however, to isolate the effects of scaled disclosures on registrants with public float slightly below or above the current $75 million public float threshold using 2006–2009 data. This is because, as a result of the rules that established the SRC definition in 2007, registrants with public float of $25 million or more and less than $75 million experienced no change in the Section 404(b) exemption (that is, they remained exempt from the requirement), but became eligible for the SRC scaled disclosures. Our empirical method is a difference-in-difference estimation between a treatment group and a control group that is the basis for comparison.[155] In particular, the treatment group (''Treatment Group'') consists of registrants with public float of $25 million or more and less than $75 million that claimed SRC status in 2008. Two natural control groups exist. The first (''Control Group 1'') consists of registrants that did not qualify for SRC status because they had public float at or just above $75 million ($75 million or more and less than $125 million).[156] The second (''Control Group 2'') consists of registrants with public float and revenues below $25 million that were already eligible for scaled disclosures at that time and thus not affected by the Commission's 2007 rules.[157]

To analyze the economic effects of eligibility for scaled disclosures resulting from the Commission's 2007 rules by this method, we compare the Treatment Group with Control Group 1 and Control Group 2 in the following areas: Cost savings, information environment, liquidity, and growth. We then use the analysis to extrapolate the likely effects of the expansion of eligibility for SRC status under the final rules. In extrapolating the likely effects, we place particular emphasis on the comparison between the Treatment Group and Control Group 1, which represents a closer group in size to the newly eligible SRCs under the final rules.

We believe that the evidence from analysis of changes in the information environments of registrants around the 2007 amendments is a suitable basis for evaluating the effects of the current amendments on registrants with public floats at the low end of the range that are newly eligible for scaled disclosure. We included a similar analysis in the Proposing Release and solicited comments on this analysis, including ways to better quantify the effects of scaled disclosure on SRCs, but did not receive any comments in response.

[153] For example, the S&P 500 index grew by more than 80 percent over the decade ending with the fourth quarter of 2017. Source: CRSP and St. Louis Fed (*https://fred.stlouisfed.org/series/GDPDEF*).

[154] Although there is a clear threshold for eligibility, we cannot use the well-known empirical method of Regression Discontinuity Design to assess the treatment effect of scaled disclosures for SRCs. This method requires that the assignment of the treatment among registrants be ''as good as random'' around the threshold. Under this assumption, the registrants that receive the treatment of scaled disclosure (*i.e.,* SRCs) should be comparable to those registrants that do not receive the treatment because their public float is just above the $75 million threshold. Given the exemption from Section 404(b) available to current SRCs with public float below $75 million, this assumption does not hold.

[155] Difference-in-difference is a technique used to calculate the effect of a variable on a treatment group versus a control group. In particular, in the analysis below, the average change over time in the outcome of a variable for the treatment group is compared to the average change over time in the outcome of that variable for the control group.

[156] This would allow for a $50 million bandwidth similar to that used in the Commission's 2007 rules, which raised the threshold for relief from $25 million to $75 million.

[157] The comparison groups help control for confounding factors that may also independently affect the economic effects associated with scaled disclosures. While we determine Treatment Group and Control Group 1 based on public float alone, we use both public float and revenues to determine Control Group 2, because, prior to the Commission's 2007 rules, registrants with public float below $25 million were not eligible for scaled disclosures if their revenues exceeded $25 million.

While the 2007 amendments resulted in changes that are similar to what we expect will occur under the current amendments, our analysis is subject to a number of assumptions and limitations. The evidence from the 2007 amendments may be less suitable as a basis for evaluating the effects of the current amendments on registrants with relatively higher levels of public float than for evaluating potential effects of the current amendments on registrants with public float around the $75 million threshold.[158] It is thus more challenging to quantify the likely effects of the current amendments on newly eligible SRCs with public float levels that are farther from the $75 million level, such as those closer to the $250 million and $700 million levels.[159] We believe those challenges may be less pronounced for registrants that have other characteristics, such as revenue, similar to those of the registrants that were affected by the prior rules.

a. Potential Cost Savings: Estimates Based on Changes in Audit Fees

The cost savings from scaled disclosures could include savings of resources that are likely to be used for the relevant parts of disclosures, for example, managerial and employee time, other internal resources, and audit fees related to certain disclosures. Among these potential savings, changes in audit fees are readily quantifiable. To the extent that the scaled disclosure accommodations affect information that must be audited, scaled disclosures of the audited portions of the filings should lead to a reduction in audit expenses. Because many of the scaled disclosures available to SRCs relate to governance and executive compensation disclosures that are not subject to audit, a reduction in audit fees is likely a small part of the total cost savings associated with scaled disclosures. However, quantifying the change in audit fees can potentially help us estimate the entire cost savings.

To estimate the cost savings from the amendments, we first examine changes in the audit fees of registrants that were newly eligible to use scaled disclosures as a result of the 2007 amendments relative to those in the control, or comparison, groups between the pre-amendment 2006–2007 period and the post-amendment 2008–2009 period. Audit fee data come from the Ives Group Audit Analytics database. We include only registrants that had both pre-amendment and post-amendment audit fee data in the analysis. Table 5 reflects the general results.

TABLE 5—PRE- AND POST-COMMISSION'S 2007 AMENDMENTS AUDIT FEES FOR SRCS AND CONTROL GROUPS

Fiscal year	Treatment Group (SRCs w/public float $25m–$75m)	Control Group 1 (Non-SRCs w/public float $75m–$125m)	Control Group 2 (SRCs w/public float and revenues below $25m)
Avg. 2006–2007	$311,105	$676,194	$113,757
Avg. 2008–2009	$267,252	$654,463	$101,854
Number of Observations	1,315	694	962

For SRCs with public floats of $25 million or more and less than $75 million, in 2008–2009, average audit fees declined by $43,853. In contrast, both Control Group 1, which just missed eligibility for SRC status, and Control Group 2, which already was eligible for scaled disclosures, experienced smaller declines in average audit fees after the adoption of the 2007 amendments: $21,731 and $11,903, respectively. Thus, the difference-in-difference estimate of the savings in audit fees associated with scaled disclosures is between $22,122 and $31,950 per SRC with public float around the $75 million threshold. Although two different control groups are used to control for other factors that may have caused the changes in audit fees noted in Table 5 during the 2006–2009 period,[160] the effect of the 2008 financial crisis may not be completely ruled out and could make the estimated savings in audit fees appear larger than they actually were.

We also estimate the savings in audit fees in terms of a percentage reduction, instead of a dollar value.[161] The audit fees for the Treatment Group declined by 14.1% in the 2008–2009 period relative to the 2006–2007 period, but only by 3.2% for Control Group 1 and 10.5% for Control Group 2. Thus, the difference-in-difference estimate of the treatment effect in terms of a percentage reduction is a 3.6% to 10.9% reduction in the audit fees.

For the 966 newly eligible registrants that we estimate would be potentially affected by the amendments, the average audit fees were $658,735 in fiscal year 2016. Thus, if we use the dollar value estimates of the audit fee savings, the estimated reduction in audit fees would be between $28,490 and $41,147 for this group, which are the inflation-adjusted values of the audit fee savings estimates in 2008 and 2009.[162] This estimate of savings on audit fees for the newly eligible registrants is approximately

[158] The 2007 rule amendments affected the reporting practices of registrants with public floats near the $75 million threshold (*i.e.,* $25 million or more and less than $75 million) and, accordingly, may indicate the effects of increasing the public float threshold on registrants with public float of $75 million or slightly more than $75 million.

[159] One limitation of difference-in-difference and regression discontinuity design studies of the effects of changes in regulatory rules is that their results are more applicable in evaluating the effects of the changes on the registrants whose characteristics most closely resemble those who were affected by the event under the analysis than in evaluating effects on other registrants. *See, e.g.,* Leuz and Wysocki (2016).

[160] For example, among other factors, we note that the Commission approved Public Company Accounting Oversight Board Auditing Standard No. 5 regarding Audits of Internal Control over Financial Reporting (AS 5). Among other things, AS 5 was intended to reduce unnecessary costs by making the audit scalable to fit the size and complexity of a company. AS 5 became effective in November 2007, and registrants with fiscal years ending between July and November were allowed to avail themselves of the provision earlier. The adoption and implementation of AS 5 in 2007 could have had an impact on the audit fees of all registrants subject to Section 404(b). Given that in our analysis both Treatment Group and Control Group 1 were affected by AS 5, however, the difference-in-difference methodology should control for the potential effects of AS 5 on audit fees. In addition, based on registrants' fiscal year end, we have no reason to believe that early adopters were more or less concentrated in Treatment Group than Control Group 1. *See also* Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 33–8810 (Jun. 20, 2007) [72 FR 35324 (Jun. 27, 2007)].

[161] If there is a fixed (dollar value) component in audit expenses that apply to registrants of all sizes, then the estimates under this alternative approach can be viewed as the upper bound of the potential audit fee savings.

[162] The inflation adjustment was performed using the CPI calculator of the Bureau of Labor Statistics (*http://data.bls.gov/cgi-bin/cpicalc.pl*).

4.3% ($28,491/$658,735) to 6.2% ($41,148/$658,735) of the audit fees.

We recognize that this analysis of the audit fee data is subject to a number of assumptions, some of which may not be fully applicable when estimating the potential change in audit expenses as a result of the amendments.[163] As a result, there are limitations to our ability to draw conclusions from the analysis. For example, we recognize that audit expenses are only one component of costs for registrants and that changes in audit fees do not capture the full range of potential cost savings stemming from scaled disclosures. There are cost savings apart from the audit, such as cost savings resulting from a SRC not being required to prepare a compensation discussion and analysis and from other scaled disclosures in Item 402 of Regulation S–K. These cost savings likely will include both internal cost savings (such as employee and managerial time and resources) and external cost savings from fees for other outside professionals such as attorneys. Given the nature of scaled disclosures available to SRCs, we expect these other cost savings to be much larger than the cost savings in audit fees. In the Proposing Release, we assumed that 25% of the total cost savings from scaled disclosure comes from savings in audit fees and 75% of the savings comes from reduction in other expenses. We solicited comments on this assumption and on whether we should use a different assumption but did not receive any comments in response. Accordingly, we use the same assumption here.

Given this assumption, we estimate total annual cost savings per newly eligible registrant with a public float around the $75 million threshold to be between $98,439 ($24,610 × 4) and $298,052 ($74,513 × 4). The savings to registrants that become newly eligible with public floats closer to the $250 million and $700 million thresholds, will vary from this estimate by amounts that are difficult to quantify, because these registrants are less comparable to the Control Groups, and will depend on the facts and circumstances of the newly eligible registrant. For example, the audit cost for some of these registrants may be higher as a result of greater complexity in their business operations, increasing the cost savings associated with SRC status.

b. Information Environment, Liquidity, and Growth

A registrant's information environment can be measured by the amount of useful information available to investors and the quality of that information. To gauge the potential effects on the degree of external information production about the registrant that could benefit investors, we determine a registrant's percentage of institutional ownership, total 5% block institutional ownership, and analyst coverage (*i.e.,* whether a registrant is covered by at least one analyst and the number of analysts).

To measure disclosure quality, we use four discretionary accrual measures commonly used in the accounting literature as proxies for earnings management and the incidence of material restatements (based on the first year of financial statements restated and the filing year). Scaled disclosure may contribute to lowering the overall quality of the information environment, which is proxied in this analysis by the propensity for earnings management and the incidence of material restatements.[164] The data on restatements are from the Ives Group Audit Analytics database. A material restatement is defined as a restatement that is reported under Item 4.02 of Form 8–K.

To examine the potential effects on liquidity, we focus on the share turnover ratio, which is calculated by dividing the total number of shares traded over a period by the number of shares outstanding. To assess the effects of scaled disclosures on growth, we examine a registrant's capital investment, which is measured by the capital expenditures to assets ratio, as a proxy for real growth. Because there is a high concentration of SRCs in industries for which research and development (''R&D'') investment is important (*e.g.,* pharmaceutical products and electronic equipment), we also examine a registrant's investment in R&D. Finally, we examine asset growth, which is the growth rate in book assets, which could capture a registrant's growth through both capital investment and acquisition.

Table 6 reports the estimated treatment effect. The number in the Treatment Group vs. Control Group 1 column reflects the difference between: (1) The average change in the metric for the Treatment Group, from the 2006–2007 period, when it was not eligible for scaled disclosure, to the 2008–2009 period, when it was eligible for scaled disclosure, and (2) the average change in the metric between the same periods for Control Group 1, which was never eligible for scaled disclosure. Similarly, the number in the Treatment Group vs. Control Group 2 column reflects the difference between: (1) The average change in the metric for the Treatment Group from the 2006–2007 period, when it was not eligible for scaled disclosure, to the 2008–2009 period, when it was eligible for scaled disclosure and (2) the average change in the metric between the same periods for Control Group 2, which had been eligible for scaled disclosure for both periods.[165]

TABLE 6—SCALED DISCLOSURES AND THE INFORMATION ENVIRONMENT, LIQUIDITY, AND GROWTH [166]

	Treatment Group vs. Control Group 1	Treatment Group vs. Control Group 2
Information Environment:		

[163] Estimates based on data from 2006 to 2009 may not be directly applicable to the estimation of audit fees for the newly eligible registrants under the rule amendments. On the one hand, because auditors may charge larger registrants more for auditing the same disclosure items, our estimate could be viewed as a conservative estimate on the potential savings of audit fees for the newly eligible SRCs. On the other hand, if there were any increased competition in the auditing industry since 2009, then it could have led to lower audit expenses for the same disclosure items. Thus, our estimate could be higher or lower than the actual savings on audit fees for SRCs in 2008 and 2009.

[164] In using these proxies, we do not mean to suggest that scaled disclosure would be expected to directly cause an increase in earnings management or an increased incidence of material restatements, as there is little direct connection between the types of disclosure governed by our scaled disclosure requirements and the disclosure affected by a restatement.

[165] Specifically, for each number reported in Table 6, we estimate the following equation:

$$y = a + b * SRC + c * After + d * [SRC * After]$$

where the single-letter terms ''*a*'' to ''*d*'' are coefficients to be estimated; ''SRC'' equals one for the treatment group and zero for the comparison group; and ''After'' equals one for fiscal years 2008 and 2009 and zero for fiscal years 2006 and 2007. The treatment effect is reflected in the coefficient estimate *d,* which is the differential value of the variable *y* for treated firms following the start of the treatment. A statistically negative estimate of *d* is consistent with a reduction in the value of the dependent variable *y* (Institutional Ownership, Institutional Block Ownership, etc.) for treated firms.

TABLE 6—SCALED DISCLOSURES AND THE INFORMATION ENVIRONMENT, LIQUIDITY, AND GROWTH [166]—Continued

	Treatment Group vs. Control Group 1	Treatment Group vs. Control Group 2
External Information Production:		
Institutional Ownership	*** −0.052	*** −0.022
Institutional Block Ownership	** −0.016	−0.002
Number of Analysts	−0.179	−0.068
Analyst Coverage Dummy	*** −0.099	*** 0.087
Information Environment:		
Disclosure Quality:		
Earnings Mgmt. 1	0.025	0.015
Earnings Mgmt. 2	0.024	0.013
Earnings Mgmt. 3	0.020	0.024
Earnings Mgmt. 4	0.018	0.023
Material Restatement (Filing Year)	0.018	0.015
Material Restatement (First Year Restated)	** 0.036	0.016
Liquidity:		
Share Turnover Ratio	−0.063	−0.052
Growth:		
Capital Investment	0.005	−0.005
R&D Investment	−0.035	−0.002
Asset Growth Rate	−0.005	*** −0.282

The results in Table 6 suggest that the scaled disclosures had a negative effect on institutional ownership. The Treatment Group, which became eligible for scaled disclosures, experienced a 5.2% greater decrease in average institutional ownership from period to period than the registrants in Control Group 1, which remained ineligible for scaled disclosures, and a 2.2% greater decrease in average institutional ownership from period to period than the registrants in Control Group 2, which were eligible for scaled disclosures throughout both periods.

The results reflect a positive effect on material restatements in SRCs based on the first year restated, while the effect on analyst coverage is inconclusive. SRCs tend to lose analyst coverage relative to comparable registrants that just missed eligibility, but they gain coverage relative to even smaller registrants that already were eligible for scaled disclosures. There is no statistically significant effect on earnings quality as captured by discretionary accruals measures or the incidence of material restatement based on when the restatement was filed. Overall, the evidence suggests a modest, but statistically significant, negative effect of scaled disclosure on SRCs' overall information environment.

The effect of scaled disclosures on share turnover ratio is negative but statistically insignificant, suggesting no significant effect of scaled disclosures on SRCs' liquidity.[167] Because the newly eligible registrants are larger in market value and have more institutional ownership and analyst coverage than the current SRCs, to the extent those registrants rely on the accommodations, we do not expect a significant negative impact on their liquidity.

The results in Table 6 indicate no clear difference between SRCs and registrants in Control Group 1 and Control Group 2 in terms of changes in capital investment and R&D investment. The effect on asset growth rate is mixed. There is no significant difference between the Treatment Group and Control Group 1, but compared to Control Group 2, the Treatment Group had deterioration in asset growth rate after the 2007 rules. Overall, our empirical analysis suggests that scaled disclosures have only a minimal effect on growth in current SRCs relative to the Control Groups. Thus, we do not expect the use of scaled disclosures to have a significant effect on the growth of the newly eligible registrants under the final rules.

c. Rule 3–05

Similar to our discussion of the amendments to the SRC definition, we generally expect a modest reduction in compliance costs for registrants that are eligible to provide two rather than three years of historical financial statements of certain acquired businesses under Rule 3–05(b)(2)(iv), with corresponding potential modest increases in information asymmetries. We expect the magnitude of the effects of the change in the revenue threshold in Rule 3–05(b)(2)(iv) to be smaller for those registrants that acquire relevant businesses and their investors, as compared to the change in the SRC definition for newly eligible registrants and their investors. The reason for this expectation is that the revenue

[166] This table shows changes in the information environment, liquidity, and growth upon the introduction of scaled disclosure for SRCs. Treatment Group consists of SRCs with public float of $25 million or more and less than $75 million in fiscal year 2008. Control Group 1 consists of non-SRCs with public float of $75 million or more and less than $125 million. Control Group 2 consists of small business issuers with public float and revenues below $25 million. Institutional Ownership is total percentage institutional ownership. Block Institutional Ownership is total block (5%) institutional ownership. Number of Analysts is the number of analysts following a registrant. Analyst Coverage Dummy is a dummy variable indicating the existence of analyst following. Earnings Mgmt. 1–4 are four different discretionary accruals measures. Earnings Mgmt. 1 follows Kothari, Leone, and Wasley (2005), and Earnings Mgmt. 2–4 follows Dechow, Sloan, and Sweeney (1995).1 Material Restatement (Filing Year) is a dummy variable that equals one if a registrant discloses restatement under Item 4.02 of Form 8–K in that year, and zero otherwise. Material Restatement (First Year Restated) is a dummy variable that equals one if the material reason for the restatement under Item 4.02 of Form 8–K originated in that year, and zero otherwise. Share Turnover is the ratio of shares traded over shares outstanding. Capital Investment is capital expenditures over book assets. R&D investment is R&D expenditures over revenue. Asset Growth is the annual growth rate of book assets. ***, **, and * indicate significance at 1%, 5%, and 10% confidence levels, respectively.

[167] In contrast, Chang et al. (2013) did find a negative and significant effect of the Commission's 2007 amendments on SRCs' liquidity. The difference in the results could stem from the use of a different empirical methodology, sample, and sample period. Chang et al. (2013) excluded financial companies. While the authors examined a pre-amendment period of April to June 2007, we included the entire 2006 and 2007 periods. Also, while the authors examined a post-amendment period of February to August 2008, we included the entire 2008 and 2009 periods. In addition, the authors focus on a set of illiquidity measures, while we focus on the share turnover ratio, a commonly used liquidity measure.

threshold in Rule 3–05(b)(2)(iv) only affects the historical financial statements of the acquired businesses (by limiting them to two years rather than three years), whereas a registrant that qualifies as a SRC will be able to comply with a number of scaled disclosure accommodations, including providing two years of financial statements and scaled executive compensation disclosures.[168]

d. Conclusion

Taken together, our empirical analysis suggests that, for most of the newly eligible SRCs under the final rules, scaled disclosures may generate a modest, but statistically significant, amount of cost savings in terms of the reduction in compliance costs, a modest, but statistically significant, deterioration in some of the proxies used to assess the overall quality of information environment, and a muted effect on the growth of the registrant's capital investments, investments in R&D, and assets. We expect the effects on registrants that are newly eligible for reduced disclosure under Rule 3–05(b)(2)(iv) to be lesser in magnitude but qualitatively similar.

4. Affiliated Ownership and Adverse Selection

In general, holding market value constant, the use of public float to define eligibility favors registrants with more affiliated ownership. If we consider two registrants with the same market value but different affiliated ownership, the one with greater affiliated ownership will have a lower public float, which is the value of non-affiliated ownership, and thus will be more likely to qualify for SRC status based on the public float threshold. This could be problematic if the adverse selection problem creates a conflict of interest between affiliated owners—who are often the decision makers—and non-affiliated owners—who are often the uninformed minority shareholders on whom reduced disclosure may have a greater impact. We examine whether the effects of scaled disclosure on registrants' information environment, liquidity, and growth depend on the percentage of affiliated ownership, which is the market value of affiliated equity shares divided by the registrant's total market value of equity. The average affiliated ownership is 43% for SRCs in the treatment group in years 2008 and 2009 (median 42%). Specifically, we examine whether and to what extent the effects of scaled disclosure on information environment, liquidity, and growth differ for SRCs with high, or above-average, affiliated ownership as compared to low, or below-average, affiliated ownership.

The results are reflected in Table 7. The number in the Treatment Group vs. Control Group 1 column reflects the difference between: (1) The difference between the average metric of registrants in the Treatment Group with affiliated ownership that is higher than the group median and that of the registrants in the Treatment Group with affiliated ownership that is lower than the group median and (2) the difference between the average metric of registrants in Control Group 1 with affiliated ownership that is higher than the group median and that of the registrants in Control Group 1 with affiliated ownership that is lower than the group median. Similarly, the number in the Treatment Group vs. Control Group 2 column reflects the difference between: (1) The difference between the average metric for the higher-than-median affiliated ownership registrants and that of the lower-than-median affiliated ownership registrants in the Treatment Group and (2) the difference between the average metrics for the same sectors of Control Group 2.[169]

TABLE 7—AFFILIATED OWNERSHIP AND ADVERSE SELECTION[170]

	Treatment Group vs. Control Group 1	Treatment Group vs. Control Group 2
Information Environment:		
External Information Production:		
Institutional Ownership	*** −0.127	* −0.110
Institutional Block Ownership	** −0.079	* −0.126
Number of Analysts	** −0.742	** 1.277
Analyst Coverage Dummy	−0.052	** 0.500
Information Environment:		
Disclosure Quality:		
Earnings Mgmt. 1	0.010	0.286
Material Restatement (Filing Year)	0.038	−0.040
Material Restatement (Beginning Year)	** 0.084	0.001
Liquidity:		
Share Turnover Ratio	0.052	0.059
Growth:		
Capital Investment	** 0.029	0.049
R&D Investment	0.014	−0.756
Asset Growth Rate	0.136	−1.485

Our analysis suggests that affiliated ownership may exacerbate the potential

[168] *See* Section I for a discussion of the scaled disclosure accommodations available to SRCs.

[169] Specifically, for each number reported in Table 7, we estimate the following equation:

$y = a + b * SRC + c * After + d * HighAff + e * [SRC * After] + f * [SRC * HighAff] + g * [After * HighAff] + h * [SRC * HighAff * After]$

where the single-letter terms ''*a*'' to ''*h*'' are coefficients to be estimated. ''After'' and ''SRC'' are defined in note 169. ''HighAff'' is a dummy variable equal to one if the firm's affiliated ownership is greater than the sample median of 0.42; otherwise, ''HighAff'' is equal to zero. The treatment effect of interest is measured by the coefficient *h*, which is the differential value of the variable *y* for treated firms with high affiliated ownership, following the start of the treatment. *See also* note 169.

[170] This table shows the differences in the changes between registrants with high affiliated ownership and those with low affiliated ownership upon the introduction of scaled disclosure for SRCs. Affiliated ownership is the percentage of a registrant's market value of equity that is owned by

negative effects of scaled disclosure on external information production by professionals such as institutional investors. There is also some evidence that larger affiliated ownership may exacerbate the adverse effect of scaled disclosure on material restatements based on when such restatement was triggered in SRCs (relative to Control Group 1). At the same time, scaled disclosures tend to have a more positive effect on SRCs' capital investment when affiliated ownership is higher. Overall, there is inconclusive evidence that affiliated ownership is associated with adverse selection in current SRCs.

5. Effects on Efficiency, Competition and Capital Formation

The final rules may have competitive effects. On one hand, the amendments may reduce the compliance-related costs of newly eligible registrants relative to current SRCs. The amendments may also increase the competitive advantage of the newly eligible registrants relative to non-eligible registrants that compete with them in the product market. However, because there is no clear evidence that scaled disclosures have a significant effect on the growth of current SRCs, we expect these potentially positive competitive effects to be modest. On the other hand, setting any eligibility threshold may create a competitive disadvantage for those registrants that miss eligibility because their public float or revenue is just above the specified threshold, relative to the newly eligible registrants. However, our economic analysis suggests that this potentially negative effect also is likely to be modest.

As discussed above, our empirical analysis suggests that scaled disclosures are unlikely to have a significant negative effect on the overall information environment of SRCs. Thus, we do not expect the amendments to have a significant negative effect on the information efficiency of affected parties. Finally, it is difficult to quantify the effect of scaled disclosures on capital formation. The Commission's 2007 amendments coincided with the 2008 financial crisis and its aftermath, which contributed to extremely thin public capital market activities. The potential cost savings and the potential negative consequences of scaled disclosure for reporting companies discussed in Tables 5 and 6 (based on data encompassing the period during the financial crisis) are modest. These figures do not include potential cost savings from newly-eligible companies that may contemplate going public.[171]

C. Possible Alternatives

In this section, we present several alternatives to the final rules and discuss their relative costs and benefits.

As a first alternative, we could have used a different registrant size metric in the SRC definition. While public float has the advantage of capturing the value held by non-affiliated investors who may be more affected by informational asymmetries, the disadvantage of public float is twofold. First, reported public float numbers are not easily verifiable. Second, using public float to define eligibility may increase adverse selection due to conflicts of interest between affiliated and non-affiliated owners. We considered equity market value as an alternative size metric to public float. Equity market value is in many instances more accessible and more easily verifiable than public float. It does not as effectively differentiate registrants based on the degree of informational asymmetry concerns, but it also does not favor registrants with more affiliated ownership. If we define registrants as SRCs when they have (1) less than $250 million in equity market value, (2) no equity market value and revenue below $100 million, or (3) less than $700 million in equity market value and revenue below $100 million, the number of registrants estimated to become eligible for scaled disclosure declines by five percent, relative to the number that are estimated to be eligible under the rule amendments with available 2016 data on public float, revenue and market value. Thus, this alternative would lead to a slightly smaller pool of registrants eligible for SRC status than under the amendments.

As a second alternative, we could have used different thresholds. Neither public float nor revenue data show a natural breakpoint for different thresholds. For example, we could take inflation since 2007 into account, raising the public float threshold from $75 million to $86.2 million and the revenue threshold from $50 million to $57.5 million. An inflation adjustment of the current thresholds would expand the pool of eligible SRCs by 83 registrants, 78 of which reported public float of between $75 million and $86.2 million in their 2016 Form 10-Ks, and five of which had no public float and revenue of between $50 million and $57.5 million.[172] Alternatively, instead of the $250 million public float threshold for all registrants and the $700 million public float threshold for registrants with revenue below $100 million, we could have allowed the $700 million public float threshold to apply to all registrants, regardless of revenue. A test capturing all registrants with less than $700 million in public float, regardless of revenue, would have expanded the pool of eligible SRCs with available data by 1,029 registrants. Because the $700 million is the threshold in the ''large accelerated filer'' definition, the effect of this alternative would be to permit all accelerated filers to provide the SRC scaled disclosures.

For registrants with no public float or public float of less than $700 million, instead of the $100 million revenue threshold, we could have used a revenue threshold of $1 billion. A $1 billion revenue threshold would make scaled disclosure accommodations for SRCs and EGCs generally more consistent for the subset of SRCs that have no public float or public float of less than $700 million.[173] Using 2016 data, we estimate that if we were to increase the revenue threshold from $100 million to $1 billion in addition to the accommodations being adopted, there would be 879 newly eligible registrants based on revenues, in addition to the 966 newly eligible registrants under the final rules. Expanding the pool of registrants eligible for SRC status using this alternative revenue threshold would further reduce overall compliance costs for registrants but also potentially increase the informational asymmetries and other adverse effects associated with scaled disclosures. Relative to the current SRCs or the newly eligible SRCs under the final rules, these additional qualifying registrants also may have different characteristics that could affect the appropriateness of scaled disclosure. For example, the 879 additional registrants under this alternative are much larger, implying that any cost savings from scaled disclosures would generate a much smaller impact on the registrants' market value, and may not

affiliated parties (*i.e.,* corporate insiders and 10% block owners). Registrants with high (low) affiliated ownership include registrants with affiliated ownership above (below) the sample median. A negative and significant estimate means that scaled disclosures have a more negative effect on SRCs with high affiliated ownership than on those with low affiliated ownership. ***, **, and * indicate significance at 1%, 5%, and 10% confidence levels, respectively.

[171] *See* Section IV.B.1.

[172] The inflation adjustment was performed using the CPI calculator of the Bureau of Labor Statistics (*http://data.bls.gov/cgi-bin/cpicalc.pl*).

[173] An EGC is defined as an issuer that had total annual gross revenues of less than $1.07 million during its most recently completed fiscal year. Public Law 112–106, Sec. 101, 126 Stat. 306 (2012); 15 U.S.C. 77b(a)(19); 15 U.S.C. 78c(a)(80). Inflation Adjustments and Other Technical Amendments under Titles I and II of the JOBS Act, Release No. 33–10332 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)].

justify the potential loss of informational transparency.

As a third alternative, we could have considered reducing the number of registrants that our rules define as accelerated filers, which would expand the number of registrants eligible for the Sarbanes-Oxley Act Section 404(b) exemption. The newly eligible SRCs under the final rules will remain accelerated filers and must comply with Section 404(b). This creates two tiers among SRCs. Registrants with public floats below $75 million are eligible for the scaled disclosures and, as non-accelerated filers, are exempt from Section 404(b). Registrants with either (1) public floats of $75 million or more and less than $250 million or (2) public floats of $75 million or more and less than $700 million and less than $100 million in revenues will be eligible only for the scaled disclosures and, as accelerated filers, must comply with Section 404(b). In evaluating the costs and benefits of this alternative, we considered the comments that the Commission received in response to the Proposing Release. In light of these comments, as stated above, the Chairman has directed the staff to formulate recommendations to the Commission for possible changes to reduce the number of registrants that our rules define as accelerated filers.

V. Paperwork Reduction Act

A. Background

The final rules will affect existing rules, regulations and forms that contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[174] We are submitting the proposals to the Office of Management and Budget (''OMB'') for review in accordance with the PRA and its implementing regulations.[175] We also requested comment on the changes to these ''collection of information'' requirements in the Proposing Release.

The titles of the collections of information are: [176]

(1) ''Regulation S–X'' (OMB Control No. 3235–0009);
(2) ''Regulation S–K'' (OMB Control No. 3235–0071);
(3) ''Regulation C'' (OMB Control No. 3235–0074);
(4) ''Regulation 12B'' (OMB Control No. 3235–0062);
(5) ''Form 10–K'' (OMB Control No. 3235–0063);
(6) ''Form 10–Q'' (OMB Control No. 3235–0070);
(7) ''Form 8–K'' (OMB Control No. 3235–0060);
(8) ''Regulation 14A and Schedule 14A'' (OMB Control No. 3235–0059);
(9) ''Regulation 14C and Schedule 14C'' (OMB Control No. 3235–0057);
(10) ''Form 10'' (OMB Control No. 3235–0064);
(11) ''Form S–1'' (OMB Control No. 3235–0065);
(12) ''Form S–3'' (OMB Control No. 3235–0073);
(13) ''Form S–4'' (OMB Control No. 3235–0324); and
(14) ''Form S–11'' (OMB Control No. 3235–0067).

We adopted the existing rules, regulations, and forms pursuant to the Securities Act and the Exchange Act. These rules, regulations, and forms set forth the disclosure requirements for annual and quarterly reports, proxy and information statements, current reports, and registration statements that are prepared by registrants to provide investors information to make informed investment and voting decisions.

The hours and costs associated with preparing disclosure, filing information required by forms, and retaining records constitute reporting and cost burdens imposed by collection of information requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid control number. Compliance with the information collections listed above is mandatory to the extent applicable to each registrant.[177] Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed.

B. Summary of the Final Amendments

As described in more detail above, we are adopting final rules to amend the definition of SRC to encompass a greater number of registrants and to revise Rule 3–05(b)(2)(iv) of Regulation S–X to align the revenue threshold in that rule with the new revenue threshold in the definition of SRC. The final rules make scaled disclosure accommodations available to a larger number of registrants. As a result, the final rules should decrease the disclosure requirements for registrants that fall within the expanded thresholds of the SRC definition and should decrease the disclosure burden for registrants acquiring other companies by increasing the number of acquired companies for which Rule 3–05(b)(2)(iv) of Regulation S–X permits one less year of financial information to be disclosed.

In the Proposing Release, we proposed to amend the SRC definition to include registrants with a public float of less than $250 million, as well as registrants with annual revenues of less than $100 million for the previous year and no public float. We are adopting the amendments generally as proposed with two changes. In a change from the proposal, the SRC definition in the final rules also will include registrants with annual revenues of less than $100 million for the previous year and a public float of less than $700 million. As detailed below, the burden estimates for the respective forms and schedules have been revised to reflect that the SRC scaled disclosure accommodations also will be available to the additional registrants that come within these revised thresholds.

In another change from the proposal, we are amending Rule 3–05(b)(2)(iv) of Regulation S–X to increase the revenue threshold under which certain registrants may omit from certain registration statements or current reports the earliest of the three fiscal years of audited financial statements of an acquired business or business to be acquired.[178] Accordingly, we have added two new titles, ''Regulation S–X'' (OMB Control No. 3235–0009) and ''Form 8–K'' (OMB Control No. 3235–0060), to the collections of information affected by the final rules. The impact of the amendment to Rule 3–05(b)(2)(iv) is reflected in the burden estimates for the applicable forms.[179] However, as discussed below, while we estimate that the amendment to Rule 3–05 may decrease the existing paperwork burden for some issuers, we do not believe it will change the total burden estimates for the relevant registration statements and current reports.

The final rules do not change the amount of information required to be included in Exchange Act reports by any registrant because of its status as an accelerated filer or a large accelerated filer.

C. Summary of Comment Letters

One commenter addressed the specific PRA-related comment requests in the Proposing Release.[180] This

[174] 44 U.S.C. 3501 *et seq.*

[175] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[176] The paperwork burdens from Regulation S–X, Regulation S–K, Regulation C, and Regulation 12B are imposed through the forms that are subject to the requirements in those regulations and are reflected in the analysis of those forms. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to each of Regulation S–X, Regulation S–K, Regulation C, and Regulation 12B.

[177] As noted above, registrants claiming SRC status have the option to comply with the scaled disclosures available to them on an item-by-item basis.

[178] *See* note 99.

[179] *See* note 180.

[180] *See* IMA.

commenter stated that the proposed adjustment to the SRC definition is fair and that the details provided as the basis for the cost reduction estimates appear to be thorough and specific.[181] As to the ways to enhance the information collected, the commenter stated that the burden of preparing information remained with the respective registrant and that registrants may be required to provide additional disclosure if they are entering into capital transactions.[182] As to ways to minimize the burden of the collection of information, the commenter stated that XBRL may facilitate the evaluation of data.[183] Lastly, the commenter stated that the list of collections of information appeared to be complete and that it was not aware of any collection of information that would be negatively affected.[184]

D. Revisions to Burden and Cost Estimates

For purposes of the PRA, the final rules decrease the burden hour and costs estimates for Form 10–K, Form 10–Q, Schedule 14A, Schedule 14C, Form 10, Form S–1, Form S–3, Form S–4, and Form S–11 by approximately 493,016 burden hours and decrease external costs by approximately $66,242,345.[185]

Our burden hour and cost estimates below reflect the average burdens for all registrants that may benefit from the expanded accommodations. In deriving our estimates, we recognize that the burdens likely will vary among individual registrants based on a number of factors, including the size and complexity of their business. We believe that some registrants will experience costs in excess of this average and some registrants will experience less than the average costs.

For quarterly and annual reports and for proxy and information statements, we estimate that 75% of the burden of preparation is carried by the registrant internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour.[186] For registration statements, we estimate that 25% of the burden of preparation is carried by the registrant internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour. While we cannot predict with certainty the number of newly eligible SRCs that will begin to use the scaled disclosure provisions, for purposes of our PRA calculations, we estimate that 80% of them will do so.[187]

For purposes of the PRA, we estimate that over a three-year period,[188] the annual aggregate decreased burden [189] resulting from the amendments in the final rules will average:

- 403,250 hours and $53,883,321 of external costs for Form 10–K;
- 88,864 hours and $11,851,661 of external costs for Form 10–Q;
- 481 hours and $64,160 of external costs for Schedule 14A;
- 11 hours and $1,440 of external costs for Schedule 14C;
- nine hours and $11,163 of external costs for Form 10;
- 145 hours and $174,000 of external costs for Form S–1;
- 38 hours and $45,600 of external costs for Form S–3;
- 203 hours and $243,600 of external costs for Form S–4; and
- 15 hours and $17,400 of external costs for Form S–11.

1. Form 10–K

We estimate that approximately 966 additional registrants will satisfy the revised definition of a SRC and become eligible to use scaled disclosure in their annual reports on Form 10–K. These registrants could experience burden and cost savings under the final rules.[190] We estimate that, if all of these registrants used all of the scaled disclosure requirements, they would save an estimated 504,063 burden hours and an aggregate cost of $67,291,651.[191]

Based on our assumption that 80% of newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 403,250 internal burden hours and costs of $53,833,321 for Form 10–K.[192]

2. Form 10–Q

We assume that the same approximately 966 registrants will become newly eligible to use scaled disclosure for purposes of their quarterly reports. We estimate that if all of these registrants used all of the scaled SRC requirements, they would save

[181] *Id.*

[182] *Id.*

[183] *Id.*

[184] *Id.*

[185] These estimates reflect the difference between (1) our estimates of the burden hours and costs for each affected collection of information under the final rules and (2) the current estimates for each affected collection of information prior to effectiveness of the final rules. The current estimates for some of the affected collections of information have changed since the Proposing Release due to changes in our rules that are unrelated to the amendments we are adopting. As a result, our estimated changes in the burden hours and costs for each affected collection of information in this release may differ from our estimates for the same collection of information in the Proposing Release.

[186] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs will average $400 per hour. This is the rate we typically estimate for outside legal services used in connection with public company reporting. *See* Section VI.D below for a discussion of the professional skills needed to comply with the amendments.

[187] This estimated realization rate reflects the percentage of registrants eligible to claim SRC status in 2016 that claimed such status. Based on data collected by DERA, 2,408, or approximately 91.2%, of an estimated 2,640 eligible registrants claimed SRC status.

In addition, this estimated realization rate is further reduced to reflect that a portion of newly eligible SRCs may already qualify as EGCs, which are eligible to rely on certain scaled disclosure requirements for a limited period, including some of the scaled requirements available to SRCs. Based on data collected by DERA, 365, or approximately 37.8%, of the 966 registrants in 2016 that would have been newly eligible for scaled disclosure under the final rules were EGCs and therefore already benefitting from a portion of these estimated savings.

[188] We calculated an annual average over a three-year period because OMB approval of PRA submissions covers a three-year period.

[189] Our decreased burden estimates take into account, and are net of, any increased burden that may result from SRCs providing expanded disclosures under disclosure requirements that are more stringent for SRCs than for non-SRCs, such as Item 404 of Regulation S–K.

[190] We estimate that 966 additional registrants will be eligible under the final rules to use the scaled disclosure requirements available to SRCs for their annual and quarterly reports in the first year. We base this estimate on the number of additional registrants that would have been eligible to use scaled disclosure for their annual and quarterly reports in 2016, based on data collected by DERA from annual reports on Form 10–K filed in 2016. The data show that 779 registrants had a public float of $75 million or more but less than $250 million, 26 registrants had no public float and annual revenues of $50 million or more but less than $100 million, and 161 registrants had a public float of $250 million or more but less than $700 million and annual revenues of less than $100 million.

[191] Consistent with our analysis in the SRC Adopting Release and the Proposing Release, we estimate the compliance burden for a Form 10–K for a SRC using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form 10–KSB, which was 1,272 burden hours and a cost of $169,600 (424 professional hours × $400/hour) per report.

Accordingly, we estimate that, if all eligible registrants used all available scaled disclosure, the final rules would decrease the compliance burden of Form 10–K by up to 504,062.65 hours (1,793.80 internal hours per filing using standard Regulation S–K and Regulation S–X disclosure minus 1,272.00 internal hours per filing using scaled disclosure = 521.80 internal hours saved per filing × 966 filings) and decrease the cost by up to $67,291,651.41 (598.15 professional hours per filing using standard Regulation S–K and Regulation S–X disclosure minus 424.00 professional hours per filing using scaled disclosure = 174.15 external hours saved per filing × $400 per hour = $69,660.09 external cost savings per filing × 966 filings).

[192] This estimated decrease in the compliance burden for Form 10–K is based on 80% × 504,062.65 internal hours saved = 403,250.12 internal hours saved and 80% × $67,291,651.41 external cost savings = $53,833,312.13 external cost savings.

111,080 burden hours and an aggregate cost of $14,814,576.[193]

Assuming that 80% of newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 88,864 internal burden hours and costs of $11,851,661 for Form 10–Q.[194]

3. Form 8–K

We estimate that the amendments to Rule 3–05 may decrease the existing paperwork burden for some registrants but not change the total burden estimates for Form 8–K. This reflects our appraisal that few registrants are eligible to rely on the $50 million threshold in Rule 3–05(b)(2)(iv) and our expectation that the amendments will not significantly change the number of registrants that are eligible to rely on Rule 3–05(b)(2)(iv).[195] This also is consistent with the Commission's estimate of the impact on the compliance burden for Form 8–K when it revised Rule 3–05 of Regulation S–X in 2007 to increase the threshold in Rule 3–05(b)(iv) from $25 million to $50 million.[196]

4. Schedule 14A

We estimate that registrants newly eligible to use scaled disclosure will file approximately 802 definitive proxy statements on Schedule 14A per year.[197] We estimate that if all of these registrants used all of the scaled SRC requirements, they would save 602 burden hours and an aggregate cost of $80,200.[198]

Assuming that 80% of newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 481 internal burden hours and costs of $64,160 for Schedule 14A.[199]

5. Schedule 14C

We estimate that registrants newly eligible to use scaled disclosure will file approximately 18 definitive information statements on Schedule 14C per year.[200] We estimate that if all of these registrants used all of the scaled SRC requirements, they would save 14 burden hours and an aggregate cost of $1,800.[201]

Assuming that 80% of newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease in burden of 11 internal burden hours and costs of $1,440 for Schedule 14C.[202]

6. Form 10

We estimate that registrants newly eligible to use scaled disclosure will file one registration statements on Form 10 per year.[203] Assuming that this registrant uses all of the scaled SRC requirements, we estimate an aggregate decrease of nine internal burden hours and cost of $11,163 for Form 10.[204] Due to the low number of Form 10 filers and rounding considerations, we assume that all newly eligible registrants filing Form 10 will begin to use scaled disclosure and therefore realize the full extent of burden and cost savings.

7. Form S–1

We estimate that registrants newly eligible to use scaled disclosure will file approximately 25 registration statements on Form S–1 per year.[205] We

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[193] Similar to our approach to estimating the reduced compliance burden for a Form 10–K using scaled disclosure, we base our estimates of the reduced compliance burden for SRCs using all scaled disclosure available for certain other filings on the last available PRA inventory for completing the most comparable form under Regulation SB. We estimate the compliance burden for a Form 10–Q for a SRC using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form 10–QSB, which was 102.24 burden hours and a cost of $13,362 (34.08 professional hours × $400/hour) per report.

Accordingly, we estimate that, if all eligible registrants used all available scaled disclosure, the final rules would decrease the compliance burden of Form 10–Q by up to 111,080.34 hours (140.57 internal hours per filing using standard Regulation S–K disclosure minus 102.24 internal hours per filing using scaled disclosure = 38.33 internal hours saved per filing × 966 registrants × 3 filings per year) and decrease the cost by up to $14,814,576.00 (46.86 professional hours per filing using standard Regulation S–K disclosure minus 34.08 professional hours per filing using scaled disclosure = 12.78 external hours saved per filing × $400 per hour = $5,112 external cost savings per filing × 966 registrants × 3 filings per year).

[194] This estimated decrease in the compliance burden for Form 10–Q is based on 80% × 111,080.34 internal hours saved = 88,864.27 internal hours saved and 80% × $14,814,576.00 external cost savings = $11,851,660.80 external cost savings.

[195] *See* Section IV.B.1.

[196] *See* SRC Adopting Release.

[197] We base this estimate on the number of definitive proxy statements on Schedule 14A filed in 2016 by registrants that would have been newly eligible to use scaled disclosure under the final rules. Based on data collected by DERA, registrants with a public float of $75 million or more but less than $250 million filed 652 definitive proxy statements on Schedule 14A, registrants with no public float and annual revenues of $50 million or more but less than $100 million filed 17 definitive proxy statements on Schedule 14A, and registrants with a public float of $250 million or more but less than $700 million and annual revenues of less than $100 million filed 133 definitive proxy statements on Schedule 14A.

[198] We base our estimate of the reduced compliance burden for Schedule 14A for a SRC using all scaled disclosure available on our estimate of the compliance burden for Item 407(d)(5) and (e)(4) and (5) of Regulation S–K [17 CFR 229.407(d)(5) and (e)(4) and (5)], with which SRCs are not required to comply. We estimate this burden to be 0.75 burden hours and a cost of $100 (0.25 professional hours × $400/hour) per report.

Accordingly, we estimate that, if all eligible registrants used all available scaled disclosure, the final rules would decrease the compliance burden of Schedule 14A by up to 601.57 hours (0.75 internal hours saved per filing × 802 filings) and decrease the cost by up to $80,200.00 (0.25 professional hours saved per filing × $400 per hour = $100 external cost savings per filing × 802 filings).

[199] This estimated decrease in the compliance burden for Schedule 14A is based on 80% × 601.57 internal hours saved = 481.25 internal hours saved and 80% × $80,200.00 external cost savings = $64,160.00 external cost savings.

[200] We base this estimate on the number of definitive information statements on Schedule 14C filed in 2016 by registrants that would have been newly eligible to use scaled disclosure under the final rules. Based on data collected by DERA, registrants with a public float of $75 million or more but less than $250 million filed nine definitive information statements on Schedule 14C, registrants with no public float and annual revenues of $50 million or more but less than $100 million filed no definitive information statements on Schedule 14C, and registrants with a public float of $250 million or more but less than $700 million and annual revenues of less than $100 million filed nine definitive information statements on Schedule 14C.

[201] Similar to Schedule 14A, we base our estimate of the decrease in the compliance burden for Schedule 14C for a SRC using all scaled disclosure available on our estimate of the compliance burden for Item 407(d)(5) and (e)(4) and (5) of Regulation S–K, which is 0.75 burden hours and a cost of $100 (0.25 professional hours × $400/hour) per report.

Accordingly, we estimate that, if all eligible registrants used all available scaled disclosure, the final rules would decrease the compliance burden of Schedule 14C by up to 13.48 hours (0.75 internal hours saved per filing × 18 filings) and decrease the cost by up to $1,800.00 (0.25 professional hours saved per filing × $400 per hour = $100 external cost savings per filing × 18 filings).

[202] This estimated decrease in the compliance burden for Schedule 14C is based on 80% × 13.48 internal hours saved = 10.79 internal hours saved and 80% × $1,800 external cost savings = $1,440 external cost savings.

[203] We generally base our estimated number of each type of registration statement filed on the average number of that type of registration statement filed in each of the calendar years 2014 through 2016 by registrants that would have been newly eligible to use scaled disclosure under the final rules.

Based on data collected by DERA, registrants that would have been newly eligible to use scaled disclosure under the final rules filed an average of less than one registration statement on Form 10 per year during the period 2014 through 2016. However, we believe an estimate of one Form 10 is more reasonable because, as reflected in the Proposing Release, such registrants have filed more than one Form 10 in prior years.

[204] We estimate the compliance burden for a Form 10 for a SRC using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form 10–SB, which was 44.50 burden hours and a cost of $53,400 (133.50 professional hours × $400/hour) per report.

Accordingly, if all eligible registrants used all available scaled disclosure, we estimate that the final rules will decrease the compliance burden of Form 10 by up to 9.30 hours (53.80 internal hours per filing using standard Regulation S–K and Regulation S–X disclosure minus 44.50 internal hours per filing using scaled disclosure = 9.30 internal hours saved per filing × one filing) and decrease the cost by up to $11,163.20 (161.41 professional hours per filing using standard Regulation S–K and Regulation S–X disclosure minus 133.50 professional hours per filing using scaled disclosure = 27.91 external hours saved per filing × $400 per hour = $11,163.20 external cost savings per filing × one filing).

[205] Based on data collected by DERA, during 2014 through 2016, registrants with a public float of $75

estimate that if all of these registrants use all of the scaled SRC requirements, they would save 181 burden hours and an aggregate cost of $217,500.[206]

Assuming that 80% of these newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 145 internal burden hours and costs of $174,000 for Form S–1.[207]

8. Form S–3

We estimate that registrants newly eligible to use scaled disclosure will file approximately 190 registration statements on Form S–3 per year.[208] We estimate that if all of these registrants use all of the scaled SRC requirements, they would save 48 burden hours and an aggregate cost of $57,000.[209]

Assuming that 80% of the newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 38 internal burden hours and costs of $ 45,600 for Form S–3.[210]

9. Form S–4

We estimate that registrants newly eligible to use scaled disclosure will file approximately 35 registration statements on Form S–4 per year.[211] We estimate that if all of these registrants use all of the scaled SRC requirements, they would save 254 burden hours and an aggregate cost of $304,500.[212]

Assuming that 80% of newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 203 internal burden hours and costs of $243,600 for Form S–4.[213]

10. Form S–11

We estimate that registrants newly eligible to use scaled disclosure will file approximately two registration statements on Form S–11 per year.[214]

Assuming that both of these registrants use all of the scaled SRC requirements, we estimate an aggregate decrease of 15 burden hours and cost of $17,400 for Form S–11.[215]

Due to the low number of Form S–11 filers and rounding considerations, we assume that both of the newly eligible registrants filing Form S–11 will begin to use scaled disclosure and realize the full extent of burden and cost savings.

VI. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') [216] requires us, in promulgating rules under Section 553 of the Administrative Procedure Act,[217] to consider the impact of those rules on small entities. We have prepared this Final Regulatory Flexibility Analysis (''FRFA'') in accordance with Section 604 of the RFA.[218] This FRFA relates to amendments to the SRC definition as used in our rules and Rule 3–05 of Regulation S–X. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and was included in the Proposing Release.

A. Need for, and Objectives of, the Final Rules

The amendments to the SRC definition in the final rules are intended to promote capital formation through a modest reduction in compliance costs and disclosure burdens for these registrants by expanding the number of registrants that qualify as SRCs and are eligible to provide scaled disclosure, while maintaining appropriate investor protections. These amendments will

million or more but less than $250 million filed an average of approximately 17 registration statements on Form S–1 each year, registrants with no public float and annual revenues of $50 million or more but less than $100 million filed an average of approximately two registration statements on Form S–1 each year, and registrants with a public float of $250 million or more but less than $700 million and annual revenues of less than $100 million filed an average of six registration statements on Form S–1 each year.

[206] We estimate the compliance burden for a Form S–1 for a SRC using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form SB–2, which was 159.50 burden hours and a cost of $191,400 (478.50 professional hours × $400/hour) per report.

Accordingly, we estimate that, if all eligible registrants used all available scaled disclosure, the final rules would decrease the compliance burden of Form S–1 by up to 181.25 hours (166.75 internal hours per filing using standard Regulation S–K and Regulation S–X disclosure minus 159.50 internal hours per filing using scaled disclosure = 7.25 internal hours saved per filing × 25 filings) and decrease the cost by up to $217,500.00 (500.25 professional hours per filing using standard Regulation S–K and Regulation S–X disclosure minus 478.50 professional hours per filing using scaled disclosure = 21.75 external hours saved per filing × $400 per hour = $8,700 external cost savings per filing × 25 filings).

[207] This estimated decrease in the compliance burden for Form S–1 is based on 80% × 181.25 internal hours saved = 145.00 internal hours saved and 80% × $217,500.00 external cost savings = $174,000.00 external cost savings.

[208] Based on data collected by DERA, during 2014 through 2016, registrants with a public float of $75 million or more but less than $250 million filed an average of approximately 148 registration statements on Form S–3 each year, registrants with no public float and annual revenues of $50 million or more but less than $100 million filed an average of two registration statements on Form S–3 each year, and registrants with a public float of $250 million or more but less than $700 million and annual revenues of less than $100 million filed an average of 40 registration statements on Form S–3 each year.

[209] We base our estimate of the reduced compliance burden for Form S–3 for a SRC using all scaled disclosure available on our estimate of the average compliance burden for Items 503(d) and 504 of Regulation S–K [17 CFR 229.503(d) and 229.504], which requirements are scaled for SRCs. We estimate the decrease in compliance burden for a registration statement on Form S–3 for a SRC using all scaled disclosure available to be 0.25 burden hours and a cost of $300 (0.75 professional hours × $400/hour) per filing.

Accordingly, we estimate that, if all eligible registrants used all available scaled disclosure, the final rules would decrease the compliance burden of Form S–3 by up to 47.50 hours (0.25 internal hours saved per filing × 190 filings) and decrease the cost by up to $57,000.00 ($300 external cost savings per filing × 190 filings).

[210] This estimated decrease in the compliance burden for Form S–3 is based on 80% × 47.50 internal hours saved = 38.00 internal hours saved and 80% × $57,000.00 external cost savings = $45,600.00 external cost savings.

[211] Based on data collected by DERA, during 2014 through 2016, registrants with a public float of $75 million or more but less than $250 million filed an average of approximately 30 registration statements on Form S–4 each year, registrants with no public float and revenues of $50 million or more but less than $100 million filed an average of approximately one registration statement on Form S–4 each year, and registrants with a public float of $250 million or more but less than $700 million and annual revenues of less than $100 million filed an average of four registration statements on Form S–4 each year.

[212] We estimate the reduction in the compliance burden for Form S–4 for a SRC using all scaled disclosure available to be the same as the reduction in the compliance burden for a Form S–1 for a SRC using all scaled disclosure available as compared to standard Regulation S–K and Regulation S–X disclosure, which was 7.25 burden hours and a cost of $8,700 (21.75 professional hours × $400/hour) per report.

Accordingly, we estimate that, if all eligible registrants used all available scaled disclosure, the final rules will decrease the compliance burden of Form S–4 by up to 253.75 hours (7.25 internal hours saved per filing × 35 filings) and decrease the annual cost by up to $304,500.00 ($8,700 external cost savings per filing × 35 filings).

[213] This estimated decrease in the compliance burden for Form S–4 is based on 80% × 253.75 internal hours saved = 203.00 internal hours saved and 80% × $304,500.00 external cost savings = $243,600.00 external cost savings.

[214] Based on data collected by DERA, during 2014 through 2016, registrants with a public float of $75 million or more but less than $250 million filed an average of approximately one registration statement on Form S–11 each year, registrants with no public float and revenues of $50 million or more but less than $100 million filed an average of less than one registration statement on Form S–11 each year, and registrants with a public float of $250 million or more but less than $700 million and annual revenues of less than $100 million filed an average of one registration statement on Form S–11 each year.

[215] We estimate the reduction in the compliance burden for Form S–11 for a SRC using all scaled disclosure available to be the same as reduction in the compliance burden for Form S–1 for a SRC using all scaled disclosure available as compared to standard Regulation S–K disclosure and Regulation S–X, which was 7.25 burden hours and a cost of $8,700 (21.75 professional hours × $400/hour) per report.

Accordingly, we estimate that, if both eligible registrants used all available scaled disclosure, the final rules will decrease the compliance burden of Form S–11 by up to 14.50 hours (7.25 internal hours saved per filing × two filings) and decrease the annual cost by up to $17,400.00 ($8,700 external cost savings per filing × two filings).

[216] 5 U.S.C. 601 *et seq.*

[217] 5 U.S.C. 553.

[218] 5 U.S.C. 604.

enable a registrant to qualify as a SRC based on a public float test or a revenue test that includes registrants both with and without a public float.[219] We believe that the amendments will permit a broader group of registrants to make scaled disclosure to their investors without significantly detracting from investor protections.

The amendments to Rule 3–05(b)(2)(iv) of Regulation S–X will maintain the consistency of the revenue thresholds in Rule 3–05 and the definition of a SRC. The current revenue threshold in Rule 3–05(b)(2)(iv) was based on the revenue threshold in the SRC definition, and the final rules maintain this consistency by increasing the revenue threshold in Rule 3–05(b)(2)(iv) to $100 million. This amendment will enable more registrants to omit the earliest of the three fiscal years of audited financial statements of an acquired business or business to be acquired in certain registration statements and current reports.

The amendments to the accelerated filer and large accelerated filer definitions in Exchange Act Rule 12b–2 maintain the current thresholds at which registrants are subject to accelerated and large accelerated filer disclosure and filing requirements. At this time, we are not raising the accelerated filer public float threshold or modifying the Section 404(b) requirements for registrants.

The need for, and objectives of, the final rules are discussed in more detail in Sections II and IV above.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on all aspects of the IRFA, including the number of small entities that would be affected by the proposed amendments, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis, and how to quantify the impact of the proposed amendments. We did not receive any comments specifically addressing the IRFA. We did, however, receive comments from members of the public on matters that could potentially impact small entities. These comments are discussed at length by topic in the corresponding subsections of Section II above.

While many commenters expressed support for the proposed amendments to the SRC definition,[220] commenters also recommended making changes to the proposed rules that would further expand the number of registrants that would qualify as SRCs and would be eligible to rely on the scaled disclosure requirements. For example, many commenters recommended that the Commission allow a revenue test for companies with a public float.[221] Commenters stated that a revenue test would ''stimulat[e] innovation and drive business growth,'' [222] ''ensure that pre-revenue companies are not forced to divert investment funds . . . from science to compliance,'' [223] and help ''avoid stifling the advancement of [these] companies that face costly compliance burdens.'' [224] Two commenters specifically recommended that the Commission adopt a test based on revenues of less than $100 million and a public float of less than $700 million, as recommended by the Small Business Forum.[225] In response to commenters [226] and recommendations from the Small Business Forum,[227] the definition in the final rules will include, in addition to registrants with a public float of less than $250 million, registrants with annual revenues of less than $100 million during their most recently completed fiscal year and either no public float or a public float of less than $700 million.[228] As described above, we believe that it is appropriate to provide a measure by which a registrant with public float but with limited revenues may qualify as a SRC.[229]

We are not, however, adopting a revenue test without a limitation on the public float or market capitalization of the company, as specifically suggested by two commenters.[230] We believe the amended revenue test in the final rules is consistent with the position expressed by these commenters and others [231] that it is not necessary to subject capital-intensive, low-revenue registrants with larger public floats or market capitalizations to the same reporting requirements as registrants with larger public floats and more well-established, revenue-generating businesses. The amended revenue test in the final rules will enable these registrants to benefit from the cost-savings of scaled reporting, while recognizing that as a registrant's business and public float grows, investors should benefit from greater disclosure. The additional information provided by the registrant in these circumstances will assist a growing investor base in making informed investment decisions and should also lead to a lower cost of capital for the business as it grows.

Two commenters recommended amending Rule 3–05 to increase the revenue threshold in paragraph (b)(2)(iv) to $100 million to maintain the alignment between Rule 3–05 and the definition of a SRC.[232] Given that the current revenue threshold in Rule 3–05(b)(2)(iv) was based on the revenue threshold in the SRC definition [233] and that the final rules, among other things, increase the revenue threshold in the SRC definition from $50 million to $100 million, we believe it is appropriate to raise the net revenue threshold in Rule 3–05(b)(2)(iv) of Regulation S–X from $50 million to $100 million.

While some commenters supported eliminating the provision in the accelerated filer and large accelerated filer definitions that specifically excludes registrants that are eligible to use the SRC disclosure requirements for their annual or quarterly reports,[234] many other commenters recommended that the Commission increase the thresholds in the accelerated filer definition, consistent with the changes to the SRC definition.[235] Commenters recommended increasing the public float threshold in the accelerated filer definition to reduce compliance costs [236] and to maintain consistency in the rules.[237]

The final rules include amendments to the accelerated filer and large accelerated filer definitions in Exchange Act Rule 12b–2 to maintain the current thresholds at which registrants are subject to accelerated and large accelerated filer disclosure and filing requirements. These amendments will change the current relationship between

[219] *See* Item 10(f)(1)(i) and (ii) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

[220] *See* Acorda et al; AMTA; BDO; BIO; CAQ/CII; CONNECT; Coalition; ICBA; MidSouth; Nasdaq; NVCA; NYSE; Seneca; and IMA.

[221] *See* Acorda, et al; AMTA; BIO; Calithera; CONNECT; CSBA; Nasdaq; NYSE; and Zeller.

[222] BIO.

[223] Acorda, et al.

[224] AMTA.

[225] *See* BIO; and Calithera.

[226] *See* Acorda, et al.; AMTA; BIO; Calithera; CONNECT; and CSBA.

[227] *See* notes 20 and 89 for a discussion of the Small Business Forum recommendations.

[228] *See* Item 10(f)(1)(ii) of Regulation S–K; Securities Act Rule 405; Exchange Act Rule 12b–2.

[229] *See* Section II.A.2.

[230] *See* NYSE; and Nasdaq.

[231] *See* Acorda, et al.; AMTA; BIO; Calithera; CONNECT; CSBA; NYSE; and Nasdaq.

[232] *See* EY; and BDO.

[233] *See* 1996 Rule 3–05 Adopting Release and SRC Adopting Release.

[234] *See* BDO; CAQ/CII; CFA Institute; Deloitte; and EY.

[235] *See* Acorda, et al.; AMTA; BIO; Calithera; CONNECT; Coalition; CSBA; ICBA; Dixie; MidSouth; Nasdaq; NVCA; NYSE; and Seneca.

[236] *See* Acorda, et al.; AMTA; BIO; Calithera; CONNECT; Coalition; CSBA; ICBA; Dixie; MidSouth; Nasdaq; NVCA; NYSE; and Seneca.

[237] *See* BIO; Coalition; Nasdaq; NVCA; and NYSE.

the SRC and ''accelerated filer'' definitions by allowing a registrant to qualify as both a SRC and an accelerated filer.[238] As stated above, the Chairman has directed the staff to formulate recommendations to the Commission for possible changes to reduce the number of registrants that our rules define as accelerated filers. As part of the staff's consideration of possible recommended amendments, the Chairman has directed the staff to consider, among other things, the historical and current relationship between the SRC and ''accelerated filer'' definitions.

We believe that the final rules will reduce disclosure burdens by expanding the number of registrants that will qualify as SRCs and that are eligible to provide scaled disclosure, while maintaining appropriate investor protections.

C. Small Entities Subject to the Final Rules

For purposes of the RFA, under 17 CFR 230.157 (Securities Act Rule 157), an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding $5 million. Under 17 CFR 240.0–10(a) (Exchange Act Rule 0–10(a)), an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year.

We estimate that there are currently 1,181 entities that qualify as ''small'' under the definitions set forth above.[239] We believe it is likely that virtually all small businesses or small organizations, as defined in our rules described above, are already encompassed within the current SRC definition and the current revenue threshold in Rule 3–05(b)(2)(iv) of Regulation S–X and will continue to be encompassed within the revised thresholds contained in the final rules. To the extent any small business or small organization, as defined for RFA purposes, is not already encompassed within the current SRC definition and the current revenue threshold in Rule 3–05(b)(2)(iv) of Regulation S–X, we believe it is likely that the revised thresholds contained in the final rules will capture those entities.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The amendments to the SRC definition in the final rules increase the number of registrants eligible to provide scaled disclosures in response to Regulation S–K and Regulation S–X disclosure requirements. These amendments do not revise the scaled disclosure requirements themselves, but could modestly decrease the disclosures required for registrants that will qualify as SRCs under the expanded thresholds.

Consistent with the amendments to the revenue threshold in the SRC definition, the amendment to Rule 3–05 of Regulation S–X raises the net revenue threshold in Rule 3–05(b)(2)(iv) of Regulation S–X from $50 million to $100 million. Current Rule 3–05(b)(2)(iv) allows certain registrants to omit financial statements of businesses acquired or to be acquired in certain registration statements and current reports for the earliest of the three fiscal years required if the net revenues of the business to be acquired are less than $50 million. With the amendment, those registrants will become eligible to omit the relevant financial statements for acquired businesses with net annual revenues of $50 million or more but less than $100 million in the most recent fiscal year. In this way, the amendment to Rule 3–05 could moderately decrease the existing disclosure requirements for some registrants; however, we do not expect that the number of registrants affected by the amendments will be significant.

Both (i) the amendments to the SRC definition, which expand the number of registrants that qualify for the scaled disclosure based on revenue and public float measures, and (ii) the amendment to Rule 3–05 of Regulation S–X, which expands the pool of acquired companies for which registrants are required to provide only two years of financials, reduce disclosure already required to be prepared under our rules. Accordingly, there are no particular professional skills needed to comply with the amendments themselves. Consistent with the current rules, however, a registrant will need to monitor the applicable thresholds for disclosure and to comply with the underlying existing disclosure requirements, which may require the use of professional skills, including information technology, accounting, and legal skills.

The amendments are discussed in detail in Section II above. We discuss the economic impact, including the estimated compliance costs and burdens, of the final rules in Section IV (Economic Analysis) and Section V (Paperwork Reduction Act) above.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider significant alternatives that would accomplish the stated objectives of the amendments, while minimizing any significant adverse impact on small entities. Accordingly, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- clarifying, consolidating or simplifying compliance and reporting requirements for small entities under our rules as revised by the amendments;
- using performance rather than design standards; and
- exempting small entities from coverage of all or part of the amendments.

The amendments generally do not create any new compliance or reporting requirements. Instead, the amendments expand the number of companies eligible for the different compliance and reporting requirements available to SRCs and increase the revenue threshold to qualify for the disclosure accommodation in Rule 3–05(b)(2)(iv) of Regulation S–X.[240] As a result, we do not believe it is necessary or appropriate to exempt small entities in connection with this rulemaking. The amendments are intended to increase the number of registrants eligible to provide scaled disclosures under Regulation S–K and Regulation S–X. To the extent any small entity is not already encompassed within the current SRC definition or the current revenue threshold in Rule 3–05(b)(2)(iv) of Regulation S–X, we believe it is likely that the revised thresholds contained in the final rules will capture those entities, thereby enabling them to provide scaled disclosures. Therefore, we believe that the amendments will simplify compliance and reporting requirements for small entities. Small entities may avail themselves of the amendments upon their effective date. This timetable

[238] In conjunction with these amendments, we also are adopting technical revisions to Securities Act Forms S–1, S–3, S–4, S–8, and S–11 and Exchange Act Forms 10, 10–Q and 10–K. These amendments modify the cover page of the specified forms to remove the parenthetical next to the ''non-accelerated filer'' definition that states ''(Do not check if a smaller reporting company).'' After these amendments, a registrant should check all applicable boxes on the cover page addressing, among other things, non-accelerated, accelerated, and large accelerated filer status, SRC status, and emerging growth company status.

[239] This estimate is based on staff analysis of XBRL data submitted by filers, excluding co-registrants, with EDGAR filings of Forms 10–K filed during the calendar year of January 1, 2016 to December 31, 2016.

[240] As discussed in note 20, Item 404 is the only disclosure item in Regulation S–K that may require more extensive information for SRCs than for non-SRCs. *See also* note 22.

will provide newly-eligible small entities with the ability to take advantage of the scaled disclosure requirements at the earliest possible date. In this regard, we do not believe that it is necessary to establish a different timetable for small entities. With respect to the use of performance rather than design standards, because the amendments are not expected to have any significant adverse effect on small entities (and are, in fact, expected to relieve burdens for some such entities), we do not believe it is necessary to use performance standards in connection with this rulemaking.

In Section IV, above, we discuss additional alternatives that we have considered and their economic impact.[241] We note that those alternatives, such as using a different threshold or different standard for determining SRC status, would be unlikely to have a significant effect on smaller entities because, as noted above, we believe virtually all small entities are already eligible for SRC status. Similarly, with respect to the alternative of not amending the accelerated and large accelerated filer definitions, we believe there are very few small entities that will be considered accelerated filers under the definitions in the final rules, and, therefore, this alternative would not significantly affect small entities.[242]

VII. Statutory Amendments and Text of Final Rules

The rule amendments described in this release are being adopted pursuant to Sections 7, 10 and 19 of the Securities Act (15 U.S.C. 77a *et seq.*), as amended, Sections 3(b), 12, 13, 15(d) and 23(a) of the Exchange Act (15 U.S.C. 78a *et seq.*), as amended, and Section 72002 of the FAST Act.

List of Subjects in 17 CFR Parts 210, 229, 230, 239, 240, and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

■ 2. Amend § 210.3–05 by revising paragraph (b)(2)(iv) to read as follows:

§ 210.3–05 Financial statements of businesses acquired or to be acquired.

* * * * *

(b) * * *

(2) * * *

(iv) If any of the conditions exceed 50 percent, the full financial statements specified in §§ 210.3–01 and 210.3–02 shall be furnished. However, financial statements for the earliest of the three fiscal years required may be omitted if net revenues reported by the acquired business in its most recent fiscal year are less than $100 million.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78*o,* 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.,* and 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 4. Amend § 229.10 by revising paragraphs (f)(1) and (2) to read as follows:

§ 229.10 (Item 10) General.

* * * * *

(f) * * *

(1) *Definition of smaller reporting company.* As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(i) Had a public float of less than $250 million; or

(ii) Had annual revenues of less than $100 million and either:

(A) No public float; or

(B) A public float of less than $700 million.

(2) *Determination.* Whether an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act:

(A) Public float is measured as of the last business day of the issuer's most recently completed second fiscal quarter and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity;

(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and

(C) An issuer must reflect the determination of whether it came within the definition of smaller reporting company in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial registration statement under the Securities Act or Exchange Act for shares of its common equity:

(A) Public float is measured as of a date within 30 days of the date of the filing of the registration statement and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of shares of its voting and non-voting common equity included in the registration statement by the estimated public offering price of the shares;

(B) Annual revenues are as of the most recently completed fiscal year for

[241] *See* Section IV.C. (alternatives include (i) using a different registrant size metric in the SRC definition, (ii) revising the SRC definition using different thresholds, and (iii) reducing the number of registrants that our rules define as accelerated filers, which would expand the number of registrants eligible for the Sarbanes-Oxley Act Section 404(b) exemption).

[242] *See* Section IV.B.

which audited financial statements are available; and

(C) The issuer must reflect the determination of whether it came within the definition of smaller reporting company in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether it is a smaller reporting company. The issuer must re-determine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (f)(2)(i)(C) of this section. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to re-determine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status because it exceeded one or more of the current thresholds, it will remain unqualified unless when making its annual determination either:

(A) It determines that its public float was less than $200 million; or

(B) It determines that its public float and its annual revenues meet the requirements for subsequent qualification included in the following chart:

Prior annual revenues	Prior public float	
	None or less than $700 million	$700 million or more
Less than $100 million	Neither threshold exceeded	Public float—Less than $560 million; and Revenues—Less than $100 million.
$100 million or more	Public float—None or less than $700 million; and. Revenues—Less than $80 million	Public float—Less than $560 million; and Revenues—Less than $80 million.

Instruction 1 to paragraph (f): A registrant that qualifies as a smaller reporting company under the public float thresholds identified in paragraphs (f)(1)(i) and (f)(2)(iii)(A) of this section will qualify as a smaller reporting company regardless of its revenues.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 5. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 6. Amend § 230.405 by revising the definition of ''smaller reporting company'' to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Smaller reporting company. As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than $250 million; or

(2) Had annual revenues of less than $100 million and either:

(i) No public float; or

(ii) A public float of less than $700 million.

(3) Whether an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act:

(A) Public float is measured as of the last business day of the issuer's most recently completed second fiscal quarter and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity;

(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and

(C) An issuer must reflect the determination of whether it came within the definition of smaller reporting company in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial registration statement under the Securities Act or Exchange Act for shares of its common equity:

(A) Public float is measured as of a date within 30 days of the date of the filing of the registration statement and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of shares of its voting and non-voting common equity included in the registration statement by the estimated public offering price of the shares;

(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and

(C) The issuer must reflect the determination of whether it came within the definition of smaller reporting company in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether it is a smaller reporting company. The issuer must re-determine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (3)(i)(C) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to re-determine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status because it exceeded one or more of the current thresholds, it will remain unqualified unless when making its annual determination either:

(A) It determines that its public float was less than $200 million; or

(B) It determines that its public float and its annual revenues meet the requirements for subsequent qualification included in the following chart:

Prior annual revenues	Prior public float	
	None or less than $700 million	$700 million or more
Less than $100 million	Neither threshold exceeded	Public float—Less than $560 million; and Revenues—Less than $100 million.
$100 million or more	Public float—None or less than $700 million; and. Revenues—Less than $80 million	Public float—Less than $560 million; and Revenues—Less than $80 million.

Instruction 1 to definition of ''smaller reporting company'': A registrant that qualifies as a smaller reporting company under the public float thresholds identified in paragraphs (1) and (3)(iii)(A) of this definition will qualify as a smaller reporting company regardless of its revenues.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 7. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78*o*(d), 78*o*–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 8. Amend Form S–1 (referenced in § 239.11) by revising the text and check boxes on the cover page immediately before the text ''If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.'' The revisions read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–1

Registration Statement Under the Securities Act of 1933

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of ''large accelerated filer,'' ''accelerated filer,'' ''smaller reporting company,'' and ''emerging growth company'' in Rule 12b–2 of the Exchange Act.

Large accelerated filer ☐
Accelerated filer ☐
Non-accelerated filer ☐
Smaller reporting company ☐
Emerging growth company ☐

* * * * *

■ 9. Amend Form S–3 (referenced in § 239.13) by revising the text and check boxes on the cover page immediately before the text ''If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.'' The revisions read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of ''large accelerated filer,'' ''accelerated filer,'' ''smaller reporting company,'' and ''emerging growth company'' in Rule 12b–2 of the Exchange Act.

Large accelerated filer ☐
Accelerated filer ☐
Non-accelerated filer ☐
Smaller reporting company ☐
Emerging growth company ☐

* * * * *

■ 10. Amend Form S–8 (referenced in § 239.16b) by revising the text and check boxes on the cover page immediately before the text ''If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.'' The revisions read as follows:

Note: The text of Form S–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–8

Registration Statement Under the Securities Act of 1933

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of ''large accelerated filer,'' ''accelerated filer,'' ''smaller reporting company,'' and ''emerging growth company'' in Rule 12b–2 of the Exchange Act.

Large accelerated filer ☐
Accelerated filer ☐
Non-accelerated filer ☐
Smaller reporting company ☐
Emerging growth company ☐

* * * * *

■ 11. Amend Form S–11 (referenced in § 239.18) by revising the text and check boxes on the cover page immediately before the text ''If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.'' The revisions read as follows:

Note: The text of Form S–11 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–11

Registration Statement Under the Securities Act of 1933

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of ''large accelerated filer,'' ''accelerated filer,'' ''smaller reporting company,'' and ''emerging growth company'' in Rule 12b–2 of the Exchange Act.

Large accelerated filer ☐
Accelerated filer ☐
Non-accelerated filer ☐
Smaller reporting company ☐
Emerging growth company ☐
* * * * *

■ 12. Amend Form S–4 (referenced in § 239.25) by revising the text and check boxes on the cover page immediately before the text ''If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.'' The revisions read as follows:

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–4

Registration Statement Under the Securities Act of 1933

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of ''large accelerated filer,'' ''accelerated filer,'' ''smaller reporting company,'' and ''emerging growth company'' in Rule 12b–2 of the Exchange Act.

Large accelerated filer ☐
Accelerated filer ☐
Non-accelerated filer ☐
Smaller reporting company ☐
Emerging growth company ☐
* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 13. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 14. Amend § 240.12b–2 by:
■ a. In the definition of ''accelerated filer and large accelerated filer'':
■ i. Adding the word ''and'' at the end of paragraph (1)(ii);
■ ii. Removing ''; and'' at the end of paragraph (1)(iii) and in its place adding a period;
■ iii. Removing paragraph (1)(iv);
■ iv. Adding the word ''and'' at the end of paragraph (2)(ii);
■ v. Removing ''; and'' at the end of paragraph (2)(iii) and in its place adding a period; and
■ vi. Removing paragraph (2)(iv).
■ b. Revising the definition of ''smaller reporting company''.

The addition and revision reads as follows:

§ 240.12b–2 Definitions.

* * * * *

Smaller reporting company. As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than $250 million; or

(2) Had annual revenues of less than $100 million and either:

(i) No public float; or

(ii) A public float of less than $700 million.

(3) Whether an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act:

(A) Public float is measured as of the last business day of the issuer's most recently completed second fiscal quarter and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity;

(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and

(C) An issuer must reflect the determination of whether it came within the definition of smaller reporting company in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial registration statement under the Securities Act or Exchange Act for shares of its common equity:

(A) Public float is measured as of a date within 30 days of the date of the filing of the registration statement and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of shares of its voting and non-voting common equity included in the registration statement by the estimated public offering price of the shares;

(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and

(C) The issuer must reflect the determination of whether it came within the definition of smaller reporting company in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether it is a smaller reporting company. The issuer must re-determine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (3)(i)(C) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to re-determine its status at the conclusion of the offering covered by the registration

statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status because it exceeded one or more of the current thresholds, it will remain unqualified unless when making its annual determination either:

(A) It determines that its public float was less than $200 million; or

(B) It determines that its public float and its annual revenues meet the requirements for subsequent qualification included in the following chart:

Prior annual revenues	Prior public float	
	None or less than $700 million	$700 million or more
Less than $100 million	Neither threshold exceeded	Public float—Less than $560 million; and Revenues—Less than $100 million.
$100 million or more	Public float—None or less than $700 million; and. Revenues—Less than $80 million	Public float—Less than $560 million; and Revenues—Less than $80 million.

Instruction 1 to definition of ''smaller reporting company'': A registrant that qualifies as a smaller reporting company under the public float thresholds identified in paragraphs (1) and (3)(iii)(A) of this definition will qualify as a smaller reporting company regardless of its revenues.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 15. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq*. and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

■ 16. Amend Form 10 (referenced in § 249.210) by revising the text and check boxes on the cover page immediately before the text ''If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.'' The revisions read as follows:

Note: The text of Form 10 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form 10

General Form for Registration of Securities

Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of ''large accelerated filer,'' ''accelerated filer,'' ''smaller reporting company,'' and ''emerging growth company'' in Rule 12b–2 of the Exchange Act.

Large accelerated filer ☐
Accelerated filer ☐
Non-accelerated filer ☐
Smaller reporting company ☐
Emerging growth company ☐

* * * * *

■ 17. Amend Form 10–Q (referenced in § 249.308a) by revising the text and check boxes on the cover page immediately before the text ''If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.'' The revisions read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form 10–Q

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of ''large accelerated filer,'' ''accelerated filer,'' ''smaller reporting company,'' and ''emerging growth company'' in Rule 12b–2 of the Exchange Act.

Large accelerated filer ☐
Accelerated filer ☐
Non-accelerated filer ☐
Smaller reporting company ☐
Emerging growth company ☐

* * * * *

■ 18. Amend Form 10–K (referenced in § 249.310) by revising the text and check boxes on the cover page immediately before the text ''If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.'' The revisions read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form 10–K

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of ''large accelerated filer,'' ''accelerated filer,'' ''smaller reporting company,'' and ''emerging growth company'' in Rule 12b–2 of the Exchange Act.

Large accelerated filer ☐
Accelerated filer ☐
Non-accelerated filer ☐
Smaller reporting company ☐
Emerging growth company ☐

* * * * *

By the Commission.

Dated: June 28, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–14306 Filed 7–9–18; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 83 Tuesday,
No. 132 July 10, 2018

Part III

Environmental Protection Agency

40 CFR Part 80
Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2018–0167; FRL–9980–37–OAR]

RIN 2060–AT93

Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 211 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to set renewable fuel percentage standards every year. This action proposes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to gasoline and diesel transportation fuel produced or imported in the year 2019. Relying on statutory waiver authority that is available when the projected cellulosic biofuel production volume is less than the applicable volume specified in the statute, EPA is proposing volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel that are below the statutory volume targets. We are also proposing the applicable volume of biomass-based diesel for 2020.

DATES:

Comments. Comments must be received on or before August 17, 2018.

Public Hearing. EPA will announce the public hearing date and location for this proposal in a supplemental **Federal Register** document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0167, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4131; email address: *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION: Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially affected categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially affected entities
Industry	324110	2911	Petroleum refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	221210	4925	Manufactured gas production and distribution.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC).

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. This table lists the types of entities that EPA is now aware could potentially be affected by this proposed action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this proposed action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
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I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) that were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), leading to the publication of major revisions to the regulatory requirements on March 26, 2010.[1] EISA's stated goals include moving the United States (U.S) toward ''greater energy independence and security [and] increase[ing] the production of clean renewable fuels.'' [2]

The statute includes annual volume targets, and requires EPA to translate those volume targets (or alternative volume requirements established by EPA in accordance with statutory waiver authorities) into compliance obligations that obligated parties must meet every year. In this action we are proposing the applicable volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2019, and biomass-based diesel (BBD) for 2020.[3] We are also proposing the annual percentage standards (also known as ''percent standards'') for cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel that would apply to all gasoline and diesel produced or imported in 2019.[4]

Today, nearly all gasoline used for transportation purposes contains 10 percent ethanol (E10), and on average diesel fuel contains nearly 5 percent biodiesel and/or renewable diesel.[5] However, the market has fallen well short of the statutory volumes for cellulosic biofuel, resulting in shortfalls in the advanced biofuel and total renewable fuel volumes. In this action, we are proposing a volume requirement for cellulosic biofuel at the level we project to be available for 2019, along with an associated applicable percentage standard. For advanced biofuel and total renewable fuel, we are proposing reductions under the ''cellulosic waiver authority'' that would result in advanced biofuel and total renewable fuel volume requirements that are lower than the statutory targets by the same magnitude as the reduction in the cellulosic biofuel reduction. This would effectively maintain the implied statutory volumes for non-cellulosic advanced biofuel and conventional biofuel.[6]

The resulting proposed volume requirements for 2019 are shown in Table I–1 below. Relative to the levels finalized for 2018, the 2019 volume requirements for advanced biofuel and total renewable fuel would be higher by 590 million gallons. Approximately 90 million gallons of this increase would be due to the increase in the projected production of cellulosic biofuel in 2019 relative to 2018. We are also proposing to establish the volume requirement for BBD for 2020 at 2.43 billion gallons. This volume is 330 million gallons higher than the volume for 2019.

TABLE I–1—PROPOSED VOLUME REQUIREMENTS [a]

	2018 [b]	2019 Statutory volumes	2019 Proposed volumes	2020 Proposed volumes
Cellulosic biofuel (million gallons)	288	8,500	381	n/a
Biomass-based diesel (billion gallons)	2.1	≥1.0	[c] 2.1	2.43
Advanced biofuel (billion gallons)	4.29	13.00	4.88	n/a
Renewable fuel (billion gallons)	19.29	28.00	19.88	n/a

[a] All values are ethanol-equivalent on an energy content basis, except for BBD which is biodiesel-equivalent.
[b] The 2018 volume requirements for cellulosic biofuel, advanced biofuel, and renewable fuel were established in the 2018 final rule (82 FR 58486, December 12, 2017). The 2018 BBD volume requirement was established in the 2017 final rule (81 FR 89746, December 12, 2016).
[c] The 2019 BBD volume requirement was established in the 2018 final rule (82 FR 58486, December 12, 2017).

[1] 75 FR 14670, March 26, 2010.

[2] Public Law 110–140, 121 Stat. 1492 (2007). Hereinafter, ''EISA.''

[3] The 2019 BBD volume requirement was established in the 2018 final rule.

[4] For a list of the statutory provisions for the determination of applicable volumes, see the 2018 final rule (82 FR 58486; Table I.A–2).

[5] Average biodiesel and/or renewable diesel blend percentages based on EIA's April 2018 Short Term Energy Outlook (STEO).

[6] The statutory total renewable fuel, advanced biofuel and cellulosic biofuel requirements for 2019 are 28.0, 13.0 and 8.5 billion gallons respectively. This implies a conventional renewable fuel applicable volume (the difference between the total renewable fuel and advanced biofuel volumes, which can be satisfied by with conventional (D6) RINs) of 15.0 billion gallons, and a non-cellulosic advanced biofuel applicable volume (the difference between the advanced biofuel and cellulosic biofuel volumes, which can be satisfied with advanced (D5) RINs) of 4.5 billion gallons.

A. Summary of Major Provisions in This Action

This section briefly summarizes the major provisions of this final rule. We are proposing applicable volume requirements and associated percentage standards for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2019; for BBD we are proposing the percentage standard for 2019 and the applicable volume requirement for 2020.

1. Approach to Setting Volume Requirements

For advanced biofuel and total renewable fuel, we are proposing reductions based on the ''cellulosic waiver authority'' that would result in advanced biofuel and total renewable fuel volume requirements that are lower than the statutory targets by the same magnitude as the reduction in the cellulosic biofuel applicable volume. This follows the same general approach as in the 2018 final rule. The proposed volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel exceed the required volumes for these fuel types in 2018.

Section II provides a general description of our approach to setting volume requirements in today's rule, including a review of the statutory waiver authorities and our consideration of carryover RINs. Section III provides our assessment of the 2019 cellulosic biofuel volume, based on a projection of production that reflects a neutral aim at accuracy. Section IV describes our assessment of advanced biofuel and total renewable fuel. Finally, Section VI provides our proposal regarding the 2020 BBD volume requirement, reflecting a proposed analysis of a set of factors stipulated in CAA section 211(o)(2)(B)(ii).

2. Cellulosic Biofuel

EPA must annually determine the projected volume of cellulosic biofuel production for the following year. If the projected volume of cellulosic biofuel production is less than the applicable volume specified in section 211(o)(2)(B)(i)(III) of the statute, EPA must lower the applicable volume used to set the annual cellulosic biofuel percentage standard to the projected production volume. In this rule we are proposing a cellulosic biofuel volume requirement of 381 million ethanol-equivalent gallons for 2019 based on our production projection. Our projection reflects consideration of RIN generation data for past years and 2018 to date that is available to EPA through EMTS; the information we have received regarding individual facilities' capacities, production start dates, and biofuel production plans; a review of cellulosic biofuel production relative to EPA's projections in previous annual rules; and EPA's own engineering judgment. To project cellulosic biofuel production for 2019 we used the same basic methodology described in the 2018 final rule. However, we have used updated data to derive percentile values used in our production projection for liquid cellulosic biofuels and to derive the year-over-year change in the rate of production of CNG/LNG derived from biogas that is used in the projection for CNG/LNG. EPA anticipates that our final projection of cellulosic biofuel will be based on additional data we will obtain prior to issuing the final rule, including an estimate of cellulosic biofuel production for 2019 to be provided by the Energy Information Administration (EIA).

3. Advanced Biofuel

If we reduce the applicable volume of cellulosic biofuel below the volume specified in CAA section 211(o)(2)(B)(i)(III), we also have the authority to reduce the applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser amount. We refer to this as the ''cellulosic waiver authority.'' The conditions that caused us to reduce the 2018 volume requirement for advanced biofuel below the statutory target remain relevant in 2019. As for 2018, we investigated the projected availability of non-cellulosic advanced biofuels in 2019. We took into account the various constraints on the ability of the market to make advanced biofuels available, the ability of the standards we set to bring about market changes in the time available, the potential impacts associated with diverting biofuels and/or biofuel feedstocks from current uses to the production of advanced biofuel used in the U.S., the fact that the biodiesel tax credit is currently not available for 2019, the tariffs on imports of biodiesel from Argentina and Indonesia, as well as the cost of advanced biofuels. Based on these considerations we are proposing to reduce the statutory volume target for advanced biofuel by the same amount as we are reducing the statutory volume target for cellulosic biofuel. This would result in an advanced biofuel volume for 2019 of 4.88 billion gallons, which would be 590 million gallons higher than the advanced biofuel volume for 2018.

4. Total Renewable Fuel

As for advanced biofuel, we are proposing the maximum reduction permissible under the cellulosic waiver authority. We are proposing that the reduction in total renewable fuel would be the same as the reduction in advanced biofuel, such that the resulting implied volume requirement for conventional renewable fuel would be 15 billion gallons.

5. 2020 Biomass-Based Diesel

In EISA, Congress specified increasing applicable volumes of BBD through 2012. Beyond 2012 Congress stipulated that EPA, in coordination with DOE and USDA, was to establish the BBD volume taking into consideration implementation of the program to date and various specified factors, provided that the required volume for BBD could not be less than 1.0 billion gallons. For 2013, EPA established an applicable volume of 1.28 billion gallons. For 2014 and 2015 we established the BBD volume requirement to reflect the actual volume for each of these years of 1.63 and 1.73 billion gallons.[7] For 2016 and 2017, we set the BBD volume requirements at 1.9 and 2.0 billion gallons respectively. Finally, for 2018 and 2019 the BBD volume requirement was set a 2.1 billion gallons. We are proposing to increase the BBD volume for 2020 to 2.43 billion gallons.

Given current and recent market conditions, the advanced biofuel volume requirement is driving the production and use of biodiesel and renewable diesel volumes over and above volumes required through the separate BBD standard, and we expect this to continue. While EPA continues to believe it is appropriate to maintain the opportunity for other advanced biofuels to compete for market share, the vast majority of the advanced biofuel obligations in recent years have been satisfied with BBD. Thus, after a review of the implementation of the program to date and considering the statutory factors, and in light of the 500 million gallon increase we are proposing for non-cellulosic advanced biofuels, we are proposing, in coordination with USDA and DOE, an applicable volume of BBD for 2020 of 2.43 billion gallons.[8]

[7] The 2015 BBD standard was based on actual data for the first 9 months of 2015 and on projections for the latter part of the year for which data on actual use was not available at the time.

[8] The proposed 330 million gallon increase for BBD would generate approximately 500 million RINs, due to the higher equivalence value of biodiesel (1.5 RINs/gallon) and renewable diesel (generally 1.7 RINs/gallon).

6. Annual Percentage Standards

The renewable fuel standards are expressed as a volume percentage and are used by each refiner and importer of fossil-based gasoline or diesel to determine their renewable fuel volume obligations.

Four separate percentage standards are required under the RFS program, corresponding to the four separate renewable fuel categories shown in Table I.A–1. The specific formulas we use in calculating the renewable fuel percentage standards are contained in the regulations at 40 CFR 80.1405. The percentage standards represent the ratio of the national applicable volume of renewable fuel volume to the national projected non-renewable gasoline and diesel volume less any gasoline and diesel attributable to small refineries granted an exemption prior to the date that the standards are set. The volume of transportation gasoline and diesel used to calculate the proposed percentage standards was based on the April 2018 version of EIA's Short-Term Energy Outlook.[9] The proposed percentage standards for 2019 are shown in Table I.B.6–1. Detailed calculations can be found in Section VII, including the projected gasoline and diesel volumes used.

TABLE I.B.6–1—PROPOSED 2019 PERCENTAGE STANDARDS

	Proposed percentage standards
Cellulosic biofuel	0.209
Biomass-based diesel	1.72
Advanced biofuel	2.67
Renewable fuel	10.88

B. RIN Market Operations

In the rulemaking notice proposing the 2018 RFS volume requirements, EPA noted that various stakeholders had raised concerns regarding lack of transparency and potential manipulation in the RIN market. We asked for comment from the public on those issues, and received multiple suggestions from stakeholders in response. Commenters suggested a number of potential steps EPA could take, including increasing the public availability of data related to the RIN market; establishing new regulations relating to the purchase, ownership, and retirement of RINs; and increasing coordination with sister federal agencies. Since receiving those comments, we have held additional meetings with stakeholders on these topics, through which we have continued to hear various perspectives on RIN market operations and potential changes.

A number of the comments received in response to the 2018 NPRM suggested increasing the amount of data related to the RIN market that EPA makes publicly available. For example, commenters urged EPA to consider increasing the frequency at which currently available information is posted. EPA is currently exploring the possibility of posting regular updates to the number of RINs we anticipate will be required for compliance. These updates could take into account several factors, such as updated information on gasoline and diesel consumption throughout the year, the impact of small refinery exemptions, and the volume of renewable fuel exported from the United States for which RINs were generated, and would thus need to be retired. EPA is also considering publicly posting average RIN prices based on the price information submitted to EPA through EMTS. Other information that may be of interest to the public could be aggregated information related to the number of RINs held by different categories of entities, such as renewable fuel producers, obligated parties, and parties that neither produce renewable fuel nor have an RVO under the RFS program. Finally, we are considering whether there may be value in increasing the frequency of the release of data that is already posted publicly, such as information related to RIN generation by D-code and fuel type.

Stakeholders have also suggested ways EPA could amend the RFS regulations to change rules related to who may purchase RINs, the duration for which RINs could be held, and other rules related to the buying, selling, or holding of RINs. The goal of such changes would be to minimize or eliminate potential manipulation in the market. EPA is currently considering a handful of ideas, including: Prohibiting parties other than obligated parties from purchasing separated RINS; requiring public disclosure if a party holds a certain percentage of the RIN market; and/or requiring obligated parties to retire RINs for compliance purposes on a more frequent basis (*e.g.,* requiring monthly compliance). EPA requests comment on the expected impact that these specific potential regulatory changes could have on the RIN market, positively or negatively, as well as on any other potential regulatory changes commenters may recommend to address perceived vulnerabilities in the RIN market. Today's action is not proposing to make any such regulatory changes. Should EPA decide to move forward on any of these ideas, we would do so through a separate proposed rulemaking. That rulemaking would be informed by comments received in response to today's notice.

Finally, we note that multiple stakeholders have encouraged cooperation and coordination between EPA and other federal agencies that may play an oversight role in the RFS or broader fuels market, including the Commodity Futures Trading Commission and the Federal Trade Commission. EPA has engaged with both agencies on an ongoing basis and will continue to do so.

C. EPA Response to Court Decision in Americans for Clean Energy v. *EPA*

In the annual rule establishing the 2014–2016 renewable fuel standards, we determined that there would be an ''inadequate domestic supply'' of renewable fuel to consumers in 2016, and so exercised the general waiver authority to reduce the applicable volume of total renewable fuel to a level we believed could be supplied.[10] In response to a petition for review of the 2014–2016 rule, the United States Court of Appeals for the District of Columbia Circuit ruled that EPA improperly focused on assessing the supply of renewable fuel to consumers, and that the statute instead requires a ''supply-side'' assessment of the volumes of renewable fuel that can be supplied to refiners, importers and blenders. The court vacated EPA's decision to reduce the total renewable fuel volume requirements for 2016 using general waiver authority, and remanded the rule to EPA for further consideration in light of the decision. *Americans for Clean Energy (''ACE'')* v. *EPA,* 864 F.3d 691 (2017).

EPA is currently considering a number of issues raised by the need to respond to the court's remand in a separate process from this annual rulemaking. EPA is not requesting comment on this rulemaking process at this time and any comments on this issue will be treated as outside of the scope of this rulemaking. EPA understands that there is a compelling need to respond to the remand and intends to expeditiously move ahead with a separate rule to resolve this matter.

[9] The final percentage standards will be based on the most recent gasoline and diesel projected volumes provided by EIA.

[10] See 80 FR 77420 (December 14, 2015).

II. Authority and Need for Waiver of Statutory Applicable Volumes

The CAA provides EPA with the authority to enact volume requirements below the applicable volume targets specified in the statute under specific circumstances. This section discusses those authorities. As described in the executive summary, we are proposing a single volume requirement for cellulosic biofuel at the level we project to be available for 2019, and an associated applicable percentage standard. For advanced biofuel and total renewable fuel, we are proposing volume requirements and associated applicable percent standards, based on use of the ''cellulosic waiver authority'' that would result in advanced biofuel and total renewable fuel volume requirements that are lower than the statutory targets by the same magnitude as the reduction in the cellulosic biofuel reduction. This would effectively maintain the implied statutory volumes for non-cellulosic advanced biofuel and conventional biofuel.[11]

A. Statutory Authorities for Reducing Volume Targets

In CAA section 211(o)(2), Congress specified increasing annual volume targets for total renewable fuel, advanced biofuel, and cellulosic biofuel for each year through 2022, and for BBD through 2012, and authorized EPA to set volume requirements for subsequent years in coordination with USDA and DOE, and after consideration of specified factors. However, Congress also recognized that under certain circumstances it would be appropriate for EPA to set volume requirements at a lower level than reflected in the statutory volume targets, and thus provided waiver provisions in CAA section 211(o)(7).

1. Cellulosic Waiver Authority

Section 211(o)(7)(D)(i) of the CAA provides that if EPA determines that the projected volume of cellulosic biofuel production for a given year is less than the applicable volume specified in the statute, then EPA must reduce the applicable volume of cellulosic biofuel required to the projected production volume for that calendar year. In making this projection, EPA may not ''adopt a methodology in which the risk of overestimation is set deliberately to outweigh the risk of underestimation'' but must make a projection that ''takes neutral aim at accuracy.'' *API* v. *EPA,* 706 F.3d 474, 479, 476 (D.C. Cir. 2013). Pursuant to this provision, EPA has set the cellulosic biofuel requirement lower than the statutory volume for each year since 2010. As described in Section III.D, the projected volume of cellulosic biofuel production for 2019 is less than the 8.5 billion gallon volume target in the statute. Therefore, for 2019, we are proposing to set the cellulosic biofuel volume requirement at a level lower than the statutory applicable volume, in accordance with this provision.

CAA section 211(o)(7)(D)(i) also provides EPA with the authority to reduce the applicable volume of total renewable fuel and advanced biofuel in years when it reduces the applicable volume of cellulosic biofuel under that provision. The reduction must be less than or equal to the reduction in cellulosic biofuel. For 2019, we are also proposing to reduce the applicable volumes of advanced biofuel and total renewable fuel under this authority.

EPA has used the cellulosic waiver authority to lower the cellulosic biofuel, advanced biofuel and total renewable fuel volumes every year since 2014. Further discussion of the cellulosic waiver authority, and EPA's interpretation of it, can be found in the preamble to the 2017 final rule.[12] See also *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013) (requiring that EPA's cellulosic biofuel projections reflect a neutral aim at accuracy); *Monroe Energy* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014) (affirming EPA's broad discretion under the cellulosic waiver authority to reduce volumes of advanced biofuel and total renewable fuel); *Americans for Clean Energy* v. *EPA* (''*ACE*''), 864 F.3d 691 (D.C. Cir. 2017) (discussed below).

In *ACE,* the court evaluated EPA's use of the cellulosic waiver authority in the 2014–2016 annual rulemaking to reduce the advanced biofuel and total renewable fuel volumes for 2014, 2015, and 2016. There, EPA used the cellulosic waiver authority to reduce the advanced biofuel volume to a level that was reasonably attainable, and then provided a comparable reduction under this authority for total renewable fuel.[13] The Court of Appeals for the District of Columbia, relying on the analysis in *Monroe Energy,* reaffirmed that EPA enjoys ''broad discretion'' under the cellulosic waiver authority ''to consider a variety of factors—including demand-side constraints in the advanced biofuels market.'' [14] The Court noted that the only textual limitation on the use of the cellulosic waiver authority is that it cannot exceed the amount of the reduction in cellulosic biofuel.[15] The Court contrasted the general waiver authority under CAA section 211(o)(7)(A) and the biomass based diesel waiver authority under CAA section 211(o)(7)(E), which ''detail the considerations and procedural steps that EPA must take before waiving fuel requirements,'' with the cellulosic waiver authority, which identifies no factors regarding reductions in advanced and total renewable fuel other than the limitation that any such reductions may not exceed the reduction in cellulosic biofuel volumes.[16] The Court also concluded that the scope of EPA's discretionary authority to reduce advanced and total volumes is the same under the cellulosic waiver provision whether EPA is declining to exercise its authority to waive volumes, or choosing to do so.[17]

In this action we are proposing to use the cellulosic waiver authority to reduce the statutory volume targets for advanced biofuels and total renewable fuel by equal amounts, consistent with our long-held interpretation of this provision and our approach in setting the 2014–2018 standards. This approach considers the Congressional objectives reflected in the volume tables in the statute, and the environmental objectives that generally favor the use of advanced biofuels over non-advanced biofuels. See 81 FR 89752–89753 (December 12, 2016). See also 78 FR 49809–49810 (August 15, 2013); 80 FR 77434 (December 14, 2015). We are proposing, as described in Section IV, that the applicable volume for advanced biofuels specified in the statute for 2019 is not attainable, and thus to exercise our cellulosic waiver authority to lower the applicable volume of advanced biofuel by the same quantity as the reduction in cellulosic biofuel, and to provide an equal reduction under the cellulosic waiver authority in the applicable volume of total renewable fuel. The volumes of advanced and total renewable fuel resulting from this exercise of the cellulosic waiver authority provide for an implied volume allowance for conventional biofuel of fifteen billion gallons, equal to the implied statutory volume for 2019.

[11] The statutory total renewable fuel, advanced biofuel and cellulosic biofuel requirements for 2019 are 28.0, 13.0, and 8.5 billion gallons, respectively. This implies a conventional renewable fuel applicable volume (the difference between the total renewable fuel and advanced biofuel volumes, which can be satisfied by with conventional (D6) RINs) and a non-cellulosic advanced biofuel applicable volume (the difference between the advanced biofuel and cellulosic biofuel volumes, which can be satisfied with advanced (D5) RINs) of 15.0 and 4.5 billion gallons, respectively.

[12] See 81 FR 89752–89753 (December 12, 2016).

[13] See 80 FR 77433–34 (December 14, 2015).

[14] *ACE,* 864 F.3d at 730.

[15] *Id.* at 733.

[16] *Id.*

[17] *Id.* at 734.

2. General Waiver Authority

Section 211(o)(7)(A) of the CAA provides that EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the applicable volumes specified in the Act in whole or in part based on a petition by one or more States, by any person subject to the requirements of the Act, or by the EPA Administrator on his own motion. Such a waiver must be based on a determination by the Administrator, after public notice and opportunity for comment that: (1) Implementation of the requirement would severely harm the economy or the environment of a State, a region, or the United States; or (2) there is an inadequate domestic supply. At this time, we do not believe that the circumstances exist that would justify a waiver of volumes under the general waiver authority.

As discussed further in Section IV.C below, EPA is soliciting comment on whether further reductions under the general waiver authority could be justified.

B. Treatment of Carryover RINs

Consistent with our approach in the final rules establishing the RFS standards for 2013 through 2018, we have also considered the availability and role of carryover RINs in evaluating whether we should exercise our discretion to use our waiver authorities in setting the cellulosic, advanced, and total volume requirements for 2019. Neither the statute nor EPA regulations specify how or whether EPA should consider the availability of carryover RINs in exercising the cellulosic waiver authority.[18] As noted in the context of the rules establishing the RFS standards for 2014 through 2018, we believe that a bank of carryover RINs is extremely important in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace, and in providing a liquid and well-functioning RIN market upon which success of the entire program depends.[19] Carryover RINs provide flexibility in the face of a variety of circumstances that could limit the availability of RINs, including weather-related damage to renewable fuel feedstocks and other circumstances potentially affecting the production and distribution of renewable fuel.[20] On the other hand, carryover RINs can be used for compliance purposes, and in the context of the 2013 RFS rulemaking we noted that an abundance of carryover RINs available in that year, together with possible increases in renewable fuel production and import, justified maintaining the advanced and total renewable fuel volume requirements for that year at the levels specified in the statute.[21] EPA's approach to the consideration of carryover RINs in exercising our cellulosic waiver authority was affirmed in *Monroe Energy* and *ACE*.[22]

An adequate RIN bank serves to make the RIN market liquid. Just as the economy as a whole functions best when individuals and businesses prudently plan for unforeseen events by maintaining inventories and reserve money accounts, we believe that the RFS program functions best when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves. Were there to be no RINs in reserve, then even minor disruptions causing shortfalls in renewable fuel production or distribution, or higher than expected transportation fuel demand (requiring greater volumes of renewable fuel to comply with the percentage standards that apply to all volumes of transportation fuel, including the unexpected volumes) could lead to the need for a new waiver of the standards, undermining the market certainty so critical to the RFS program. Moreover, a significant drawdown of the carryover RIN bank leading to a scarcity of RINs may stop the market from functioning in an efficient manner (*i.e.,* one in which there are a sufficient number of reasonably available RINs for obligated parties seeking to purchase them), even where the market overall could satisfy the standards. For all of these reasons, the collective carryover RIN bank provides a needed programmatic buffer that both facilitates individual compliance and provides for smooth overall functioning of the program.[23]

1. Carryover RIN Bank Size

At the time of the 2018 standards final rule, we estimated that there were approximately 2.22 billion total carryover RINs available and decided that carryover RINs should not be counted on to avoid or minimize the need to reduce the 2018 statutory volume targets.[24] We also stated that we may or may not take a similar approach in future years, and that we would evaluate the issue on a case-by-case basis considering the facts in future years. Since that time, obligated parties have submitted their compliance demonstrations for the 2017 compliance year and we now estimate that there are currently approximately 3.06 billion total carryover RINs available, an increase of 840 million RINs from the previous estimate of 2.22 billion total carryover RINs in the 2018 final rule.[25] This increase in the total carryover RIN bank compared to that projected in the 2018 final rule results from various factors, including market factors, regulatory and enforcement actions, and judicial proceedings. They include the approximately 1,460 million RINs that were not required to be retired by small refineries that were granted hardship exemptions for 2017 and approximately 790 million RINs that were not required to be retired by small refineries that were granted hardship exemptions for 2016, along with the RINs that Philadelphia Energy Solutions Refining and Marketing, LLC (''PESRM'') was not required to retire as part of its bankruptcy settlement agreement.[26]

[18] CAA section 211(o)(5) requires that EPA establish a credit program as part of its RFS regulations, and that the credits be valid to show compliance for 12 months as of the date of generation. EPA implemented this requirement though the use of RINs, which can be used to demonstrate compliance for the year in which they are generated or the subsequent compliance year. Obligated parties can obtain more RINs than they need in a given compliance year, allowing them to ''carry over'' these excess RINs for use in the subsequent compliance year, although use of these carryover RINs is limited to 20 percent of the obligated party's RVO. For the bank of carryover RINs to be preserved from one year to the next, individual carryover RINs are used for compliance before they expire and are essentially replaced with newer vintage RINs that are then held for use in the next year. For example, if the volume of the collective carryover RIN bank is to remain unchanged from 2017 to 2018, then all of the vintage 2017 carryover RINs must be used for compliance in 2018, or they will expire. However, the same volume of 2018 RINs can then be ''banked'' for use in 2019.

[19] See 80 FR 77482–87 (December 14, 2015), 81 FR 89754–55 (December 12, 2016), and 82 FR 58493–95 (December 12, 2017).

[20] See 72 FR 23900 (May 1, 2007), 80 FR 77482–87 (December 14, 2015), 81 FR 89754–55 (December 12, 2016), and 82 FR 58493–95 (December 12, 2017).

[21] See 79 FR 49793–95 (August 15, 2013).

[22] *Monroe Energy* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014), *ACE* at 713.

[23] Here we use the term ''buffer'' as shorthand reference to all of the benefits that are provided by a sufficient bank of carryover RINs.

[24] See 82 FR 58494 (December 12, 2017).

[25] The calculations performed to estimate the number of carryover RINs currently available can be found in the memorandum, ''Carryover RIN Bank Calculations for 2019 NPRM,'' available in the docket.

[26] Per PESRM's bankruptcy filings, PESRM had an RVO of 467 million RINs for 2017 (including its deficit carryforward from 2016). Pursuant to the settlement agreement, which was based on the unique facts and circumstances present in this case, including the insolvency and risk of liquidation, PESRM agreed to retire 138 million RINs to meet its 2017 RVO and the portion of its 2018 RVO during the bankruptcy proceedings (approximately 97 million RINs). See docket for PES Holdings, LLC, 1:18bk10122, ECF Document Nos. 244 (proposed settlement agreement), 347 (United States' motion

Continued

While EPA cannot predict how obligated parties will comply in 2018 or the amount of additional small refinery hardship exemptions that may be granted in the future, the 2016 and 2017 exemptions have directly increased the number of carryover RINs that will likely be available for compliance with the 2019 standards. This total volume of carryover RINs is approximately 15 percent of the total renewable fuel volume requirement that EPA is proposing for 2019, which is less than the 20 percent maximum limit permitted by the regulations to be carried over for use in complying with the 2019 standards.[27]

The above discussion applies to total carryover RINs; we have also considered the available volume of advanced biofuel carryover RINs. At the time of the 2018 final rule, we estimated that there were approximately 810 million advanced carryover RINs available.[28] Since that time, obligated parties have submitted their compliance demonstrations for the 2017 compliance year and we now estimate that there are currently approximately 640 million advanced carryover RINs available, a decrease of 170 million RINs from the previous estimate in the 2018 final rule.[29] This volume of advanced carryover RINs is approximately 14 percent of the advanced renewable fuel volume requirement that EPA is proposing for 2019, which is less than the 20 percent maximum limit permitted by the regulations to be carried over for use in complying with the 2019 standards.[30]

However, there remains considerable uncertainty surrounding these estimates for a number of reasons, including the potential impact of any future action to address the remand in *ACE,* the possibility of additional small refinery exemptions, and the impact of 2018 RFS compliance on the bank of carryover RINs. In addition, we note that there have been enforcement actions in past years that have resulted in the retirement of carryover RINs to make up for the generation and use of invalid RINs and/or the failure to retire RINs for exported renewable fuel. Future enforcement actions could have similar results, and require that obligated parties and/or renewable fuel exporters settle past enforcement-related obligations in addition to the annual standards, thereby potentially creating demand for RINs greater than can be accommodated through actual renewable fuel blending in 2019. In light of these uncertainties, the net result could be a bank of total carryover RINs larger or smaller than 15 percent of the proposed 2019 total renewable fuel volume requirement, and a bank of advanced carryover RINs larger or smaller than 14 percent of the proposed 2019 advanced biofuel volume requirement.

2. EPA's Proposed Decision Regarding the Treatment of Carryover RINs

We have evaluated the volume of carryover RINs currently available and considered whether it would justify a reduced use of our cellulosic waiver authority in setting the 2019 volume requirements in order to intentionally draw down the carryover RIN bank. For the reasons described above and in Section IV, we do not believe this to be the case. The current bank of carryover RINs provides an important and necessary programmatic buffer that will both facilitate individual compliance and provide for smooth overall functioning of the program. We believe that a balanced consideration of the possible role of carryover RINs in achieving the statutory volume objectives for advanced and total renewable fuels, versus maintaining an adequate bank of carryover RINs for important programmatic functions, is appropriate when EPA exercises its discretion under the cellulosic waiver authority, and that the statute does not specify the extent to which EPA should require a drawdown in the bank of carryover RINs when it exercises this authority. Therefore, for the reasons noted above and consistent with the approach we took in the final rules establishing the RFS standards for 2014 through 2018, we are not proposing to set the 2019 volume requirements at levels that would envision an intentional drawdown in the bank of carryover RINs.

III. Cellulosic Biofuel Volume for 2019

In the past several years, production of cellulosic biofuel has continued to increase. Cellulosic biofuel production reached record levels in 2017, driven largely by CNG and LNG derived from biogas. Production volumes have continued to increase in 2018.[31] Production of liquid cellulosic biofuel has also increased in recent years, even as the total production of liquid cellulosic biofuels remains much smaller than the production volumes of CNG and LNG derived from biogas. This section describes our assessment of the volume of cellulosic biofuel that we project will be produced or imported into the U.S. in 2018, and some of the uncertainties associated with those volumes.

to approve proposed settlement agreement), and 376 (order approving proposed settlement agreement), (Bankr. D. Del.).

[27] See 40 CFR 80.1427(a)(5).

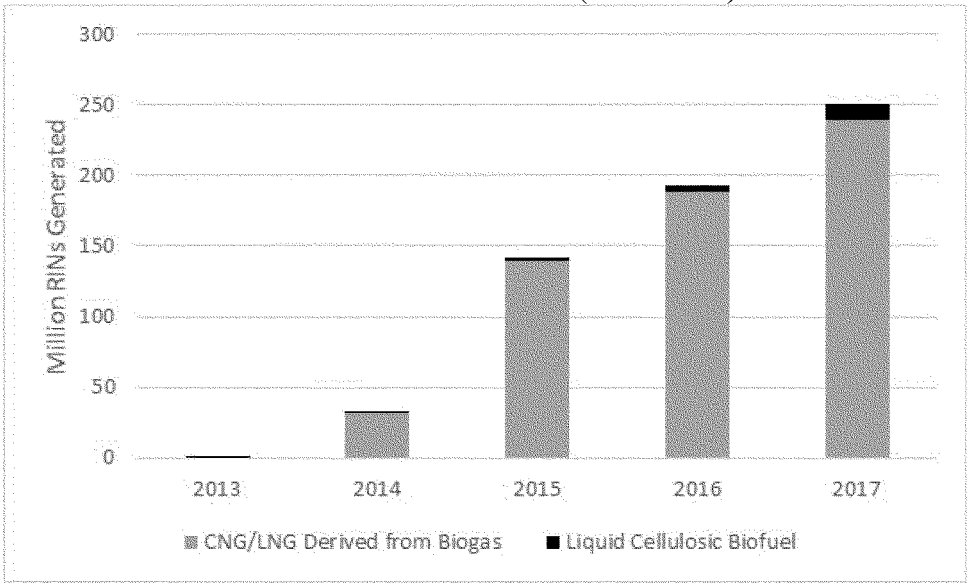
[28] See ''Carryover RIN Bank Calculations for 2018 Final Rule,'' Docket Item No. EPA–HQ–OAR–2017–0091–4989.

[29] The calculations performed to estimate the number of carryover RINs currently available can be found in the memorandum, ''Carryover RIN Bank Calculations for 2019 NPRM,'' available in the docket.

[30] See 40 CFR 80.1427(a)(5).

[31] The majority of the cellulosic RINs generated for CNG/LNG are sourced from biogas from landfills; however, the biogas may come from a variety of sources including municipal wastewater treatment facility digesters, agricultural digesters, separated MSW digesters, and the cellulosic components of biomass processed in other waste digesters.

Figure III-1
Cellulosic RINs Generated (2013-2017)[a]



[a]Cellulosic RIN generation data from EMTS

In order to project the volume of cellulosic biofuel production in 2019, we considered the accuracy of the methodologies used to project cellulosic biofuel production in previous years, data reported to EPA through EMTS, and information we collected through meetings with representatives of facilities that have produced or have the potential to produce qualifying volumes of cellulosic biofuel for consumption as transportation fuel, heating oil, or jet fuel in the U.S. in 2019. Our projection of cellulosic biofuel in the final rule will also reflect Energy Information Administration's (EIA) projection of cellulosic biofuel production, comments received on the 2019 NPRM, and updated data on cellulosic biofuel production in 2018 and projections for 2019.

There are two main elements to the cellulosic biofuel production projection. To project the range of potential production volumes of liquid cellulosic biofuel we used the same methodology as the methodology used in the 2018 final rule. However, we have adjusted the percentile values used to select a point estimate within a projected production range for each group of companies based on updated information (through the end of 2017) with the objective of improving the accuracy of the projections. To project the production of cellulosic biofuel RINs for CNG/LNG derived from biogas we use the same year-over-year growth rate methodology as in the 2018 final rule. This methodology reflects the mature status of this industry, the large number of facilities registered to generate cellulosic biofuel RINs from these fuels, and EPA's continued attempts to refine its methodology to yield estimates that are as accurate as possible. This methodology is an improvement on the methodology that EPA used to project cellulosic biofuel production for CNG/LNG derived from biogas in the 2017 and previous years. The methodologies used to project the production of liquid cellulosic biofuels and cellulosic CNG/LNG derived from biogas are described in more detail in Sections III.C–1 and III.C–2 below.

After a brief description of the statutory requirements in Section III.A, we discuss the companies the EPA reviewed in the process of projecting qualifying cellulosic biofuel production in the U.S. in 2018 in Section III.B. Section III.C discusses the methodologies used by EPA to project cellulosic biofuel production in 2019 and the resulting projection of 381 million ethanol-equivalent gallons.

A. Statutory Requirements

CAA section 211(o)(2)(B)(i)(III) states the statutory volume targets for cellulosic biofuel. The volume of cellulosic biofuel specified in the statute for 2019 is 8.5 billion gallons. The statute provides that if EPA determines, based on a letter provided to the EPA by EIA, that the projected volume of cellulosic biofuel production in a given year is less than the statutory volume, then EPA shall reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year.[32]

In addition, if EPA reduces the required volume of cellulosic biofuel below the level specified in the statute, we may reduce the applicable volumes of advanced biofuels and total renewable fuel by the same or a lesser volume,[33] and we are also required to make cellulosic waiver credits available.[34] Our consideration of the 2019 volume requirements for advanced biofuel and total renewable fuel is presented in Section IV.

B. Cellulosic Biofuel Industry Assessment

In order to project liquid cellulosic biofuel production for 2019 we have tracked the progress of a number of potential cellulosic biofuel production facilities, located both in the U.S. and in foreign countries. As we have done in previous years, we have focused on facilities with the potential to produce commercial-scale volumes of cellulosic biofuel rather than small research and development (R&D) or pilot-scale facilities. Larger commercial-scale facilities are much more likely to

[32] CAA section 211(o)(7)(D)(i). The U.S. Court of Appeals for the District of Columbia Circuit evaluated this requirement in *API* v. *EPA,* 706 F.3d 474, 479–480 (D.C. Cir. 2013), in the context of a challenge to the 2012 cellulosic biofuel standard. The Court stated that in projecting potentially available volumes of cellulosic biofuel EPA must apply an ''outcome-neutral methodology'' aimed at providing a prediction of ''what will *actually* happen.'' *Id.* at 480, 479.

[33] CAA section 211(o)(7)(D)(i).

[34] See CAA section 211(o)(7)(D)(ii); 40 CFR 80.1456.

generate RINs for the fuel they produce and the volumes they produce will have a far greater impact on the cellulosic biofuel standard for 2019. The volume of cellulosic biofuel produced from R&D and pilot-scale facilities is small in relation to that expected from the commercial-scale facilities. R&D and demonstration-scale facilities have also generally not generated RINs for the fuel they have produced in the past. Their focus is on developing and demonstrating the technology, not producing commercial volumes. RIN generation from R&D and pilot-scale facilities in previous years has not contributed significantly to the overall number of cellulosic RINs generated.[35] We have therefore not considered production from R&D and pilot-scale facilities in our projection of cellulosic biofuel production for 2019.

From this list of commercial-scale facilities capable of producing liquid cellulosic biofuel, we used information from EMTS, the registration status of potential biofuel production facilities as cellulosic biofuel producers in the RFS program, publicly available information (including press releases and news reports), and information provided by representatives of potential cellulosic biofuel producers, to make a determination of which facilities are most likely to produce liquid cellulosic biofuel and generate cellulosic biofuel RINs in 2019. Each of these companies was investigated further in order to determine the current status of its facilities and its likely cellulosic biofuel production and RIN generation volumes for 2019. Both in our discussions with representatives of individual companies and as part of our internal evaluation process we gathered and analyzed information including, but not limited to, the funding status of these facilities, current status of the production technologies, anticipated construction and production ramp-up periods, facility registration status, and annual fuel production and RIN generation targets.

As an initial matter, it is useful to review the accuracy of EPA's past cellulosic biofuel projections. EPA used a consistent methodology to project cellulosic biofuel production in the final three months of 2015 and all of 2016 and 2017.[36] The record of actual production indicates that EPA's projection was lower than the actual number of cellulosic RINs made available in 2015,[37] and higher than the actual number of RINs made available in 2016 and 2017.[38] The fact that the projections made using this methodology have been somewhat inaccurate, under-estimating the actual number of RINs made available in 2015 and over-estimating in 2016 and 2017, reflects the inherent difficulty with projecting cellulosic biofuel production. It also emphasizes the importance of continuing to make refinements to our projection methodology in order to make our projections more accurate.

EPA's projections of liquid cellulosic biofuel were higher than the actual volume of liquid cellulosic biofuel produced in 2015–2017. As a result of these over-projections, and in an effort to take into account the most recent data available and make the liquid cellulosic biofuel projections more accurate, EPA adjusted our methodology in the 2018 final rule.[39] In this 2019 proposed rule we are once again using adjusted percentile values to project liquid cellulosic biofuel production based on actual liquid cellulosic biofuel production in 2016 and 2017. Use of this updated data also results in different percentile values than we used to project production of liquid cellulosic biofuel for 2018. We believe that the use of the methodology (described in Section III.C.1 below), with the adjusted percentile values used to project production volumes for liquid cellulosic biofuels, results in a projection that reflects a neutral aim at accuracy since it accounts for expected growth in the near future by using historical data that is free of any subjective bias. At this time, we do not have sufficient data to assess the accuracy of this methodology to project cellulosic biofuel production for 2018, however we anticipate that for the final rule we will assess the accuracy of this methodology in projecting liquid cellulosic biofuel in 2018 and will make adjustments where appropriate.

We next turn to the projection of CNG/LNG derived from biogas. For 2018, EPA used for the first time an industry-wide approach, rather than an approach that projects volumes for individual companies or facilities, to project the production of CNG/LNG derived from biogas. This updated approach reflects the fact that this industry is far more mature than the liquid cellulosic biofuel industry, and that there are a large number of facilities registered to generate cellulosic biofuel RINs from biogas, rendering a facility-by-facility analysis difficult and unnecessary for purposes of accuracy. As described in Section III.C.2 below, EPA is again proposing to project production of CNG/LNG derived from biogas by calculating a year-over-year rate of growth in the renewable CNG/LNG industry by comparing RIN generation for CNG/LNG derived from biogas from April 2016–March 2017 to the RIN generation for these same fuels from April 2017–March 2018 (the most recent month for which data are available). We then apply this year-over-year growth rate to the total number of cellulosic RINs available for compliance from CNG/LNG in 2017 (the most recent year for which complete data are available), to estimate the production of CNG/LNG derived from biogas in 2019.

The remainder of this section describes in more detail the methodology EPA is using to project cellulosic biofuel production in 2019 (including a review of cellulosic biofuel production and the accuracy of the projection methodology in previous years).

1. Potential Domestic Producers

There are several companies and facilities[40] located in the U.S. that have either already begun producing cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel at a commercial scale, or are anticipated to be in a position to do so at some time during 2019. The financial incentive provided by cellulosic biofuel RINs,[41] combined with the fact that to date nearly all cellulosic biofuel

[35] While a few small R&D and pilot scale facilities have registered as cellulosic RIN generators, total production from each of these facilities from 2011 through March 2018 has been less than 150,000 RINs. This is approximately 0.6 percent of all liquid cellulosic biofuel production through March 2018. See ''D3 RIN generation by Company Through March 2018—CBI.''

[36] This methodology is most recently described in the 2017 final rule. See 81 FR 89746, 89755 (December 12, 2016).

[37] EPA only projected cellulosic biofuel production for the final three months of 2015, since data on the availability of cellulosic biofuel RINs (D3+D7) for the first nine months of the year were available at the time the analyses were completed for the final rule.

[38] EPA projected that 123 million, 230 million cellulosic, and 311 million RINs would be generated in 2015, 2016, and 2017 respectively. The number of available cellulosic RINs in these years (RINs generated minus RINs retired for non-compliance reasons) was 140 million, 190 million, and 250 million RINs. All numbers are derived from EMTS data.

[39] 82 FR 58486 (December 12, 2017).

[40] The volume projection from CNG/LNG producers does not represent production from a single company or facility, but rather a group of facilities utilizing the same production technology.

[41] According to data from Argus Media, the price for 2017 cellulosic biofuel RINs averaged $2.78 in 2017. Alternatively, obligated parties can obtain a RIN value equivalent to a cellulosic biofuel RIN by purchasing an advanced (or biomass-based diesel) RIN and a cellulosic waiver credit. The price for 2017 advanced biofuel RINs averaged $0.99 in 2017 while the price for a 2017 cellulosic waiver credit is $2.00 (EPA–420–B–17–036).

produced in the U.S. has been used domestically [42] and all the domestic facilities we have contacted in deriving our projections intend to produce fuel on a commercial scale for domestic consumption and plan to use approved pathways, gives us a high degree of confidence that cellulosic biofuel RINs will be generated for any fuel produced by domestic commercial scale facilities. In order to generate RINs, each of these facilities must be registered with EPA under the RFS program and comply with all the regulatory requirements. This includes using an approved RIN-generating pathway and verifying that their feedstocks meet the definition of renewable biomass. Most of the domestic companies and facilities considered in our assessment of potential cellulosic biofuel producers in 2018 have already successfully completed facility registration, and have successfully generated RINs.[43] A brief description of each of the domestic companies (or group of companies for cellulosic CNG/LNG producers) that EPA believes may produce commercial-scale volumes of RIN generating cellulosic biofuel by the end of 2019 can be found in a memorandum to the docket for this final rule.[44] General information on each of these companies or group of companies considered in our projection of the potentially available volume of cellulosic biofuel in 2019 is summarized in Table III.B.3–1 below.

2. Potential Foreign Sources of Cellulosic Biofuel

In addition to the potential sources of cellulosic biofuel located in the U.S., there are several foreign cellulosic biofuel companies that may produce cellulosic biofuel in 2019. These include facilities owned and operated by Beta Renewables, Enerkem, Ensyn, GranBio, and Raizen. All of these facilities use fuel production pathways that have been approved by EPA for cellulosic RIN generation provided eligible sources of renewable feedstock are used and other regulatory requirements are satisfied. These companies would therefore be eligible to register their facilities under the RFS program and generate RINs for any qualifying fuel imported into the U.S. While these facilities may be able to generate RINs for any volumes of cellulosic biofuel they import into the U.S., demand for the cellulosic biofuels they produce is expected to be high in their own local markets.

In addition to projecting the domestic production of cellulosic biofuel, EPA also projects the volume of cellulosic biofuel that will be imported into the U.S.[45] For the purposes of this final rule we have considered all the registered foreign facilities under the RFS program to be potential sources of cellulosic biofuel in 2019. We believe that due to the strong demand for cellulosic biofuel in local markets, the significant technical challenges associated with the operation of cellulosic biofuel facilities, and the time necessary for potential foreign cellulosic biofuel producers to register under the RFS program and arrange for the importation of cellulosic biofuel to the U.S., cellulosic biofuel imports from foreign facilities not currently registered to generate cellulosic biofuel RINs are generally highly unlikely in 2019. For purposes of our 2019 cellulosic biofuel projection we have, with one exception (described below), excluded potential volumes from foreign cellulosic biofuel production facilities that are not currently registered under the RFS program.

Cellulosic biofuel produced at three foreign facilities (Ensyn's Renfrew facility, GranBio's Brazilian facility, and Raizen's Brazilian facility) generated cellulosic biofuel RINs for fuel exported to the U.S. in 2017; projected volumes from each of these facilities are included in our projection of available volumes for 2019. EPA has also included projected volume from two additional foreign facilities. One of these facilities has completed the registration process as a cellulosic biofuel producer (Enerkem's Canadian facility). The other facility (Ensyn's Port-Cartier, Quebec facility), while not yet registered as a cellulosic biofuel producer, is owned by a Ensyn, a company that has previously generated cellulosic biofuel RINs using the same technology at a different facility. We believe that it is appropriate to include volume from these facilities in light of their proximity to the U.S., the proven technology used by these facilities, the volumes of cellulosic biofuel exported to the U.S. by the company in previous years (in the case of Ensyn), and the company's stated intentions to market fuel produced at these facilities to qualifying markets in the U.S. All of the facilities included in EPA's cellulosic biofuel projection for 2019 are listed in Table III.B.3–1 below.

3. Summary of Volume Projections for Individual Companies

General information on each of the cellulosic biofuel producers (or group of producers in the case of producers of CNG/LNG derived from biogas and liquid cellulosic biofuel facilities using Edeniq's technology) that factored into our projection of cellulosic biofuel production for 2019 is shown in Table III.B.3–1. This table includes both facilities that have already generated cellulosic RINs, as well as those that have not yet generated cellulosic RINs, but are projected to do so by the end of 2019. As discussed above, we have focused on commercial-scale cellulosic biofuel production facilities. Each of these facilities (or group of facilities) is discussed further in a memorandum to the docket.[46]

[42] The only known exception was a small volume of fuel produced at a demonstration scale facility exported to be used for promotional purposes.

[43] Most of the facilities listed in Table III.B.3–1 are registered to produce cellulosic (D3 or D7) RINs with the exception of several of the producers of CNG/LNG derived from biogas and Ensyn's Port-Cartier, Quebec facility.

[44] ''Cellulosic Biofuel Producer Company Descriptions (May 2018),'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2018–0167.

[45] EPA has consistently interpreted the term ''projected volume of cellulosic biofuel production'' in CAA section 211(o)(7)(D)(i) to include volumes of cellulosic biofuel likely to be made available in the U.S., including from both domestic production and imports (see 80 FR 77420 (December 14, 2015) and 81 FR 89746 (December 12, 2016)). We do not believe it would be reasonable to include in the projection all cellulosic biofuel produced throughout the world, regardless of likelihood of import to the U.S., since volumes that are not imported would not be available to obligated parties for compliance and including them in the projection would render the resulting volume requirement and percentage standards unachievable.

[46] ''Cellulosic Biofuel Producer Company Descriptions (May 2018),'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2018–0167.

TABLE III.B.3–1—PROJECTED PRODUCERS OF CELLULOSIC BIOFUEL IN 2019

Company name	Location	Feedstock	Fuel	Facility capacity (million gallons per year)[47]	Construction start date	First production[48]
CNG/LNG Producers[49]	Various	Biogas	CNG/LNG	Various	Various	August 2014.
Edeniq	Various	Corn Kernel Fiber	Ethanol	Various	Various	October 2016.
Enerkem	Edmonton, AL, Canada	Separated MSW	Ethanol	10[50]	2012	September 2017.[51]
Ensyn	Renfrew, ON, Canada	Wood Waste	Heating Oil	3	2005	2014.
Ensyn	Port-Cartier, QC, Canada	Wood Waste	Heating Oil	10.5	June 2016	January 2018.
Envia Energy	Oklahoma City, OK	Biogas	Diesel	2	May 2015	February 2017.
GranBio	São Miguel dos Campos, Brazil.	Sugarcane bagasse	Ethanol	21	Mid 2012	September 2014.
Poet-DSM	Emmetsburg, IA	Corn Stover	Ethanol	20	March 2012	4Q 2015.
QCCP	Galva, IA	Corn Kernel Fiber	Ethanol	4	Late 2013	October 2014.
Raizen	Piracicaba City, Brazil	Sugarcane bagasse	Ethanol	11	January 2014	July 2015.

C. Cellulosic Biofuel Volume for 2019

1. Liquid Cellulosic Biofuel

For our 2019 liquid cellulosic biofuel projection, we use the same general approach as we have in projecting these volumes in previous years. We begin by first categorizing potential liquid cellulosic biofuel producers in 2019 according to whether or not they have achieved consistent commercial scale production of cellulosic biofuel to date. Next we define a range of likely production volumes for 2019 for each group of companies. Finally, we use a percentile value to project from the established range a single projected production volume for each group of companies in 2019. As in 2018, we are proposing to calculate percentile values for each group of companies based on the past performance of each group relative to our projected production ranges. This methodology is briefly described here, and is described in detail in memoranda to the docket.[52]

Consistent with our approach in previous years, we separated the list of potential producers of cellulosic biofuel (listed in Table III.B.3–1) into two groups according to whether the facilities have achieved consistent commercial-scale production and cellulosic biofuel RIN generation. We next defined a range of likely production volumes for each group of potential cellulosic biofuel producers. The low end of the range for each group of producers reflects actual RIN generation data over the last 12 months for which data are available at the time our technical assessment was completed (April 2017–March 2018).[53] For potential producers that have not yet generated any cellulosic RINs, the low end of the range is zero. For the high end of the range of production volumes for companies expected to produce liquid cellulosic biofuel we considered a variety of factors, including the expected start-up date and ramp-up period, facility capacity, and the number of RINs the producer expects to generate in 2019.[54] The projected range for the groups of companies considered in our 2019 cellulosic biofuel projection are shown in Tables III.C.1–1 and III.C.1–2 below.[55]

[47] The Facility Capacity is generally equal to the nameplate capacity provided to EPA by company representatives or found in publicly available information. Capacities are listed in physical gallons (rather than ethanol-equivalent gallons). If the facility has completed registration and the total permitted capacity is lower than the nameplate capacity then this lower volume is used as the facility capacity. For companies generating RINs for CNG/LNG derived from biogas the Facility Capacity is equal to the lower of the annualized rate of production of CNG/LNG from the facility at the time of facility registration or the sum of the volume of contracts in place for the sale of CNG/LNG for use as transportation fuel (reported as the actual peak capacity for these producers).

[48] Where a quarter is listed for the first production date EPA has assumed production begins in the middle month of the quarter (*i.e.,* August for the 3rd quarter) for the purposes of projecting volumes.

[49] For more information on these facilities see ''May 2018 Assessment of Cellulosic Biofuel Production from Biogas (2019),'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2018–0167.

[50] The nameplate capacity of Enerkem's facility is 10 million gallons per year. However, we anticipate that a portion of their feedstock will be non-biogenic MSW. RINs cannot be generated for the portion of the fuel produced from non-biogenic feedstocks. We have taken this into account in our production projection for this facility (See ''May 2018 Liquid Cellulosic Biofuel Projections for 2018 CBI'').

[51] This date reflects the first production of ethanol from this facility. The facility began production of methanol in 2015.

[52] ''May 2018 Liquid Cellulosic Biofuel Projections for 2018 CBI'' and ''Calculating the Percentile Values Used to Project Liquid Cellulosic Biofuel Production for the 2019 NPRM,'' memorandums from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2018–0167.

[53] Consistent with previous years, we have considered whether there is reason to believe any of the facilities considered as potential cellulosic biofuel producers for 2019 is likely to produce a smaller volume of cellulosic biofuel in 2019 than in the previous 12 months for which data are available. At this time, EPA is not aware of any information that would indicate lower production in 2019 from any facility considered than in the previous 12 months for which data are available.

[54] As in our 2015–2018 projections, EPA calculated a high end of the range for each facility (or group of facilities) based on the expected start-up date and a six-month straight line ramp-up period. The high end of the range for each facility (or group of facilities) is equal to the value calculated by EPA using this methodology, or the number of RINs the producer expects to generate in 2019, whichever is lower.

[55] More information on the data and methods EPA used to calculate each of the ranges in these tables in contained in ''May 2018 Liquid Cellulosic Biofuel Projections for 2018 CBI'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2018–0167. We have not shown the projected ranges for each individual company. This is because the high end of the range for some of these companies are based on the company's production projections, which they consider confidential business information (CBI). Additionally, the low end of the range for facilities that have achieved consistent commercial scale production is based on actual RIN generation data in the most recent 12 months, with is also claimed as CBI. EPA has included additional information on the calculations used to define the production ranges, including the production ranges for each individual company or facility, in a memo to the docket, ''May 2018 Liquid Cellulosic Biofuel Projections for 2018 CBI''.

TABLE III.C.1–1—2019 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITHOUT CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million ethanol-equivalent gallons]

Companies included	Low end of the range	High end of the range [a]
Enerkem, Ensyn (Port Cartier facility), Envia Energy	0	18

[a] Rounded to the nearest million gallons.

TABLE III.C.1–2—2019 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITH CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million ethanol-equivalent gallons]

Companies included	Low end of the range [a]	High end of the range [b]
Facilities using Edeniq's technology (registered facilities), Ensyn (Renfrew facility), Poet-DSM, GranBio, Quad County Corn Processors, Raizen	15	56

[a] Rounded to the nearest million gallons.

After defining likely production ranges for each group of companies we next considered the percentile values to use in projecting a production volume for each group of companies. In this proposed rule we have calculated the percentile values used to project liquid cellulosic biofuel production from within the range of projected production values, using data on actual liquid cellulosic biofuel production from both 2016 and 2017. This is consistent with the approach taken in the 2018 final rule, however we now have complete data from 2017, rather than only data through September 2017. For the final rule we anticipate using available production data from 2018 to make further adjustments to the percentile values used to project liquid cellulosic biofuel production for 2019.

The projected ranges for liquid cellulosic biofuel production in 2016 and 2017, along with the actual number of cellulosic RINs generated in each year that are/were available for compliance, and the percentile values that would have resulted in a projection equal to the actual production volume are shown in Table III.C.1–3 below.

TABLE III.C.1–3—PROJECTED AND ACTUAL LIQUID CELLULOSIC BIOFUEL PRODUCTION IN 2016 AND 2017

[Million gallons]

—	Low end of the range	High end of the range	Actual production [56]	Actual percentile
New Facilities: [57]				
2016	0	76	1.06	1st
2017	0	33	8.79	27th
Average [a]	N/A	N/A	N/A	14th
Consistent Producers [58]				
2016	2	5	3.28	43rd
2017	3.5	7	3.02	−14th
Average [a]	N/A	N/A	N/A	15th

[a] We have not averaged the low and high ends of the ranges, or actual production, as we believe it is more appropriate to average the actual percentiles from 2016 and 2017 rather than calculating a percentile value for 2016 and 2017 in aggregate. This approach gives equal weight to the accuracy of our projections from 2016 and 2017, rather than allowing the average percentiles calculated to be dominated by years with greater projected volumes.

For this proposed rule EPA has projected cellulosic biofuel production from facilities that have not yet achieved consistent commercial scale production at the 14th percentile of the calculated range and projected cellulosic biofuel production from facilities that have achieved commercial scale production at the 15th percentile.[59] These percentiles are calculated by averaging the percentiles that would have produced cellulosic biofuel projections equal to the volumes produced by each group of companies in 2016 and 2017. We have not considered data from years prior to 2016, as prior to 2016 a different methodology was used to project available volumes of cellulosic biofuel. In determining the percentile values to use for 2019 we have decided to weight the observed actual percentile values from 2016 and 2017 equally. While the

[56] Actual production is calculated by subtracting RINs retired for any reason other than compliance with the RFS standards from the total number of cellulosic RINs generated.

[57] Companies characterized as new producers in the 2014–2016 and 2017 final rules were as follows: Abengoa (2016), CoolPlanet (2016), DuPont (2016, 2017), Edeniq (2016, 2017), GranBio (2016, 2017), IneosBio (2016), and Poet (2016, 2017).

[58] Companies characterized as consistent producers in the 2014–2016 and 2017 final rules were as follows: Ensyn (2016 and 2017) and Quad County Corn Processors (2016 and 2017).

[59] In the 2018 final rule EPA used the 10th and 12th percentile for new facilities and consistent producers respectively. The slightly higher percentile values used to project liquid cellulosic biofuel production in 2019 reflect additional production data from the fourth quarter of 2017 that was not available at the time the analyses were completed for the 2018 final rule. For more detail on the calculation of the percentile values used in this proposed rule see ''Calculating the Percentile Values Used to Project Liquid Cellulosic Biofuel Production for the 2019 NPRM,'' available in EPA docket EPA–HQ–OAR–2018–0167.

percentile value from 2017 represents the most recent data available, it is also dependent on the performance of a relatively small number of companies in a single year. Using data from multiple years is likely more representative of the future performance of these groups of companies than data from any single year. For the final rule we anticipate using available production data from 2018 (likely January–September), along with updated production projections for months in which data is not available (likely October–December) to make further adjustments to the percentile values used to project liquid cellulosic biofuel production for 2019. We propose using production volumes for months for which data is not available (likely October–December 2018) in a similar manner to the way we projected production volumes for months in which data were not available in the 2018 final rule (based on available historical data along with seasonal production trends; see ''Calculating the Percentile Values Used to Project Liquid Cellulosic Biofuel Production for 2018, EPA–HQ–OAR–2017–0091). We request comment on this projection methodology, as well as the appropriateness of using data from 2018 to adjust the percentile values used to projection liquid cellulosic biofuel production for 2019. We believe that adjusting the percentile values used in this final rule will improve the accuracy of the production projection and will further EPA's objective to project volumes with a ''neutral aim at accuracy.'' We request comment on the data that should be used to calculate the percentile values used to project liquid cellulosic biofuel production in 2019 (*e.g.* whether we should use data from 2016–2018, or just a sub-set of this data) and how to weight data from each of these years.[60]

Finally, we used these percentile values, together with the ranges determined for each group of companies discussed above, to project a volume for each group of companies in 2019. These calculations are summarized in Table III.C.1–4 below.

TABLE III.C.1–4—PROJECTED VOLUME OF LIQUID CELLULOSIC BIOFUEL IN 2019

[Million ethanol-equivalent gallons]

	Low end of the range [a]	High end of the range [a]	Percentile	Projected volume [a]
Liquid Cellulosic Biofuel Producers; Producers without Consistent Commercial Scale Production	0	18	14th	3
Liquid Cellulosic Biofuel Producers; Producers with Consistent Commercial Scale Production	15	56	15th	21
Total	N/A	N/A	N/A	24

[a] Volumes rounded to the nearest million gallons.

EPA also considered whether it would be appropriate to modify other individual components of the past methodology for projecting liquid cellulosic biofuel (such as the factors used to calculate the high or low end of the projected range for each company), but we do not believe that such changes are warranted at this time. Making the adjustment to the percentile values used in the methodology while keeping other components of the methodology constant should, we believe, provide an appropriate refinement of the methodology that reflects recent experience. We acknowledge, however, that using the calculated percentile values from previous years to project liquid cellulosic biofuel production in future years does not eliminate the possibility that actual production will differ from our projections. This is especially true for the liquid cellulosic biofuel industry, which is currently in the early stages of commercialization. Nevertheless, based on the record before us, we believe the ranges of projected production volumes for each company (or group of companies for those using the Edeniq technology) are reasonable, and that projecting overall production in 2019 in the manner described above results in a neutral estimate (neither biased to produce a projection that is too high or too low) of likely liquid cellulosic biofuel production in 2019 (24 million gallons).

2. CNG/LNG Derived From Biogas

For 2019, EPA is using the same methodology as in the 2018 final rule, an industry wide projected based on a year-over-year growth rate, to project production of CNG/LNG derived from biogas used as transportation fuel.[61] For this proposed rule, EPA has calculated the year-over-year growth rate in CNG/LNG derived from biogas by comparing RIN generation from April 2017–March 2018 (the most recent 12 months for which data are available) to RIN generation in the 12 months that immediately precede this time period (April 2016–March 2017). These RIN generation volumes are shown in Table III.C.2–1 below.

TABLE III.C.2–1—GENERATION OF CELLULOSIC BIOFUEL RINS FOR CNG/LNG DERIVED FROM BIOGAS

[Million gallons] [62]

RIN Generation (April 2016–March 2017)	RIN Generation (April 2017–March 2018)	Year-Over-Year Increase
189	247	30.5%

[60] For example, rather than weighting the percentiles that would have resulted in the actual production volumes in 2016 and 2017 equally, EPA could first aggregate the projected ranges for companies with and without consistent commercial scale production for 2016 and 2017 (5.5 million–12 million and 0–109 million respectively) and then use the combined production volumes for 2016 and 2017 for each group (6.3 million and 9.8 million respectively) to calculate percentile values for each group of companies for 2019. This would result in slightly different percentile values (12th percentile for companies with consistent production and the 9th percentile for companies without consistent production).

[61] Historically RIN generation for CNG/LNG derived from biogas has increased each year. It is possible, however, that RIN generation for these fuels in the most recent 12 months for which data are available could be lower than the preceding 12 months. We believe our methodology accounts for this possibility. In such a case, the calculated rate of growth would be negative.

EPA then applied this 30.5 percent year-over-year growth rate to the total number of 2018 cellulosic RINs projected to be generated for CNG/LNG in the 2018 final rule. This methodology results in a projection of 358 million gallons of CNG/LNG derived from biogas in 2019.[63] We believe that projecting the production of CNG/LNG derived from biogas in this manner appropriately takes into consideration the actual recent rate of growth of this industry, and that this growth rate accounts for both the potential for future growth and the challenges associated with increasing RIN generation from these fuels in future years. This methodology may not be appropriate to use as the projected volume of CNG/LNG derived from biogas approaches the total volume of CNG/LNG that is used as transportation fuel, as RINs can be generated only for CNG/LNG used as transportation fuel. We do not believe that this is yet a constraint, however, as our projection for 2019 is well below the total volume of CNG/LNG that is currently used as transportation fuel.[64] We request comment on estimates of the volume of CNG/LNG likely to be used as transportation fuel in 2019, as well as the ability of the CNG/LNG market to provide the documentation necessary to verify the use of this fuel as transportation fuel.

EPA has also reviewed data submitted by potential producers of CNG/LNG derived from biogas that is used as transportation fuel. The total volume of CNG/LNG derived from biogas projected to be produced in 2019 by the potential producers of these fuels exceeds the volume that EPA is projecting for 2019. Since producers of CNG/LNG derived from biogas have historically over-estimated their production of these fuels, it would not be appropriate to simply adopt this projection for 2019. The fact that the industry projections exceed EPA's projected volume, however, indicates that the volume of these fuels projected for 2019 can be satisfied by a combination of projects currently producing CNG/LNG derived from biogas for these purposes and projects expected to product biogas by the end of 2019.

We believe that while our projection methodology uses a growth rate based on historical data it adequately anticipates higher production volumes in future years, including both increased production from existing facilities as well as production from new facilities. In this way it satisfies our charge to project future cellulosic biofuel production in a reasonable manner, and with neutrality, despite the fact that it does not consider all potential producers of these fuels on a facility-by-facility basis. For the final rule we anticipate using all available data from 2018 to update both the year-over-year increase as well as the projected production volume of cellulosic biofuel for 2018 to which we apply the year-over-year increase to project the production of CNG/LNG derived from biogas in 2019.

3. Total Cellulosic Biofuel in 2019

After projecting production of cellulosic biofuel from liquid cellulosic biofuel production facilities and producers of CNG/LNG derived from biogas, EPA combined these projections to project total cellulosic biofuel production for 2019. These projections are shown in Table III.C.3–1. Using the methodologies described in this section, we project that 381 million ethanol-equivalent gallons of cellulosic biofuel will be produced in 2019. We believe that projecting overall production in 2019 in the manner described above results in a neutral estimate (neither biased to produce a projection that is too high nor too low) of likely cellulosic biofuel production in 2019.

TABLE III.C.3–1—PROJECTED VOLUME OF CELLULOSIC BIOFUEL IN 2019

[Million gallons]

	Projected volume [a]
Liquid Cellulosic Biofuel Producers; Producers without Consistent Commercial Scale Production	3
Liquid Cellulosic Biofuel Producers; Producers with Consistent Commercial Scale Production	21
CNG/LNG Derived from Biogas	358
Total	[b] 381

[a] Volumes rounded to the nearest million gallons.
[b] Total projection of cellulosic biofuel appears less than the sum of the projected volume for each group of companies due to rounding

Further discussion of the individual companies we believe will produce cellulosic biofuel and make it commercially available in 2019 can be found in a memorandum to the docket.[65] We request comment on this projection of cellulosic biofuel production for 2019, including the various aspects of the methodology used to project production of both liquid cellulosic biofuels and CNG/LNG derived from biogas.

IV. Advanced Biofuel and Total Renewable Fuel Volumes for 2019

The national volume targets for advanced biofuel and total renewable fuel to be used under the RFS program each year through 2022 are specified in CAA section 211(o)(2)(B)(i)(I) and (II).

[62] Further detail on the data used to calculate each of these numbers in this table, as well as the projected volume of CNG/LNG derived from biogas used as transportation fuel in 2019 can be found in ''May 2018 Assessment of Cellulosic Biofuel Production from Biogas (2019)'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2018–0167.

[63] To calculate this value, EPA multiplied the number of 2018 RINs projected to be generated for CNG/LNG derived from biogas in the 2018 final rule (274 million), see 82 FR 58502–03, by 1.305 (representing a 30.5 percent year-over-year increase).

[64] EPA projects that 580 million ethanol-equivalent gallons of CNG/LNG will be used as transportation fuel in 2019 based on EIA's March 2018 Short Term Energy Outlook (STEO). To calculate this estimate, EPA used the Natural Gas Vehicle Use from the STEO Custom Table Builder (0.13 billion cubic feet/day in 2019). This projection includes all CNG/LNG used as transportation fuel from both renewable and non-renewable sources. EIA does not project the amount of CNG/LNG from biogas used as transportation fuel. To convert billion cubic feet/day to ethanol-equivalent gallons EPA used conversion factors of 946.5 BTU per cubic foot of natural gas (lower heating value, per calculations using ASTM D1945 and D3588) and 77,000 BTU of natural gas per ethanol-equivalent gallon per § 80.1415(b)(5).

[65] ''Cellulosic Biofuel Producer Company Descriptions (May 2018),'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2018–0167. In the case of cellulosic biofuel produced from CNG/LNG and facilities using Edeniq's technology, we have discussed the production potential from these facilities as a group rather than individually.

Congress set annual renewable fuel volume targets that envisioned growth at a pace that far exceeded historical growth and, for years after 2011, prioritized that growth as occurring principally in advanced biofuels (contrary to previous growth patterns where most growth was in conventional renewable fuel). Congressional intent is evident in the fact that the implied statutory volume for conventional renewable fuel is 15 billion gallons for all years after 2014, while the advanced volumes, driven largely by growth in cellulosic volumes, continue to grow each year through 2022 to a total of 21 billion gallons.

Due to a shortfall in reasonably attainable volumes of cellulosic and advanced biofuel, and consistent with our long-held interpretation of the cellulosic waiver authority as best interpreted and applied by providing equal reductions in advanced biofuel and total renewable fuel, we are proposing a reduction from the statutory volumes for both advanced biofuel and total renewable fuel for 2019 using the full extent of the cellulosic waiver authority.

In this Section we discuss our proposed use of the discretion afforded by the cellulosic waiver authority at CAA 211(o)(7)(D)(i) to reduce volumes of advanced biofuel and total renewable fuel. We first discuss our assessment of advanced biofuel and the considerations which have led us to conclude that the advanced biofuel volume target in the statute should be reduced by the full amount permitted under the cellulosic waiver authority. We then address total renewable fuel in the context of our interpretation, articulated in previous annual rulemakings, that advanced biofuel and total renewable fuel should be reduced by the same amount under the cellulosic waiver authority.

To begin, we have evaluated the capabilities of the market and are proposing to find that the 13.0 billion gallons specified in the statute for advanced biofuel cannot be reached in 2019. This is primarily due to the expected continued shortfall in cellulosic biofuel; production of this fuel type has consistently fallen short of the statutory targets by 95 percent or more, and as described in Section III, we project that it will fall far short of the statutory target of 8.5 billion gallons in 2019. For this and other reasons described in this section we are proposing to reduce the advanced biofuel statutory target by the full amount of the shortfall in cellulosic biofuel for 2019.

In previous years when we have used the cellulosic waiver authority, we have determined the appropriate amount of the permissible waiver to apply to advanced biofuel by taking into account the availability of advanced biofuels, their energy security and GHG impacts, the availability of carryover RINs, the apparent intent of Congress as reflected in the statutory volumes tables to substantially increase the use of advanced biofuels over time, as well as factors such as increased costs associated with the use of advanced biofuels and the reduced benefits likely associated with use of advanced volumes achieved through diversion of foreign fuels or substitution of advanced feedstocks from other uses to biofuel production. Until the 2018 standards rule, the consideration of these factors led us to conclude that it was appropriate to set the advanced biofuel standard in a manner that would allow the partial backfilling of missing cellulosic volumes with non-cellulosic advanced biofuels.[66] For the 2018 standards, we placed a greater emphasis on cost considerations in the context of balancing the various considerations, ultimately concluding that partial backfilling with non-cellulosic advanced biofuels was not warranted and the applicable volume requirement for advanced biofuel should be based on the maximum reduction permitted under the cellulosic waiver authority.

Although we continue to believe that the factors earlier considered in exercising the cellulosic waiver authority are relevant and appropriate, we project that there will be insufficient reasonably attainable volumes of non-cellulosic biofuels in 2019 to allow any backfilling for missing volumes of cellulosic biofuel. As a result of this projection and our proposed consideration of carryover RINs, we are proposing to reduce the statutory volume target for advanced biofuel by the same amount as the reduction in cellulosic biofuel. This would result in the non-cellulosic component of the advanced biofuel volume requirement being equal to the implied statutory volume of 4.5 billion gallons in 2019.

We note that the predominant non-cellulosic advanced biofuels available in the near term are advanced biodiesel and renewable diesel.[67] We expect a decreasing rate of growth in the availability of feedstocks used to produce these fuel types, absent the diversion of these feedstocks from other uses. In addition, we expect diminishing GHG benefits and higher per gallon costs as the required volumes of advanced biodiesel and renewable diesel increase. These outcomes are a result of the fact that the lowest cost and most easily available feedstocks are typically used first, and each additional increment of advanced biodiesel and renewable diesel requires the use of feedstocks that are incrementally more costly and/or more difficult to obtain. Moreover, to the extent that higher advanced biofuel requirements cannot be satisfied through growth in the production of advanced biofuel feedstocks, they would instead be satisfied through a re-direction of such feedstocks from competing uses. Products that were formerly produced using these feedstocks are likely to be replaced by products produced using the lowest cost alternatives, likely derived from palm or petroleum sources. This in turn could increase the lifecycle GHG emissions associated with these incremental volumes of non-cellulosic advanced biofuel. There would also likely be market disruptions and increased burden associated with shifting feedstocks among the wide range of companies that are relying on them today and which have optimized their processes to use them. Higher advanced biofuel standards could also be satisfied by diversion of foreign advanced biofuel from foreign markets, and there would also likely be diminished benefits associated with such diversions. Taking these considerations into account, we believe, as discussed in more detail below, that we should exercise our discretion under the cellulosic waiver authority to set the advanced biofuel volume requirement at a level that would minimize such diversions.

Furthermore, two other factors have added uncertainty regarding the volume of advanced biofuels that we project to be attainable in 2019. The first is the fact that the tax credit for biodiesel has not been renewed for 2019. The second is the final determination by the Department of Commerce that tariffs should be imposed on biodiesel imports from Argentina and Indonesia, and the potential for those tariffs to increase.[68] [69] Each of these factors is discussed in more detail in Section IV.B.2 below.

[66] For instance, see 81 FR 89750 (December 12, 2016).

[67] While sugarcane ethanol, as well as a number of other fuel types, can also contribute to the supply of advanced biofuel, in recent years supply of these other advanced biofuels has been considerably lower than supply of advanced biodiesel or renewable diesel. See Table IV.B.3–1.

[68] ''Affirmative Final Antidumping Duty Determinations on Biodiesel From Argentina and Indonesia,'' available in docket EPA–HQ–OAR–2018–0167.

[69] ''US adds more duties on biodiesel from Argentina & Indonesia,'' Reuters article available in docket EPA–HQ–OAR–2018–0167.

We believe that the factors and considerations noted above are all appropriate to consider under the broad discretion provided under the cellulosic waiver authority, and that consideration of these factors supports our proposed use of this authority. Many of the considerations discussed in this proposed rule are related to the availability of non-cellulosic advanced biofuels (*e.g.,* historic data on domestic supply, expiration of the biodiesel blenders' tax credit, potential imports of biodiesel in light of the Commerce Department's determination on tariffs on biodiesel imports from Argentina and Indonesia, potential imports of sugarcane ethanol, and anticipated decreasing growth in production of feedstocks for advanced biodiesel and renewable diesel), while others focus on the potential benefits and costs of requiring use of available volumes (*e.g.,* relative cost of advanced biofuels to the petroleum fuels they displace, GHG reduction benefits, and energy security benefits). As discussed in further detail in the following sections, EPA's preliminary projection of the available volume of advanced biofuel in 2019 suggests that while achieving the implied statutory volume for non-cellulosic advanced biofuel in 2019 (4.5 billion gallons) may be attainable, doing so would likely require a higher rate of growth in the domestic advanced biofuel industry than we have seen in recent years. This is especially true if the tariffs on biodiesel imported from Argentina and Indonesia result in decreased volumes of imported advanced biofuel in 2019. While it may also be possible that a volume of non-cellulosic advanced biofuel greater than 4.5 billion gallons may be attainable, this higher volume would very likely result in the diversion of advanced feedstocks from other uses or diversion of advanced biofuels from foreign sources. In that case, our preliminary assessment of other factors, such as cost and GHG impacts, indicate that it would not be appropriate to set the advanced biofuel volume requirement so as to require use of such volumes to partially backfill for missing cellulosic volumes.

The impact of our exercise of the cellulosic waiver authority is that after waiving the cellulosic biofuel volume down to the projected available level, and applying the same volume reduction to the statutory volume target for advanced biofuel, the resulting volume requirement for advanced biofuel for 2019 would be 590 million gallons more than the applicable volume used to derive the 2018 percentage standard. Furthermore, after applying the same reduction to the statutory volume target for total renewable fuel, the volume requirement for total renewable fuel would also be 590 million gallons more than the applicable volume used to derive the 2018 percentage standard.

A. Volumetric Limitation on Use of the Cellulosic Waiver Authority

As described in Section II.A, when making reductions in advanced biofuel and total renewable fuel under the cellulosic waiver authority, the statute limits those reductions to no more than the reduction in cellulosic biofuel. As described in Section III.D, we are proposing to establish a 2019 applicable volume for cellulosic biofuel of 381 million gallons, representing a reduction of 8,119 million gallons from the statutory target of 8,500 million gallons. As a result, 8,119 million gallons is the maximum volume reduction for advanced biofuel and total renewable fuel that is permissible using the cellulosic waiver authority. Use of the cellulosic waiver authority to this maximum extent would result in volumes of 4.88 and 19.88 billion gallons for advanced biofuel and total renewable fuel, respectively.[70]

TABLE IV.A–1—LOWEST PERMISSIBLE VOLUMES USING ONLY THE CELLULOSIC WAIVER AUTHORITY

[Million gallons][a]

	Advanced biofuel	Total renewable fuel
Statutory target	13,000	28,000
Maximum reduction permitted under the cellulosic waiver authority	8,119	8,119
Lowest 2019 volume requirement permitted using only the cellulosic waiver authority	4,881	19,881

[a] Calculations are typically shown in million gallons for all four standards for clarity. However, when using volumes to calculate percentage standards, we specify the volume requirements as billion gallons with two decimal places to be consistent with the volume targets as given in the statute. The only exception is for cellulosic biofuel which we specify in million gallons due to the substantial reduction from the statutory target.

We are authorized under the cellulosic waiver authority to reduce the advanced biofuel and total renewable fuel volumes ''by the same or a lesser'' amount as the reduction in the cellulosic biofuel volume.[71] As discussed in Section II.A, EPA has broad discretion in using the cellulosic waiver authority in instances where its use is authorized under the statute, since Congress did not specify factors that EPA must consider in determining whether to use the authority or what the appropriate volume reductions (within the range permitted by statute) should be. This broad discretion was affirmed in both *Monroe* and *ACE.*[72] Thus, EPA could potentially set the 2019 advanced biofuel standard at a level that is designed to partially backfill for the shortfall in cellulosic biofuel. However, based on our consideration of a number of relevant factors, we are proposing to use the full extent of the cellulosic waiver authority in deriving volume requirements for 2019.

B. Attainable Volumes of Advanced Biofuel

We have considered both reasonably attainable and attainable volumes of advanced biofuel to inform our exercise of the cellulosic waiver authority. Volumes described as ''reasonably attainable'' are those that can be reached without market disruptions and/or higher costs, such as those that could result from diverting advanced biofuels or advanced biofuel feedstocks from existing uses. We use this phrase in today's action in the same way that we

[70] When expressing volumes in billion gallons, we use standard rounding methods to two decimal places, as done in previous annual standard-setting rulemakings. Volumes are sometimes shown in million gallons for clarity, but with the exception of cellulosic biofuel it is volumes in billion gallons that are used to calculate the applicable percentage standards. For cellulosic biofuel, it is million gallons that are used to calculate the percentage standards.

[71] CAA section 211(o)(7)(D)(i).

[72] See *ACE,* 864 F.3d at 730–35 (citing *Monroe,* 750 F.3d 909, 915–16).

used it in previous actions. Volumes described as ''attainable,'' in contrast, are those we believe can be reached, but would likely result in market disruption and/or higher costs. Neither ''reasonably attainable'' nor ''attainable'' are meant to convey the ''maximum achievable'' level, which as described in the 2017 final rule we do not consider, in our discretion, to be an appropriate target under the cellulosic waiver authority.[73]

As in prior rulemakings, EPA has considered what volumes of advanced biofuels are reasonably attainable. As the Court noted in *ACE,* EPA may consider demand-side considerations in addition to supply-side considerations when it assesses ''reasonably attainable'' volumes for purposes of its cellulosic waiver assessment.[74] Our proposed assessment of reasonably attainable volumes of advanced biofuel is described below.

In *ACE,* the Court noted that in assessing what volumes are ''reasonably attainable,'' EPA had considered the availability of feedstocks, domestic production capacity, imports, and market capacity to produce, distribute, and consume renewable fuel.[75] We are taking a similar approach for 2019, with the added consideration of the possibility that higher volume requirements would lead to ''feedstock switching'' or diversion of advanced biofuels from use in other countries, which we took into account in setting the 2017 and 2018 volume requirements and, we believe, are appropriate considerations under the broad discretion provided by the cellulosic waiver authority.

As noted above, a higher advanced biofuel volume requirement has a greater potential to increase the incentive for switching advanced biofuel feedstocks from existing uses to biofuel production. We are proposing to set the advanced biofuel volume requirement at a level that would seek to minimize such feedstock/fuel diversions. Our individual assessments of reasonably attainable volumes of each type of advanced biofuel reflects this approach. That is, while we refer to them as ''reasonably attainable'' volumes for convenience, they represent those volumes that are not likely to lead to feedstock/fuel diversions. Greater volumes could likely be made available if such diversions were not of concern.

EPA proposes to find that 100 million gallons of advanced ethanol, 60 million gallons of other advanced biofuels, and 2.65 billion gallons of advanced biodiesel and renewable diesel are reasonably attainable. Together with our projected volume of 381 million gallons of cellulosic biofuel, the sum of these volumes falls short of 4.88 billion gallons, which is the lowest advanced biofuel requirement that EPA can determine under the cellulosic waiver authority.

Therefore, we also have considered whether the market can nonetheless make available 4.88 billion gallons of advanced biofuel, notwithstanding likely feedstock/fuel diversions. In particular, we assess whether additional volumes of advanced biodiesel and renewable diesel are attainable. We conclude that 2.8 billion gallons of advanced biodiesel and renewable diesel is likely attainable notwithstanding likely feedstock/fuel diversions. This quantity of advanced biodiesel and renewable diesel, together with the cellulosic biofuel, sugarcane ethanol, and other advanced biofuels described above, would enable the market to make available 4.88 billion gallons of advanced biofuels.

1. Imported Sugarcane Ethanol

The predominant available source of advanced biofuel other than cellulosic biofuel and BBD is imported sugarcane ethanol. In setting the 2018 standards, we estimated that 100 million gallons of imported sugarcane ethanol would be reasonably attainable.[76] This was a reduction from the 200 million gallons we had assumed for 2016 and 2017, and was based on a combination of data from 2016 and part of 2017 as well as an attempt to balance the lower-than-expected imports from recent data with indications that higher volumes were possible based on older data. We also noted the high variability in ethanol import volumes in the past (including of Brazilian sugarcane ethanol, the predominant form of imported ethanol, and the only significant source of imported advanced ethanol), increasing gasoline consumption in Brazil, and variability in Brazilian production of sugar as reasons that it would be inappropriate to assume that sugarcane ethanol imports would reach the much higher levels suggested by some stakeholders.

During 2017 when we were developing the 2018 standards rulemaking, we used available data from a portion of 2017 to estimate that import volumes of sugarcane ethanol were likely to fall significantly below the 200 million gallons we had assumed when we set the 2017 standards. Import data for most of 2017 is now available, and indicates that imports of sugarcane ethanol reached just 77 million gallons.

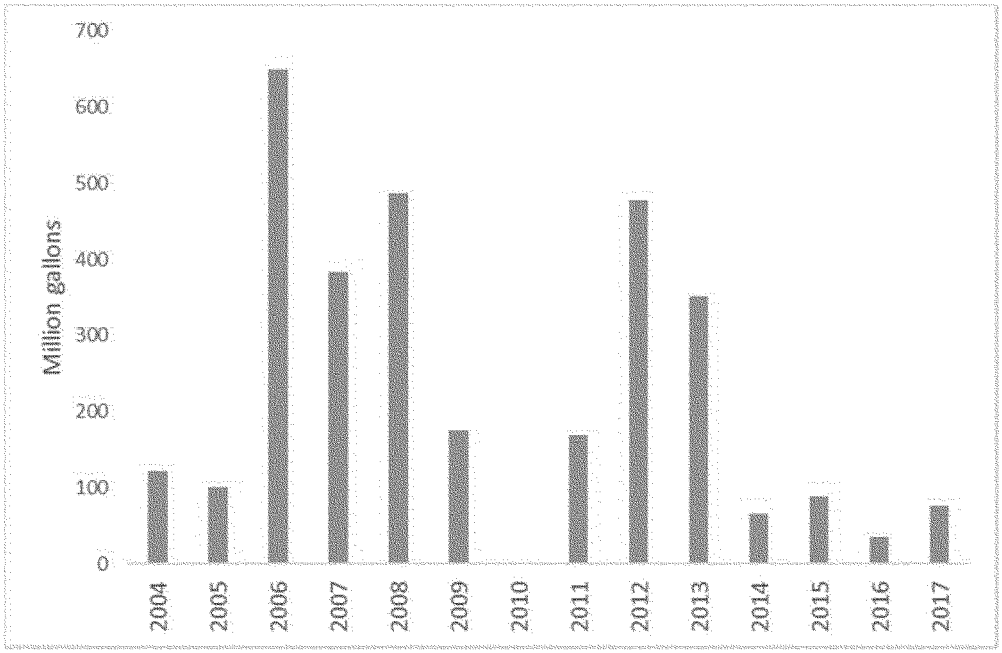
[73] 81 FR 89762 (December 12, 2016).

[74] See *ACE,* 864 F.3d at 730–35. However, EPA may not consider demand-side factors in assessing whether there is an ''inadequate domestic supply'' that would justify use of the general waiver authority. See *id.* at 704–13.

[75] See *ACE,* 864 F.3d at 735–36.

[76] 82 FR 58507 (December 12, 2017).

Figure IV.B.1-1
Historical Sugarcane Ethanol Imports



Source: "US Imports of Advanced Fuel Ethanol from EIA," docket EPA-HQ-OAR-2018-0167. Includes imports directly from Brazil and those that are transmitted through the Caribbean Basin Initiative (CBI) and Central America Free Trade Agreement (CAFTA). 2017 data is through November.

While it is difficult to predict imports for 2019, we believe it would be reasonable not to increase the assumed volume above 100 million gallons for purposes of determining whether an advanced biofuel volume requirement of 4.88 billion gallons is reasonably attainable for 2019. Although imports of advanced ethanol have been below 100 million gallons for 2014–2017, our proposed advanced biofuel volume requirement for 2019 would be higher than that for 2018, creating some incentive for increases in imports. However, the E10 blendwall and the fact that imported sugarcane ethanol typically costs more than corn ethanol create disincentives for increasing imports above the levels in recent years. Taking all of these considerations into account, we propose using 100 million gallons of imported sugarcane ethanol for the purposes of projecting reasonably attainable volumes of advanced biofuel for 2019. This level reflects a balancing of the information available to EPA at this time; both the lower import volumes that have occurred more recently with the higher volumes that are possible based on earlier years and under the influence of the higher standards in 2019.

We note that the future projection of imports of sugarcane ethanol is inherently imprecise, and that actual imports in 2019 could be lower or higher than 100 million gallons. Factors that could result in import volumes below 100 million gallons include weather and harvests in Brazil, world ethanol demand and prices, constraints associated with the E10 blendwall in the U.S., and the cost relative to that of corn ethanol. Also, global sugar consumption has continued to increase steadily, while global production has decreased.[77] If this trend continues, Brazilian production of sugar could increase, with a concurrent reduction in Brazilian production of ethanol. On the other hand, the world average price of sugar has been projected to remain relatively flat between 2016 and 2018, suggesting little change in sugar production and implying that ethanol production in Brazil might likewise remain unchanged.[78] After considering these factors, and in light of the high degree of variability in historical imports of sugarcane ethanol, we believe that 100 million gallons is reasonably attainable for 2019. As we have done in past years, we plan to take into consideration available data on imports in 2018, as well as information provided in comments, in making a final estimate of reasonably attainable volumes of sugarcane ethanol for the final rule.

2. Other Advanced Biofuel

In addition to cellulosic biofuel, imported sugarcane ethanol, and advanced biodiesel and renewable diesel, there are other D5 advanced biofuels that can be counted in the determination of reasonably attainable volumes of advanced biofuel for 2019. These other D5 advanced biofuels include non-cellulosic CNG, naphtha, heating oil, and domestically-produced advanced ethanol. However, the supply of these fuels has been relatively low in the last several years.

[77] ''Sugar—World Markets and Trade,'' USDA, November 2016. Available in docket EPA–HQ–OAR–2018–0167.

[78] ''Commodity Markets Outlook,'' World Bank Group, January 2017. Available in docket EPA–HQ–OAR–2018–0167.

TABLE IV.B.2–1—HISTORICAL SUPPLY OF OTHER ADVANCED BIOFUELS

[Million ethanol-equivalent gallons]

	CNG/LNG	Heating oil	Naphtha	Domestic ethanol	Total [a]
2013	26	0	3	23	52
2014	20	0	18	26	64
2015	0	1	24	25	50
2016	0	2	26	27	55
2017	2	2	32	26	62

[a] Excludes consideration of D5 renewable diesel, as this category of renewable fuel is considered separately as part of advanced biodiesel and renewable diesel in Section IV.B.3 below.

The downward trend over time in CNG/LNG from biogas as advanced biofuel with a D code of 5 is due to the re-categorization in 2014 of landfill biogas from advanced (D code 5) to cellulosic (D code 3).[79] Total supply of these other advanced biofuels has exhibited no consistent trend during 2013–2017. Based on this historical record, we propose that 60 million gallons would be reasonably attainable in 2019.

We recognize that the potential exists for additional volumes of advanced biofuel from sources such as jet fuel, liquefied petroleum gas (LPG), butanol, and liquefied natural gas (as distinct from compressed natural gas), as well as non-cellulosic CNG from biogas produced in digesters. However, since they have been produced, if at all, in only de minimis and sporadic amounts in the past, we do not have a basis for projecting substantial volumes from these sources in 2019.[80]

3. Biodiesel and Renewable Diesel

Having projected the production volume of cellulosic biofuel, and the reasonably attainable volumes of imported sugarcane ethanol and ''other'' advanced biofuels, we next calculated the volume of advanced biodiesel and renewable diesel that would need to be supplied to meet the volume of advanced biofuel for 2019 after reducing the advanced biofuel volume by the same amount as the cellulosic biofuel volume. Based on our projections of other advanced biofuels presented in the preceding sections, the market would need to supply 2.8 billion gallons of biodiesel and renewable diesel, generating 4.34 billion RINs, to meet a total advanced biofuel volume of 4.88 billion gallons. This calculation is shown in Table IV.B.3–1 below.

Calculating the volume of advanced biodiesel and renewable diesel that would be needed to meet the volume of advanced biofuel for 2019 is an important benchmark to help inform EPA's consideration of our waiver authorities. In situations where the reasonably attainable volume of biodiesel and renewable diesel exceeds the volume of these fuels that would be needed to meet the volume of advanced biofuel after reducing the advanced biofuel volume by the same amount as the cellulosic biofuel volume, as was the case in 2017 and 2018, EPA may consider whether or not to allow additional volumes of these fuels to backfill for missing cellulosic biofuel volumes. In situations where the reasonably attainable volume of biodiesel and renewable diesel is less than the volume of these fuels that would be needed to meet the volume of advanced biofuel after reducing the advanced biofuel volume by the same amount as the cellulosic biofuel volume, EPA may consider whether or not to use additional waiver authorities, to the extent available, to make further reductions to the advanced biofuel volume.

TABLE IV.B.3–1—DETERMINATION OF VOLUME OF BIODIESEL AND RENEWABLE DIESEL NEEDED IN 2019 TO ACHIEVE 4.88 BILLION GALLONS OF ADVANCED BIOFUEL

[Million ethanol-equivalent gallons except as noted]

Lowest 2019 advanced biofuel volume requirement permitted using under the cellulosic waiver authority	4,881
Cellulosic biofuel	381
Imported sugarcane ethanol	100
Other advanced	60
Calculated advanced biodiesel and renewable diesel needed (ethanol-equivalent gallons/physical gallons) [81]	4,340/2,800

Having calculated the volume of advanced biodiesel and renewable diesel that would need to be supplied to meet the volume of advanced biofuel for 2019 after reducing the advanced biofuel volume by the same amount as the cellulosic biofuel volume, EPA next projected the reasonably attainable volume of these fuels for 2019. With regard to advanced biodiesel and renewable diesel, there are many different factors that could potentially influence the reasonably attainable volume of these fuels used as transportation fuel or heating oil in the U.S. These factors could include the availability of qualifying biodiesel and renewable diesel feedstocks, the production capacity of biodiesel and renewable diesel facilities (both in the U.S. and internationally), and the availability of imported volumes of these fuels.[82] A review of the volumes

[79] 79 FR 42128 (July 18, 2014).

[80] No RIN-generating volumes of these other advanced biofuels were produced in 2017, and less than 1 million gallons total in prior years.

[81] To calculate the volume of advanced biodiesel and renewable diesel that would generate the 4.34 billion RINs needed to meet the proposed advanced biofuel volume EPA divided the 4.34 billion RINs by 1.55. 1.55 is the approximate average (weighted by the volume of these fuels expected to be produced in 2019) of the equivalence values for biodiesel (generally 1.5) and renewable diesel (generally 1.7).

[82] Throughout this section we refer to advanced biodiesel and renewable diesel as well as advanced biodiesel and renewable diesel feedstocks. In this context, advanced biodiesel and renewable diesel refer to any biodiesel or renewable diesel for which RINs can be generated that satisfy an obligated party's advanced biofuel obligation (*i.e.,* D4 or D5 RINs). An advanced biodiesel or renewable feedstock refers to any of the biodiesel, renewable diesel, jet fuel, and heating oil feedstocks listed in Table 1 to § 80.1426 or in petition approvals issued

of advanced biodiesel and renewable diesel used in previous years is especially useful in projecting the potential for growth in the production and use of such fuels, since for these fuels there are a number of complex and inter-related factors beyond simply the total production capacity for biodiesel and renewable diesel (including the availability of advanced feedstocks, the expiration of the biodiesel tax credit, recent tariffs on biodiesel from Argentina and Indonesia, and other market-based factors) that are likely to affect the supply of advanced biodiesel and renewable diesel.

In addition to a review of the volumes of advanced biodiesel and renewable diesel used in previous years, we believe the likely growth in production of feedstocks used to produce these fuels, as well as the total projected available volumes of these feedstocks, are important factors to consider. This is because while there are many factors that could potentially limit the production and availability of these fuels, the impacts of increasing production of advanced biodiesel and renewable diesel on factors such as costs, energy security, and GHG emissions are expected to vary depending on whether the feedstocks used to produce these fuels are sourced from increased production of advanced feedstocks or alternatively from diverting these feedstocks from existing uses. The energy security and GHG reduction value associated with the growth in the use of advanced biofuels is greater when that growth is associated with an increase in advanced feedstock production, rather than a switching of existing advanced feedstocks from other uses to renewable fuel production or the diversion of advanced biodiesel and renewable diesel from foreign markets. This is especially true if the parties that previously used the advanced biofuel or feedstocks replace these oils with low cost palm or petroleum derived products, as we believe would likely be the case in 2019.[83] In this case the global supply of advanced biodiesel and renewable diesel would not increase, and the potential benefits associated with increasing the diversity of the supply of transportation fuel (energy security) and the production of additional volumes of advanced biodiesel and renewable diesel (low GHG sources of transportation fuel) would not be realized. Such feedstock switching or fuel diversion could also result in unintended negative consequences, such as market disruption in other markets where such oils are used, which could offset some or all of the anticipated GHG benefits of the production and use of advanced biofuels.

Before considering the projected growth in the production of qualifying feedstocks that could be used to produce advanced biodiesel and renewable diesel, as well as the total volume of feedstocks that could be used to produce these fuels, it is helpful to review the volumes of biodiesel and renewable diesel that have been used in the U.S. in recent years. While historic data and trends alone are insufficient to project the volumes of biodiesel and renewable diesel that could be provided in future years, historic data can serve as a useful reference in considering future volumes. Past experience suggests that a high percentage of the biodiesel and renewable diesel used in the U.S. (from both domestic production and imports) qualifies as advanced biofuel.[84] In previous years, biodiesel and renewable diesel produced in the U.S. have been almost exclusively advanced biofuel.[85] Imports of advanced biodiesel have also increased in recent years, as seen in Table IV.B.2–1. Volumes of imported advanced biodiesel and renewable diesel have varied significantly from year to year, as they are impacted both by domestic and foreign policies, as well as many economic factors.

TABLE IV.B.2–1—ADVANCED (D4 AND D5) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2017

[Million gallons][a]

	2011	2012	2013	2014[b]	2015[b]	2016	2017
Domestic Biodiesel (Annual Change)	967 (N/A)	1,014 (+47)	1,376 (+362)	1,303 (−73)	1,253 (−50)	1,633 (+380)	1,573 (−60)
Domestic Renewable Diesel (Annual Change)	58 (N/A)	11 (−47)	92 (+81)	155 (+63)	175 (+20)	221 (+46)	258 (+37)
Imported Biodiesel (Annual Change)	44 (N/A)	40 (−4)	156 (+116)	130 (−26)	261 (+131)	561 (+300)	462 (−99)
Imported Renewable Diesel (Annual Change)	0 (N/A)	28 (+28)	145 (+117)	129 (−16)	121 (−8)	170 (+49)	193 (+23)
Exported Biodiesel and Renewable Diesel (Annual Change)	48 (N/A)	102 (+54)	125 (+23)	134 (+9)	133 (−1)	129 (−4)	157 (+28)
Total (Annual Change)	1,021 (N/A)	991 (−30)	1,644 (+653)	1,583 (−61)	1,677 (+94)	2,456 (+779)	2,329 (−127)

[a] All data from EMTS. EPA reviewed all advanced biodiesel and renewable diesel RINs retired for reasons other than demonstrating compliance with the RFS standards and subtracted these RINs from the RIN generation totals for each category in the table above to calculate the volume in each year.

[b] RFS required volumes for these years were not established until December 2015.

pursuant to § 80.1416, that can be used to produce fuel that qualifies for D4 or D5 RINs. These feedstocks include, for example, soy bean oil; oil from annual cover crops; oil from algae grown photosynthetically; biogenic waste oils/fats/greases; non-food grade corn oil; camelina sativa oil; and canola/rapeseed oil (See pathways F, G, and H of Table 1 to § 80.1426).

[83] We believe palm or petroleum derived products would likely be used replace advanced biodiesel and renewable diesel diverted to the U.S. as these products are currently the lowest cost sources.

[84] From 2011 through 2017 approximately 95% of all biodiesel and renewable diesel supplied to the U.S. (including domestically-produced and imported biodiesel and renewable diesel) qualified as advanced biodiesel and renewable diesel (11,701 million gallons of the 12,323 million gallons) according to EMTS data.

[85] From 2011 through 2017 over 99.9% of all the domestically produced biodiesel and renewable diesel supplied to the U.S. qualified as advanced biodiesel and renewable diesel (10,089 million gallons of the 10,096 million gallons) according to EMTS data.

TABLE IV.B.2–2—CONVENTIONAL (D6) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2016

[Million gallons] [a]

	2011	2012	2013	2014 [b]	2015 [b]	2016	2017
Domestic Biodiesel (Annual Change)	0 (N/A)	0 (+0)	6 (+6)	1 (−5)	0 (+0)	0 (+0)	0 (+0)
Domestic Renewable Diesel (Annual Change)	0 (N/A)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	0 (+0)
Imported Biodiesel (Annual Change)	0 (N/A)	0 (+0)	31 (+31)	52 (+21)	74 (+22)	113 (+39)	0 (−113)
Imported Renewable Diesel (Annual Change)	0 (N/A)	0 (+0)	53 (+53)	0 (−53)	106 (+106)	43 (−63)	144 (+101)
Exported Biodiesel and Renewable Diesel (Annual Change)	0 (N/A)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	1 (+1)	0 (−1)
Total (Annual Change)	0 (N/A)	0 (+0)	90 (+90)	53 (−37)	180 (+127)	155 (−25)	144 (−11)

[a] All data from EMTS. EPA reviewed all conventional biodiesel and renewable diesel RINs retired for reasons other than demonstrating compliance with the RFS standards and subtracted these RINs from the RIN generation totals for each category in the table above to calculate the volume in each year.

[b] RFS required volumes for these years were not established until December 2015.

Since 2011 the year-over-year changes in the volume of advanced biodiesel and renewable diesel used in the U.S. have varied greatly, from a low of negative 127 million gallons from 2016 to 2017 to a high of 779 million gallons from 2015 to 2016. These changes were likely influenced by multiple factors such as the cost of biodiesel feedstocks and petroleum diesel, the status of the biodiesel blenders tax credit, growth in marketing of biodiesel at high volume truck stops and centrally fueled fleet locations, demand for biodiesel and renewable diesel in other countries, biofuel policies in both the U.S. and foreign countries, and the volumes of renewable fuels (particularly advanced biofuels) required by the RFS. This historical information does not indicate that the maximum previously observed increase of 779 million gallons of advanced biodiesel and renewable diesel would be reasonable to expect from 2018 to 2019, nor does it indicate that the low (or negative) growth rates observed in other years would recur in 2019. Rather, these data illustrate both the magnitude of the increases in advanced biodiesel and renewable diesel in previous years and the significant variability in these increases.

The historic data indicates that the biodiesel tax policy in the U.S. can have a significant impact on the volume of biodiesel and renewable diesel used in the U.S. in any given year. While the biodiesel blenders tax credit has applied in each year from 2010—2017, it has only been prospectively in effect during the calendar year in 2011, 2013 and 2016, while other years it has been applied retroactively. The biodiesel blenders tax credit expired at the end of 2009 and was re-instated in December 2010 to apply retroactively in 2010 and extend through the end of 2011. Similarly, after expiring at the end of 2011, 2013, and 2014 the tax credit was re-instated in January 2013 (for 2012 and 2013), December 2014 (for 2014), December 2015 (for 2015 and 2016), and February 2018 (for 2017). Each of the years in which the biodiesel blenders tax credit was in effect during the calendar year (2013 and 2016) resulted in significant increases in the volume of advanced biodiesel and renewable diesel used in the U.S. over the previous year (653 million gallons and 779 million gallons respectively). However, following these large increases in 2013 and 2016, there was little to no growth in the use of advanced biodiesel and renewable diesel in the following years, only 33 million gallons from 2013 to 2015 and negative 127 million gallons from 2016 to 2017. This decrease from 2016 to 2017 happened despite the fact that the required volume of advanced biofuel increased from 3.61 in 2016 to 4.28 billion gallons in 2017. This pattern is likely the result of both accelerated production and/or importation of biodiesel and renewable diesel in the final few months of years during which the tax credit was available to take advantage of the expiring tax credit, as well as relatively lower volumes of biodiesel and renewable diesel production and import in 2014, 2015, and 2017 than would have occurred if the tax credit had been in place.[86]

The historical data suggests that the supply of advanced biodiesel and renewable diesel could potentially increase from 2.33 billion gallons in 2017 to 2.8 billion gallons in 2019 (the projected volume needed to meet the advanced biofuel volume for 2019 after reducing the statutory advanced biofuel volume by the same amount as the cellulosic biofuel reduction). This would represent an average annual rate of growth of approximately 235 million gallons per year, slightly higher than the average increase in the volume of advanced biodiesel and renewable diesel used in the U.S. from 2011 through 2017 (218 million gallons per year) and significantly less the highest annual increase during this time (779 million gallons from 2015 to 2016).

After reviewing the historical volume of advanced biodiesel and renewable diesel used in the U.S. and considering the possible impact of the expiration of the biodiesel tax credit (discussed above), EPA next considers other factors that may impact the production, import, and use of advanced biodiesel and renewable diesel in 2019. The production capacity of registered advanced biodiesel and renewable diesel production facilities is highly unlikely to limit the production of these fuels, as the total production capacity for biodiesel and renewable diesel at registered facilities in the U.S. (4.1 billion gallons) exceeds the volume of these fuels that are projected to be

[86] We also acknowledge that the fact that EPA did not finalize the required volumes of renewable fuel under the RFS program for 2014 and 2015 until December 2015 likely had an impact on the volume of advanced biodiesel and renewable diesel supplied in these years. Further, the preliminary tariffs on biodiesel imported from Argentina and Indonesia announced in August 2017 likely had a negative impact on the volume of biodiesel supplied in 2017.

needed to meet the advanced biofuel volume for 2019 after exercising the cellulosic waiver authority (2.8 billion gallons).[87] Significant registered production also exists internationally. Similarly, the ability for the market to distribute and use advanced biodiesel and renewable diesel appears unlikely constrain the growth of these fuels to a volume lower than 2.8 billion gallons. The investments required to distribute and use this volume of biodiesel and renewable diesel are expected to be modest, as this volume is less than 200 million gallons greater than the volume of biodiesel and renewable diesel produced, imported, and used in the U.S. in 2016.

Conversely, the availability of advanced feedstocks that can be used to produce advanced biodiesel and renewable diesel and the projected availability of imported advanced biodiesel and renewable diesel may limit the volume of these fuels available to the U.S. in 2019. We acknowledge that an increase in the required use of advanced biodiesel and renewable diesel could be realized through a diversion of advanced feedstocks from other uses, or a diversion of advanced biodiesel and renewable diesel from existing markets in other countries, and that volume of advanced biodiesel and renewable diesel and advanced feedstocks produced globally exceeds the volume projected to be required in 2019 (2.8 billion gallons of advanced biodiesel and renewable diesel and the corresponding volume of advanced feedstocks) by a significant margin.[88] However, we perceive the net benefits associated with such increased advanced biofuel and renewable fuel volumes to be significantly less than the net benefits associated with the production of additional advanced biodiesel and renewable diesel from newly-available advanced feedstocks, due to the likelihood that parties that previously used advanced biofuel feedstocks will replace them with low cost palm or petroleum derived products.

This is both because of the potential disruption and associated cost impacts to other industries resulting from feedstock switching, and the potential adverse effect on lifecycle GHG emissions associated with feedstocks for biofuel production that would have been used for other purposes and which must then be backfilled with other feedstocks. Similarly, increasing the supply of biodiesel and renewable diesel to the U.S. by diverting fuel that would otherwise have been used in other countries results in higher lifecycle GHG emissions than if the supply of these fuels was increased through additional biofuel production, especially if this diversion results in increased consumption of petroleum fuels in the countries that would have otherwise consumed the biodiesel or renewable diesel. By focusing our assessment of the potential growth in the attainable volume of biodiesel and renewable diesel on the expected growth in the production of advanced feedstocks (rather than the total supply of these feedstocks in 2018, which would include feedstocks currently being used for non-biofuel purposes), we are attempting to minimize the incentives for the RFS program to increase the supply of advanced biodiesel and renewable diesel through feedstock switching or diverting biodiesel and renewable diesel from foreign market to the U.S.

Advanced biodiesel and renewable diesel feedstocks include both waste oils, fats, and greases; and oils from planted crops. While we believe a small increase in supply of waste oils, fats, and greases may be possible in 2019, we believe this increase is limited as most of these waste oils, fats, and greases that can be recovered economically are already being recovered and used in biodiesel and renewable diesel production or for other purposes. Most of the vegetable oil used to produce advanced biodiesel and renewable diesel that is sourced from planted crops comes from crops primarily grown for purposes other than providing feedstocks for biodiesel and renewable diesel, such as for livestock feed with the oil that is used as feedstock for renewable fuel production a co-product or by-product.[89] This is true for soybeans and corn, which are the two largest sources of feedstock from planted crops used for biodiesel production in the U.S.[90] We do not believe that the increased demand for soybean oil or corn oil caused by a higher 2019 advanced biofuel standard would result in an increase in soybean or corn prices large enough to induce significant changes in agricultural activity, at least for the changes in advanced biodiesel and renewable diesel feedstock demand that may be caused by this proposed 2019 standard.

We believe the most reliable source for projecting the expected increase in vegetable oils in the U.S. is USDA's World Agricultural Supply and Demand Estimates (WASDE). At the time of our assessment for this proposed rule, the most current version of the WASDE report only projects domestic vegetable oil production through 2018. Based on domestic vegetable oil production from 2011–2017 as reported by WASDE, the average annual increase in vegetable oil production in the U.S. was 0.278 million metric tons per year.[91] Assuming a similar increase in domestic vegetable oil production from 2018 to 2019, this additional quantity of vegetable oils could be used to produce approximately 80 million additional gallons of advanced biodiesel or renewable diesel in 2019 relative to 2018.[92]

In addition to virgin vegetable oils, we also expect increasing volumes of distillers corn oil [93] to be available for use in 2019. The WASDE report does not project distillers corn oil production, so EPA must use an alternative source to project the growth in the production of this feedstock. For this proposed rule EPA is using results from the World Agricultural Economic and Environmental Services (WAEES) model to project the growth in the production of distillers corn oil.[94] In

[87] The production capacity of the sub-set of biodiesel and renewable diesel producers that generated RINs in 2017 is approximately 3.1 billion gallons. See ''Biodiesel and Renewable Diesel Registered Capacity (May 2018)'' Memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2018–0167.

[88] The March 2018 WASDE projects production of vegetable oils in 2017/18 in the World to be 197.78 million metric tons. This quantity of vegetable oil would be sufficient to produce approximately 56.5 billion gallons of biodiesel and renewable diesel.

[89] For example, corn oil is a co-product of corn grown primarily for feed or ethanol production, while soy and canola are primarily grown as livestock feed.

[90] According to EIA data 6,230 million pounds of soy bean oil and 1,579 million pounds of corn oil were used to produce biodiesel in the U.S. in 2017. Other significant sources of feedstock were yellow grease (1,471 million pounds), canola oil (1,452 million pounds), and white grease (591 million pounds). Numbers from EIA's March 2018 Monthly Biodiesel Production Report.

[91] According to the March 2018 WASDE report, U.S. vegetable oil production in the 2016/2017 agricultural marketing year is estimated to be 11.43 million metric tons. According to the January 2013 WASDE report, U.S. vegetable oil production in the 2010/2011 agricultural marketing year was 9.76 million metric tons.

[92] To calculate this volume, we have used a conversion of 7.7 pounds of feedstock per gallon of biodiesel. This is based on the expected conversion of soybean oil (*http://extension.missouri.edu/p/G1990*), which is the largest source of feedstock used to produce advanced biodiesel and renewable diesel. Conversion rates for other types of vegetable oils used to produce biodiesel and renewable diesel are similar to those for soybean oil.

[93] Distillers corn oil is non-food grade corn oil produced by ethanol production facilities.

[94] For the purposes of this rule, EPA relied on WAEES modeling results submitted as comments by the National Biodiesel Board on the 2018 final rule (Kruse, J., ''Implications of an Alternative Advanced and Biomass Based Diesel Volume Obligation for Global Agriculture and Biofuels'', August 21, 2017, World Agricultural Economic and

Continued

assessing the likely increase in the availability of distillers corn oil from 2018 to 2019, the authors of the WAEES model considered the impacts of an increasing adoption rate of distillers corn oil extraction technologies at domestic ethanol production facilities, as well as increased corn oil extraction rates enabled by advances in this technology. The WAEES model projects that production of distillers corn oil in 2018 will increase by 167 million pounds, from 2615 million pounds in agricultural marketing year 2017/2018 to 2,782 million pounds in agricultural marketing year 2018/2019. According to the WAEES model, this projected increase in the production of distillers corn oil, if devoted entirely to biofuel production, could be used to produce approximately 22 million additional gallons of advanced biodiesel or renewable diesel in 2019. We believe it is reasonable to use these estimates from the WAEES model for these purposes.

While the vast majority of the increase in advanced biodiesel and renewable diesel feedstocks produced in the U.S. from 2018 to 2019 is expected to come from virgin vegetable oils and distillers corn oil, increases in the supply of other sources of advanced biodiesel and renewable diesel feedstocks, such as biogenic waste oils, fats, and greases, may also occur. These increases, however, are expected to be modest, as many of these feedstocks that can be recovered economically are already being used to produce biodiesel or renewable diesel, or in other markets. In fact, the WAEES model projects a decrease of 3 million gallons in the volume of biodiesel produced from feedstocks other than soybean oil, canola oil, and distillers corn oil from 2018 to 2019.[95] In total, we expect that increases in feedstocks produced in the U.S. are sufficient to produce approximately 100 million more gallons of advanced biodiesel and renewable diesel in 2019 relative to 2018. In our 2018 final rule, we determined that 2.55 billion gallons of advanced biodiesel and renewable diesel were reasonably attainable in 2018,[96] therefore our projection of the reasonably attainable volume of advanced biodiesel and renewable diesel in 2019 is 2.65 billion gallons.

EPA's projections of the growth of advanced feedstocks does not, however, suggest that the total supply of advanced biodiesel and renewable diesel to the U.S. in 2018 will be limited to 2.65 billion gallons. Rather, this is the volume of these fuels that we project could be supplied without diverting significant quantities of advanced feedstocks or biofuels from existing uses. The March 2018 WASDE reports that production of vegetable oil in the U.S. in the 2017/2018 market year (the latest year for which projections are available) will be sufficient to produce approximately 3.3 billion gallons of biodiesel and renewable diesel (including both advanced and conventional biofuels) if the entire volume of vegetable oil was used to produce these fuels. Additional advanced biodiesel and renewable diesel could be produced from waste fats, oils, and greases. The global production of vegetable oil projected in the 2017/2018 marketing year would be sufficient to produce approximately 56.5 billion gallons of biodiesel and renewable diesel (including both advanced and conventional biofuels).[97] While it would not be reasonable to assume that all, or even a significant portion, of global vegetable oil production could be available to produce biodiesel or renewable diesel supplied to the U.S. for a number of reasons,[98] the large global supply of vegetable oil strongly suggests that under the right market conditions 2.8 billion gallons of advanced biodiesel and renewable diesel is attainable in 2019. Reaching these levels, however, may result in the diversion of advanced feedstocks currently used in other markets and/or the import of biodiesel and renewable diesel from these feedstocks.

Further, the supply of advanced biodiesel and renewable diesel to the U.S. in 2019 could be increased by approximately 150 million gallons if all of the exported volumes of these fuels were used domestically. Diverting this fuel to markets in the U.S. may be complicated, however, as doing so would likely require higher prices for these fuels in the U.S. (to divert the fuels from foreign markets that are presumably more profitable currently). It may also be more difficult and costly to distribute this additional volume of biodiesel and renewable diesel to domestic markets than the current foreign markets. Finally, reducing advanced biodiesel and renewable diesel exports may indirectly result in the decreased availability of imported volumes of these fuels, as other countries seek to replace volumes previously imported from the U.S.

EPA next considered potential changes in the imports of advanced biodiesel and renewable diesel produced in other countries. In previous years, significant volumes of foreign produced advanced biodiesel and renewable diesel have been supplied to markets in the U.S. (see Table IV.B.2–1 above). These significant imports were likely the result of a strong U.S. demand for advanced biodiesel and renewable diesel, supported by the RFS standards, the LCFS in California, the biodiesel blenders tax credit, and the opportunity for imported biodiesel and renewable diesel to realize these incentives.

The RFS requirements and California's LCFS are expected to continue to provide an incentive for imports of advanced biodiesel and renewable diesel in 2019. Several other factors, however, may negatively impact the volume of these fuels imported in 2019. In February 2018 the biodiesel blenders tax credit, which had expired at the end of 2016, was retroactively reinstated for biodiesel blended in 2017 but was not extended to apply to biodiesel blended in 2018 or 2019.[99] Perhaps more significantly, in December 2017 the U.S. International Trade Commission adopted tariffs on biodiesel imported from Argentina and Indonesia.[100] According to data from EIA,[101] no biodiesel was imported from Argentina or Indonesia from September 2017—February 2018, after a preliminary decision to impose tariffs on biodiesel imported from these countries was announced in August 2017. Biodiesel imports from these countries were significant, accounting for over 550 million gallons in 2016 and approximately 290 million gallons in 2017. At this time, the ultimate impact these tariffs will have on overall imports of advanced biodiesel and renewable diesel to the U.S. remains uncertain. It is possible that imports of advanced biodiesel and renewable diesel from

Environmental Services (WAEES), EPA–HQ–OAR–2017–0091–3880).

[95] Id.

[96] 82 FR 58512 (December 12, 2017).

[97] The March 2018 WASDE projects production of vegetable oils in 2017/18 in the U.S. and the World to be 11.64 and 197.78 million metric tons respectively. To convert projected vegetable oil production to potential biodiesel and renewable diesel production we have used a conversion of 7.7 pounds of feedstock per gallon of biodiesel.

[98] These reasons include the demand for vegetable oil in the food, feed, and industrial markets both domestically and globally; constraints related to the production, import, distribution, and use of significantly higher volumes of biodiesel; and the fact that biodiesel and renewable diesel produced from much of the vegetable oil available globally would not qualify as an advanced biofuel under the RFS program.

[99] Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64 §§ 40406, 40407, and 40415 (2018).

[100] ''Biodiesel from Argentina and Indonesia Injures U.S. Industry, says USITC,'' Available online at: *https://www.usitc.gov/press_room/news_release/2017/er1205ll876.htm.*

[101] See ''EIA Biomass-Based Diesel Import Data'' available in docket EPA–HQ–OAR–2018–0167.

other countries not impacted by these tariffs will increase to make up for all, or some portion of the biodiesel imported from Argentina and Indonesia in previous years. The volume of imported biodiesel in 2017 sourced from countries not impacted by the tariffs, however, is significantly less than the volume supplied by Argentina and Indonesia.[102] It is possible, therefore, that the supply of imported advanced biodiesel and renewable diesel available in the U.S. in 2019 will decrease from the relatively high levels in recent years.[103]

Domestic production of advanced biodiesel and renewable diesel in 2016 and 2017 was approximately 1.85 billion gallons. Of this total, approximately 150 million gallons of domestically produced biodiesel was exported in 2016 and 2017. An additional 100 to150 million gallons of these fuels were imported from countries unaffected by the recent tariffs. If, by 2019, alternative sources of imported biodiesel and renewable diesel are identified and the imported volume of advanced biodiesel and renewable diesel returns to the levels observed in 2016 and 2017 (approximately 700 million gallons per year) domestic production would need to increase by approximately 125 million gallons per year in both 2018 and 2019 to reach a total advanced biodiesel and renewable diesel supply of 2.8 billion gallons by 2019.[104] These increases appear attainable, as they are lower than the average annual increase of advanced biodiesel and renewable diesel production in the U.S. between 2011 and 2017 (134 million gallons per year). These increases are also approximately equal to the projected increases in advanced feedstock availability in 2017 and 2018.[105] We therefore project that a volume of 2.8 billion gallons of advanced biodiesel and renewable diesel is attainable in 2019 if the imported volume of these fuels does not fall significantly below the volumes imported in 2016 and 2017. We note, however, that using this volume of advanced biodiesel and renewable diesel in the U.S. would likely result in the diversion of advanced biodiesel and renewable diesel and/or feedstocks used to produce these fuels, as advanced biodiesel and renewable diesel that is currently exported would instead be used in the U.S. and alternative sources for significant volumes of these fuels would need to be found.

After a careful consideration of the factors discussed above, EPA has determined that 2.8 billion gallons of advanced biodiesel and renewable diesel projected needed to satisfy the implied statutory volume for non-cellulosic advanced biofuel in 2019 (4.5 billion gallons) are attainable. The total production capacity of registered biodiesel and renewable diesel producers is significantly higher than 2.8 billion gallons, even if only those facilities that generated RINs for advanced biodiesel and renewable diesel in 2017 are considered. This volume (2.8 billion gallons) is also not significantly higher than the total volume of biodiesel and renewable diesel supplied in 2016 (approximately 2.6 billion gallons), strongly suggesting that production capacity and the ability to distribute and use biodiesel and renewable diesel will not limit the supply of advanced biodiesel and renewable diesel to a volume below 2.8 billion gallons in 2018. Sufficient feedstocks are expected to be available to produce this volume of advanced biodiesel and renewable diesel in 2019, however doing so may result in some level of diversion of advanced feedstocks and/or advanced biodiesel and renewable diesel from existing uses. Achieving this level of advanced biodiesel and renewable diesel in 2019, however, will likely require finding alternative sources for biodiesel imports to replace the volume of biodiesel and renewable diesel that were supplied from Argentina and Indonesia in 2016 and 2017. Alternatively, obligated parties could rely on the significant volume of carryover advanced RINs projected to be available in 2019 (See Section II.B for a further discussion of carryover RINs).

C. Proposed Volume Requirement for Advanced Biofuel

In exercising the cellulosic waiver authority for 2017 and earlier, we determined it was appropriate to require a partial backfilling of missing cellulosic volumes with volumes of non-cellulosic advanced biofuel we determined to be reasonably attainable, notwithstanding the increase in costs associated with those decisions.[106] For the 2018 standards, in contrast, we placed a greater emphasis on cost considerations in the context of balancing the various considerations, ultimately concluding that the applicable volume requirement should be based on the maximum reduction permitted under the cellulosic waiver authority. We are proposing to take a similar approach for 2019. That is, while it may be possible that more than 4.88 billion gallons of advanced biofuel might be attainable in 2019, requiring additional volumes would lead to higher costs, feedstock switching and/or diversion of foreign advanced biofuels. We do not believe that it would be appropriate to set the advanced biofuel volume requirement higher than 4.88 billion gallons given that it could lead to these results.

Based on the information presented above, we believe that 4.88 billion gallons of advanced biofuel is attainable in 2019. After a consideration of the projected volume of cellulosic biofuel and reasonably attainable volumes of imported sugarcane ethanol and other advanced biofuels, we determined that 2.8 billion gallons of advanced biodiesel and renewable diesel would be needed to reach 4.88 billion gallons of advanced biofuel. Based on a review of the factors relevant to the supply of advanced biodiesel and renewable diesel as discussed in Section IV.B.2 above, including historic production and import data, the production capacity of registered biodiesel and renewable diesel producers, and the availability of advanced feedstocks, we have determined that 2.8 billion gallons of BBD is attainable in 2019.

However, we also acknowledge that 2.8 billion gallons of BBD is

[102] According to EIA data, total biodiesel imports from countries other than Argentina and Indonesia totaled 153 million gallons in 2016 and 103 million gallons in 2017. See ''EIA Biomass-Based Diesel Import Data'' available in docket EPA–HQ–OAR–2018–0167.

[103] According to data from EMTS, 954 million gallons of advanced biodiesel and renewable diesel were imported into the U.S. in 2016 and 854 million gallons of these fuels were imported in 2017. Note that imported volumes of biodiesel and renewable diesel from EMTS and EIA do not precisely match. The primary reason for this difference is that EIA data is sourced from EIA surveys, while the EMTS data is generated by the parties that produce and/or import biodiesel and renewable diesel into the U.S. For the purposes of this discussion we have cited the EIA data, as this data more easily allows us to quantify the fuel impacted by the recent tariffs (biodiesel imported from Argentina and Indonesia).

[104] Note that this estimate assumes that the U.S. consumes all domestically produced biodiesel and renewable diesel, rather than exporting any of this fuel. Alternatively, if the U.S. continues to export approximately 150 million gallons of biodiesel per year in 2019 domestic production of advanced biodiesel and renewable diesel would have to increase by approximately 200 million gallons per year.

[105] In the 2018 final rule, EPA projected that advanced biodiesel and renewable diesel feedstocks would increase to allow production of approximately 150 million additional gallons of advanced biodiesel and renewable diesel in 2018. 82 FR 58511 (December 12, 2017). In this proposed rule we are projecting additional growth in advanced biodiesel and renewable diesel feedstocks to allow production of approximately 100 million additional gallons of advanced biodiesel and renewable diesel in 2019 (relative to the volume of advanced feedstocks projected for 2018).

[106] See, *e.g.,* Response to Comments Document for the 2014–2016 Rule, pages 628–631, available in docket EPA–HQ–OAR–2015–0111.

considerably higher than the 2.33 billion gallons actually supplied in 2017 and the 2.55 billion gallons determined to be reasonably attainable in 2018. While 2.8 billion gallons would require an average growth in supply of 235 million gallons per year between 2017 and 2019, this is only slightly higher than the average annual growth rate in years 2011—2017. Nevertheless, there is some uncertainty regarding whether 2.8 billion gallons is attainable in 2019. This fact has led us to consider whether the use of carryover RINs might be appropriate.

The carryover RIN bank has continued to grow over the past several years as described in Section II.B, and is currently at its largest historical level. It represents a source of RINs that could help obligated parties meet an advanced biofuel volume requirement of 4.88 billion gallons in 2019 if the market fails to supply sufficient advanced biofuels in 2019. If the market does choose to meet a volume requirement of 4.88 billion gallons in this way, it would be for the first time in the history of the RFS program. Although we did point to the carryover RIN bank in 2013, along with the potential for additional volumes of E85, as a means for meeting the statutory volume requirement of 16.55 billion gallons, in that case the concern was the portion of the standard that is not required to be advanced biofuel (*e.g.* conventional biofuel). Ultimately, the market supplied more advanced biofuel than it needed to meet the applicable volume requirement for advanced biofuel while falling short of the total renewable fuel volume requirement.

Although we believe that the 2.8 billion gallon volume is attainable, and any shortfalls could be met through the use of carryover RINs, we also solicit comment and supporting data and rationale on whether circumstances exist that would warrant further reductions in volumes through the exercise of the general waiver authority (*e.g.,* due to severe economic harm). We recognize that identifying severe economic harm caused by the implementation of RFS requirements is a difficult and complex issue and one of intense interest to a number of stakeholders. We discussed in past notices, and in the most recent annual rulemaking for 2018, the type of information we generally think would be relevant to identifying severe economic harm. For example, in 2008, we examined modeling showing expected levels of production and price for both corn and ethanol with and without a waiver. We also provided quantitative estimates of the impact of a waiver on: Food expenditures for average and lowest quintile households; feeds costs for cattle, pigs, poultry and dairy; and gasoline prices and gasoline expenditures for average and lowest quintile households.

It should be noted that by exercising the full cellulosic waiver authority for advanced biofuel, the implied statutory volume target for non-cellulosic advanced biofuel of 4.5 billion gallons in 2019 would be maintained. This represents an increase of 0.5 billion gallons from the 2018 volume requirements.

D. Proposed Volume Requirement for Total Renewable Fuel

As discussed in Section II.A.1, we believe that the cellulosic waiver provision is best interpreted to provide equal reductions in advanced biofuel and total renewable fuel. We have consistently articulated this interpretation.[107] For the reasons we have previously articulated, we believe this interpretation is consistent with the statutory language and best effectuates the objectives of the statute. If EPA were to reduce the total renewable fuel volume requirement by a lesser amount than the advanced biofuel volume requirement, we would effectively increase the opportunity for conventional biofuels to participate in the RFS program beyond the implied statutory volume of 15 billion gallons. Applying an equal reduction of 8.12 billion gallons to both the statutory target for advanced biofuel and the statutory target for total renewable fuel would result in a total renewable fuel volume of 19.88 billion gallons as shown in Table IV.A–1.[108] A memorandum to the docket provides a description of the ways in which the market could make this volume of total renewable fuel available.[109]

This volume of total renewable fuel results in an implied volume of 15 billion gallons of conventional fuel, which is the same as in the 2018 final rule.

V. Impacts of 2019 Volumes on Costs

In this section, EPA presents its assessment of the illustrative costs of the proposed 2019 RFS rule. It is important to note that these illustrative costs do not attempt to capture the full impacts of this proposed rule. We frame the analyses we have performed for this proposed rule as ''illustrative'' so as not to give the impression of comprehensive estimates. These estimates are provided for the purpose of showing how the cost to produce a gallon of a ''representative'' renewable fuel compares to the cost of petroleum fuel. There are a significant number of caveats that must be considered when interpreting these illustrative cost estimates. For example, there are many different feedstocks that could be used to produce biofuels, and there is a significant amount of heterogeneity in the costs associated with these different feedstocks and fuels. Some renewable fuels may be cost competitive with the petroleum fuel they replace; however, we do not have cost data on every type of feedstock and every type of fuel. Therefore, we do not attempt to capture this range of potential costs in our illustrative estimates.

Illustrative cost estimates are provided below for the proposal discussed in Sections III and IV that reduces the cellulosic, advanced, and total renewable fuel volume requirements using the cellulosic waiver authority under CAA section 211(o)(7)(D)(i). For this proposal, we examine two different cases. In the first case, we provide illustrative cost estimates by comparing the proposed 2019 renewable fuel volumes to 2019 statutory volumes under CAA section 211(o)(7)(D)(i). In the second case, we examine the proposed 2019 renewable fuel volumes to the final 2018 renewable fuel volumes to estimate changes in the annual costs of the proposed 2019 RFS volumes in comparison to the 2018 volumes.

A. Illustrative Costs Analysis of Exercising the Cellulosic Waiver Authority Compared to the 2019 Statutory Volumes Baseline

In this section, EPA provides illustrative cost estimates that compare

[107] For instance, see discussion in the final rules setting the 2013, 2014–2016, and 2017 standards: 78 FR 49809 –49810, August 15, 2013; 80 FR 77434, December 14, 2015; 81 FR 89752—89753, December 12, 2016.

[108] EPA also considered the availability of carryover RINs in determining whether reduced use of the cellulosic waiver authority would be warranted. For the reasons described in Section II.B, we do not believe this to be the case.

[109] ''Market impacts of biofuels in 2019,'' memorandum from David Korotney to docket EPA–HQ–OAR–2018–0167. In prior actions including the 2018 annual rule proposal, similar analyses indicated that the market was capable of both producing and consuming the required volume of renewable fuels, and that as a result there was no basis for finding an inadequate domestic supply of total renewable fuel. See 82 FR 34229 & n.82. Given the D.C. Circuit's decision in *ACE,* however, the current assessment of demand-side constraints is no longer relevant for determining inadequate domestic supply. However, we believe consideration of the ways that the market could make this volume available may still be relevant to whether and how EPA exercises its waiver authorities, such as our consideration of whether the proposed volumes will cause severe economic harm.

the proposed 2019 cellulosic biofuel volume requirements to the 2019 cellulosic statutory volume that would be required absent the exercise of our cellulosic waiver authority under CAA section 211(o)(7)(D)(i). As described in Section III, we are proposing a cellulosic volume of 381 million gallons for 2019. The result is that we are using our cellulosic waiver authority to waive the statutory cellulosic volume of 8.5 billion gallons by 8.12 billion gallons. Estimating the cost savings from volumes that are not projected to be produced is inherently challenging. EPA has taken the relatively straightforward methodology of multiplying this waived volume of 8.12 billion gallons by the wholesale per-gallon costs of cellulosic biofuel production relative to the petroleum fuels they displace.

While there may be growth in other cellulosic renewable fuel sources, we believe it is appropriate to use cellulosic ethanol produced from corn kernel fiber as the representative cellulosic renewable fuel. The majority of liquid cellulosic biofuel in 2019 is expected to be produced using this technology, and application of this technology in the future could result in significant incremental volumes of cellulosic biofuel. In addition, as explained in Section III, we believe that production of the major alternative cellulosic biofuel—CNG/LNG derived from biogas—is limited to approximately 630 million gallons due to a limitation in the number of vehicles capable of using this form of fuel.[110]

EPA uses a ''bottom-up'' engineering cost analysis to quantify the costs of producing a gallon of cellulosic ethanol derived from corn kernel fiber. There are multiple processes that could yield cellulosic ethanol from corn kernel fiber. EPA assumes a cellulosic ethanol production process that generates biofuel using distiller's grains, a co-product of generating corn starch ethanol that is commonly dried and sold into the feed market as distillers dried grains with solubles (DDGS), as the renewable biomass feedstock. We assume an enzymatic hydrolysis process with cellulosic enzymes to break down the cellulosic components of the distiller's grains. This process for generating cellulosic ethanol is similar to approaches currently used by industry to generate cellulosic ethanol at a commercial scale, and we believe these cost estimates are likely representative of the range of different technology options being developed to produce ethanol from corn kernel fiber. We then compare the per-gallon costs of the cellulosic ethanol to the petroleum fuels that would be replaced at the wholesale stage, since that is when the two are blended together.

These cost estimates do not consider taxes, retail margins, or other costs or transfers that occur at or after the point of blending (transfers are payments within society and are not additional costs). We do not attempt to estimate potential cost savings related to avoided infrastructure costs (*e.g.,* the cost savings of not having to provide pumps and storage tanks associated with higher-level ethanol blends). When estimating per-gallon costs, we consider the costs of gasoline on an energy-equivalent basis as compared to ethanol, since more ethanol gallons must be consumed to travel the same distance as on gasoline due to the ethanol's lower energy content.

Table V.A–1 below presents the cellulosic fuel cost savings with this proposed rule that are estimated using this approach.[111] The per-gallon cost difference estimates for cellulosic ethanol ranges from $0.49–$2.65 per ethanol-equivalent gallon.[112] Given that cellulosic ethanol production is just starting to become commercially available, the cost estimates have a significant range. Multiplying those per-gallon cost differences by the amount of cellulosic biofuel waived in this proposed rule results in approximately $4.0–$22 billion in cost savings.

TABLE V.A–1—ILLUSTRATIVE COSTS OF EXERCISING THE CELLULOSIC WAIVER AUTHORITY COMPARED TO THE 2019 STATUTORY VOLUMES BASELINE

Cellulosic Volume Required (Million Ethanol-Equivalent Gallons)	381
Change in Required Cellulosic Biofuel from 2019 Statutory Volume (Million Ethanol-Equivalent Gallons)	(8,119)
Cost Difference Between Cellulosic Corn Kernel Fiber Ethanol and Gasoline Per Gallon ($/Ethanol-Equivalent Gallons) [113]	$0.49–$2.65
Annual Change in Overall Costs (Million $) [114]	$(4,000)–$(22,000)

B. Illustrative Costs Analysis of Exercising the Cellulosic Waiver Authority Compared to the 2018 RFS Volumes Baseline

In this section, we provide illustrative cost estimates for EPA exercising its cellulosic waiver authority to reduce statutory cellulosic volumes for 2019 (with corresponding reductions to the advanced and total renewable fuel volumes) compared to the final 2018 RFS volumes. This results in an increase in cellulosic volumes for the 2019 RFS of 93 gallons (ethanol-equivalent) and an increase in the non-cellulosic advanced biofuel volumes for 2019 of 500 million gallons (ethanol-equivalent).

1. Cellulosic Biofuel

We anticipate that the increase in proposed 2019 cellulosic biofuel volumes would be composed of 10 million gallons of liquid cellulosic biofuel and 84 million gallons of CNG/LNG derived from landfill biogas.[115] Based upon the methodology outlined above in V.A, we use corn kernel fiber

[110] EPA projects that 580 million ethanol-equivalent gallons of CNG/LNG will be used as transportation fuel in 2019 based on EIA's April 2018 Short Term Energy Outlook (STEO). To calculate this estimate, EPA used the Natural Gas Vehicle Use from the STEO Custom Table Builder (0.13 billion cubic feet/day in 2019). This projection includes all CNG/LNG used as transportation fuel from both renewable and non-renewable sources. EIA does not project the amount of CNG/LNG from biogas used as transportation fuel. To convert billion cubic feet/day to ethanol-equivalent gallons EPA used conversion factors of 946.5 BTU per cubic foot of natural gas (lower heating value, per calculations using ASTM D1945 and D3588) and 77,000 BTU of natural gas per ethanol-equivalent gallon per § 80.1415(b)(5).

[111] Details of the data and assumptions used can be found in a Memorandum available in the docket entitled ''Cost Impacts of the Proposed 2019 Annual Renewable Fuel Standards'', Memorandum from Michael Shelby, Dallas Burkholder, and Aaron Sobel available in docket EPA–HQ–OAR–2018–0167.

[112] For the purposes of the cost estimates in this section, EPA has not attempted to adjust the price of the petroleum fuels to account for the impact of the RFS program, since the changes in the renewable fuel volume are relatively modest. Rather, we have simply used the wholesale price projections for gasoline and diesel as reported in EIA's April 2018 STEO.

[113] For this table and all subsequent tables in this section, approximate costs in per gallon cost difference estimates are rounded to the cents place.

[114] For this table and all subsequent tables in this section, approximate resulting costs (other than in per-gallon cost difference estimates) are rounded to two significant figures.

[115] These volumes do not add to 93 million gallons due to rounding.

as the representative liquid cellulosic biofuel to develop cost estimates of cellulosic ethanol. We estimate a cost difference between cellulosic corn fiber-derived ethanol and gasoline of $0.49–$2.65 on an ethanol-equivalent gallon basis. Next, the per-gallon costs of cellulosic renewable fuel are multiplied by the 10 million gallon increase between the proposed 2019 cellulosic volume and the final 2018 cellulosic RFS volume requirements to estimate the total costs from the increase in cellulosic ethanol.

For CNG/LNG-derived cellulosic biogas, we provide estimates of the cost of displacing natural gas with CNG/LNG derived from landfill biogas to produce 84 million ethanol-equivalent gallons of cellulosic fuel. To estimate the cost of production of CNG/LNG derived from landfill gas (LFG), EPA uses Version 3.2 of the Landfill Gas Energy Cost Model, or LFG cost-Web. EPA ran the financial cost calculator for projects with a design flow rate of 1,000 and 10,000 cubic feet per minute with the suggested default data and a project start year of 2019. The costs estimated for this analysis exclude any pipeline costs to transport the high BTU gas, as well as any costs associated with compressing the gas to CNG/LNG. These costs are not expected to differ significantly between LFG or natural gas. In addition, the cost estimates excluded the gas collection and control system infrastructure at the landfill, as EPA expects that landfills that begin producing high BTU gas in 2019 are very likely to already have this infrastructure in place.[116]

To estimate the illustrative cost impacts of the change in CNG/LNG derived from LFG, we compared the cost of production of CNG/LNG derived from LFG in each case to the projected price for natural gas in 2019 in EIA's April 2018 STEO.[117] Finally, we converted these costs to an ethanol-equivalent gallon basis. The resulting cost estimates are shown in Table V.B.2–1. Adding the cost of cellulosic ethanol to the costs of CNG/LNG landfill gas, the total costs of the proposed 2019 cellulosic volume compared to 2018 RFS cellulosic volume range from $2.3–$32 million.

2. Advanced Renewable Fuel

EPA provides a range of illustrative cost estimates for the increases in the advanced standard of 500 million ethanol-equivalent gallons using two different advanced biofuels. In the first scenario, we assume that all the increase in advanced biofuel volumes is comprised of soybean oil BBD. In the second scenario, we assume that all the increase in the advanced volume is comprised of sugarcane ethanol from Brazil.

Consistent with the analysis in previous annual RFS volume rules, a ''bottom-up'' engineering cost analysis is used that quantifies the costs of producing a gallon of soybean-based biodiesel and then compares that cost to the energy-equivalent gallon of petroleum-based diesel. We compare the cost of biodiesel and diesel fuel at the wholesale stage, since that is when the two are blended together and represents the approximate costs to society absent transfer payments and any additional infrastructure costs. On this basis, EPA estimates the costs of producing and transporting a gallon of biodiesel to the blender in the U.S.

To estimate the illustrative costs of sugarcane ethanol, we compare the cost of sugarcane ethanol and gasoline at the wholesale stage, since that is when the two are blended together and represents the approximate costs to society absent transfer payments and any additional infrastructure costs (*e.g.,* blender pumps). On this basis, EPA estimates the costs of producing and transporting a gallon of sugarcane ethanol to the blender in the U.S. More background information on the cost assessment described in this Section, including details of the data sources used and assumptions made for each of the scenarios, can be found in a Memorandum available in the docket.[118]

Table VI.B.2–1 below also presents estimates of per energy-equivalent gallon costs for producing: (1) Soybean biodiesel (in ethanol-equivalent gallons) and (2) Brazilian sugarcane ethanol, relative to the petroleum fuels they replace at the wholesale level. For each of the fuels, these per-gallon costs are then multiplied by the increase in the 2019 non-cellulosic advanced volume relative to the 2018 final advanced standard volume to obtain an overall cost increase of $380–$710 million. In addition, in Table V.B.2–1, we also present estimates of the total cost of this proposal relative to 2018 RFS fuel volumes. We add the increase in cost of the proposed 2019 cellulosic standard volume, $2.3–$32 million, with the additional costs of the increase in non-cellulosic advanced biofuel volumes resulting from the proposed 2019 advanced standard volume, $380–$710 million. The overall total costs of this proposal range from $380–$740 million.

TABLE V.B.2–1—ILLUSTRATIVE COSTS OF EXERCISING THE CELLULOSIC WAIVER AUTHORITY COMPARED TO THE 2018 RFS VOLUMES BASELINE

Cellulosic Volume	
Corn Kernel Fiber Cellulosic Ethanol Costs:	
Cost Difference Between Cellulosic Corn Kernel Fiber Ethanol and Gasoline Per Gallon ($/Ethanol-Equivalent Gallons)	$0.49–$2.65
Annual Increase in Overall Costs (Million $)	4.9–26
CNG/LNG Derived from Biogas Costs:	
Cost Difference Between CNG/LNG Derived from Landfill Biogas and Natural Gas Per Gallon (/Ethanol-Equivalent Gallons)	(0.03)–0.08
Annual Increase in Overall Costs (Million $)	(2.6)–6.4
Annual Increase in Costs with Cellulosic Volume (Million $)	2.3–32
Advanced Volume	
Soybean Biodiesel Scenario:	
Cost Difference Between Soybean Biodiesel and Petroleum Diesel Per Gallon (/Ethanol-Equivalent Gallons)	1.04–1.43
Annual Increase in Overall Costs (Million $)	520–710
Brazilian Sugarcane Ethanol Scenario:	
Cost Difference Between Sugarcane Ethanol and Gasoline Per Gallon (/Ethanol-Equivalent Gallons)	0.76–1.22
Annual Increase in Overall Costs (Million $)	380–610

[116] Ibid.

[117] Henry Hub Spot price estimate for 2019. Energy Information Administration (EIA), Short Term Energy Outlook (STEO) available in docket EPA–HQ–OAR–2018–0167.

TABLE V.B.2–1—ILLUSTRATIVE COSTS OF EXERCISING THE CELLULOSIC WAIVER AUTHORITY COMPARED TO THE 2018 RFS VOLUMES BASELINE—Continued

Annual Increase in Overall Costs with Non-Cellulosic Advanced Volume (Million $)	380–710
Cellulosic and Advanced Volumes	
Annual Increase in Overall Costs with Cellulosic and Advanced Volume (Million $)	380–740

The annual volume-setting process encourages consideration of the RFS program on a piecemeal (*i.e.,* year-to-year) basis, which may not reflect the full, long-term costs and benefits of the program. For the purposes of this proposed rule, other than the estimates of costs of producing a ''representative'' renewable fuel compared to cost of petroleum fuel, EPA did not quantitatively assess other direct and indirect costs or benefits of changes in renewable fuel volumes. These direct and indirect costs and benefits may include infrastructure costs, investment, lifecycle GHG emissions and air quality impacts, and energy security benefits, which all are to some degree affected by the annual volumes. For example, we do not have a quantified estimate of the lifecycle GHG or energy security benefits for a single year (*e.g.,* 2019). Also, there are impacts that are difficult to quantify, such as rural economic development and employment changes from more diversified fuel sources, that are not quantified in this rulemaking. While some of these impacts were analyzed in the 2010 final rulemaking that established the current RFS program,[119] we have not analyzed these impacts for the 2019 volume requirements.

VI. Biomass-Based Diesel Volume for 2020

In this section we discuss the proposed BBD applicable volume for 2020. We are proposing this volume in advance of those for other renewable fuel categories in light of the statutory requirement in CAA section 211(o)(2)(B)(ii) to establish the applicable volume of BBD for years after 2012 no later than 14 months before the applicable volume will apply. We are not at this time proposing the BBD percentage standards that would apply to obligated parties in 2020 but intend to do so in late 2019, after receiving EIA's estimate of gasoline and diesel consumption for 2020. Although the BBD applicable volume sets a floor for required BBD use, because the BBD volume requirement is nested within both the advanced biofuel and the total renewable fuel volume requirements, any BBD produced beyond the mandated 2020 BBD volume can be used to satisfy both of these other applicable volume requirements.

A. Statutory Requirements

The statute establishes applicable volume targets for years through 2022 for cellulosic biofuel, advanced biofuel, and total renewable fuel. For BBD, applicable volume targets are specified in the statute only through 2012. For years after those for which volumes are specified in the statute, EPA is required under CAA section 211(o)(2)(B)(ii) to determine the applicable volume of BBD, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years for which the statute specifies the volumes and an analysis of the following factors:

1. The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
2. The impact of renewable fuels on the energy security of the United States;
3. The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and BBD);
4. The impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
5. The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
6. The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The statute also specifies that the volume requirement for BBD cannot be less than the applicable volume specified in the statute for calendar year 2012, which is 1.0 billion gallons.[120] The statute does not, however, establish any other numeric criteria, or provide any guidance on how the EPA should weigh the importance of the often competing factors and the overarching goals of the statute when the EPA sets the applicable volumes of BBD in years after those for which the statute specifies such volumes. In the period 2013–2022, the statute specifies increasing applicable volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel, but provides no guidance, beyond the 1.0 billion gallon minimum, on the level at which BBD volumes should be set.

In establishing the BBD and cellulosic standards as nested within the advanced biofuel standard, Congress clearly intended to support development of BBD and especially cellulosic biofuels, while also providing an incentive for the growth of other non-specified types of advanced biofuels. In general, the advanced biofuel standard provides an opportunity for other advanced biofuels (advanced biofuels that do not qualify as cellulosic biofuel or BBD) to compete with cellulosic biofuel and BBD to satisfy the advanced biofuel standard after the cellulosic biofuel and BBD standards have been met.

B. Determination of the 2020 Applicable Volume of Biomass-Based Diesel

One of the primary considerations in determining the BBD volume for 2020 is a review of the implementation of the program to date, as it affects BBD. This review is required by the CAA, and also provides insight into the capabilities of the industry to produce, import, export, and distribute BBD. It also helps us to understand what factors, beyond the BBD standard, may incentivize the production and import of BBD. Table VI.B.1–1 below shows, for 2011–2017, the number of BBD RINs generated, the number of RINs retired due to export, the number of RINs retired for reasons other than compliance with the annual BBD standards, the consequent number of available BBD RINs, and the BBD and

[119] RFS2 Regulatory Impact Analysis (RIA). U.S. EPA 2010, Renewable Fuel Standard Program (RFS2) Regulatory Impact Analysis. EPA–420–R–10–006. February 2010. Docket EPA–HQ–OAR–2009–0472–11332.

[120] See CAA section 211(o)(2)(B)(v).

advanced biofuel standards for 2011–2019.

TABLE VI.B.1–1—BIOMASS-BASED DIESEL (D4) RIN GENERATION AND ADVANCED BIOFUEL AND BIOMASS-BASED DIESEL STANDARDS IN 2011–2019

[Million RINs or gallons] [121]

	BBD RINs generated	Exported BBD (RINs)	BBD RINs retired, non-compliance reasons	Available BBD RINs [a]	BBD standard (gallons)	BBD standard (RINs)	Advanced biofuel standard (RINs)
2011	1,692	72	98	1,522	800	1,200	1,350
2012	1,737	102	90	1,545	1,000	1,500	2,000
2013	2,739	124	101	2,514	1,280	1,920	2,750
2014	2,710	134	92	2,484	1,630	[b] 2,490	2,670
2015	2,796	145	32	2,619	1,730	[b] 2,655	2,880
2016	4,008	203	96	3,709	1,900	2,850	3,610
2017	3,849	244	35	3,570	2,000	3,000	4,280
2018	N/A	N/A	N/A	N/A	2,100	3,150	4,290
2019	N/A	N/A	N/A	N/A	2,100	3,150	4,880

[a] Available BBD RINs may not be exactly equal to BBD RINs Generated minus Exported RINs and BBD RINs Retired, Non-Compliance Reasons, due to rounding.

[b] Each gallon of biodiesel qualifies for 1.5 RINs due to its higher energy content per gallon than ethanol. Renewable diesel qualifies for between 1.5 and 1.7 RINs per gallon, but generally has an equivalence value of 1.7. While some fuels that qualify as BBD generate more than 1.5 RINs per gallon, EPA multiplies the required volume of BBD by 1.5 in calculating the percent standard per 80.1405(c). In 2014 and 2015 however, the number of RINs in the BBD Standard column is not exactly equal to 1.5 times the BBD volume standard as these standards were established based on actual RIN generation data for 2014 and a combination of actual data and a projection of RIN generation for the last three months of the year for 2015, rather than by multiplying the required volume of BBD by 1.5. Some of the volume used to meet the BBD standard in these years was renewable diesel, with an equivalence value higher than 1.5.

In reviewing historical BBD RIN generation and use, we see that the number of RINs available for compliance purposes exceeded the volume required to meet the BBD standard in 2011, 2012, 2013, 2016 and 2017. Additional production and use of biodiesel was likely driven by a number of factors, including demand to satisfy the advanced biofuel and total renewable fuels standards, the biodiesel tax credit,[122] and favorable blending economics. The number of RINs available in 2014 and 2015 was approximately equal to the number required for compliance in those years, as the standards for these years were finalized at the end of November 2015 and EPA's intent at that time was to set the standards for 2014 and 2015 to reflect actual BBD use.[123] In 2016, with RFS standards established prior to the beginning of the year and the blenders tax credit in place, available BBD RINs exceeded the volume required by the BBD standard by 859 million RINs (30 percent). In 2017, the RFS standards were established prior to the beginning of the year, and the blenders tax credit was only applied retroactively; even without the certainty of a tax credit, the available BBD RINs exceeded the volume required by the BBD standard by 570 million RINs (19 percent). This indicates that in appropriate circumstances there is demand for BBD beyond the required volume of BBD. We also note that while EPA has consistently established the required volume in such a way as to allow non-BBD fuels to compete for market share in the advanced biofuel category, since 2016 the vast majority of non-cellulosic advanced biofuel used to satisfy the advanced biofuel obligations has been BBD.

The prices paid for advanced biofuel and BBD RINs beginning in early 2013 through the March 2018 also support the conclusion that advanced biofuel and/or total renewable fuel standards provide a sufficient incentive for additional biodiesel volume beyond what is required by the BBD standard. Because the BBD standard is nested within the advanced biofuel and total renewable fuel standards, and therefore can help to satisfy three RVOs, we would expect the price of BBD RINs to exceed that of advanced and conventional renewable RINs.[124] If, however, BBD RINs are being used (or are expected to be used) by obligated parties to satisfy their advanced biofuel obligations, above and beyond the BBD standard, we would expect the prices of advanced biofuel and BBD RINs to converge.[125] Further, if BBD RINs are being used (or are expected to be used) to satisfy obligated parties' total renewable fuel obligation, above and beyond their BBD and advanced biofuel requirements, we would expect the price for all three RIN types to converge.

When examining RIN price data from 2012 through March 2018, shown in Figure VI.B.2–1 below, we see that beginning in early 2013 and through March 2018 (the last month for which data are available) the advanced RIN price and BBD RIN prices were approximately equal. Similarly, from early 2013 through late 2016 the conventional renewable fuel and BBD RIN prices were approximately equal. This suggests that the advanced biofuel standard and/or total renewable fuel standard are capable of incentivizing increased BBD volumes beyond the BBD

[121] Available BBD RINs Generated, Exported BBD RINs, and BBD RINs Retired for Non-Compliance Reasons information from EMTS.

[122] The biodiesel tax credit was reauthorized in January 2013. It applied retroactively for 2012 and for the remainder of 2013. It was once again extended in December 2014 and applied retroactively to all of 2014 as well as to the remaining weeks of 2014. In December 2015 the biodiesel tax credit was authorized and applied retroactively for all of 2015 as well as through the end of 2016. In February 2018 the biodiesel tax credit was authorized and applied retroactively for all of 2017.

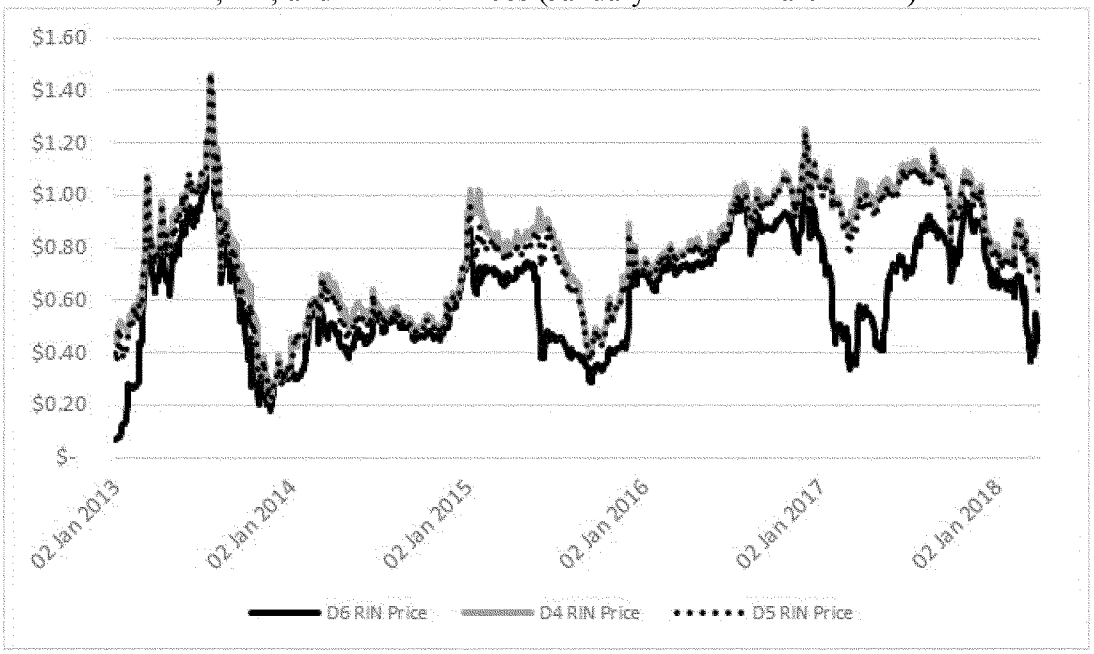
[123] See 80 FR 77490–92, 77495 (December 14, 2015).

[124] This is because when an obligated party retires a BBD RIN (D4) to help satisfy their BBD obligation, the nested nature of the BBD standard means that this RIN also counts towards satisfying their advanced and total renewable fuel obligations. Advanced RINs (D5) count towards both the advanced and total renewable fuel obligations, while conventional RINs (D6) count towards only the total renewable fuel obligation.

[125] We would still expect D4 RINs to be valued at a slight premium to D5 and D6 RINs in this case (and D5 RINs at a slight premium to D6 RINs) to reflect the greater flexibility of the D4 RINs to be used towards the BBD, advanced biofuel, and total renewable fuel standard. This pricing has been observed over the past several years.

standard. The advanced biofuel standard has incentivized additional volumes of BBD since 2013, while the total standard had incentivized additional volumes of BBD from 2013 through 2016.[126] While final standards were not in place throughout 2014 and most of 2015, EPA had issued proposed rules for both of these years.[127] In each year, the market response was to supply volumes of BBD that exceeded the proposed BBD standard in order to help satisfy the proposed advanced and total biofuel standards.[128] Additionally, the RIN prices in these years strongly suggests that obligated parties and other market participants anticipated the need for BBD RINs to meet their advanced and total biofuel obligations, and responded by purchasing advanced biofuel and BBD RINs at approximately equal prices. We do note, however, that in 2012 the BBD RIN price was significantly higher than both the advanced biofuel and conventional renewable fuel RIN prices. In 2012 the E10 blendwall had not yet been reached, and it was likely more cost effective for most obligated parties to satisfy the portion of the advanced biofuel requirement that exceeded the BBD and cellulosic biofuel requirements with advanced ethanol.

Figure VI.B.2-1
D4, D5, and D6 RIN Prices (January 2013 – March 2018)



RIN Price Source: Argus Media Group

In raising the 2013 BBD volume above the 1 billion gallon minimum mandated by Congress, the EPA sought to ''create greater certainty for both producers of BBD and obligated parties'' while also acknowledging that, ''the potential for somewhat increased costs is appropriate in light of the additional certainty of GHG reductions and enhanced energy security provided by the advanced biofuel volume requirement of 2.75 billion gallons.'' [129] Unknown at that time was the degree to which the required volumes of advanced biofuel and total renewable fuel could incentivize volumes of BBD that exceeded the BBD standard. In 2012 the available supply of BBD RINs exceeded the required volume of BBD by a very small margin (1,545 million BBD RINs were made available for compliance towards meeting the BBD requirement of 1,500 million BBD RINs). The remainder of the 2.0 billion-gallon advanced biofuel requirement was satisfied with advanced ethanol, which was largely imported from Brazil.[130] From 2012 to 2013 the statutory advanced biofuel requirement increased by 750 million gallons. If EPA had not increased the required volume of BBD for 2013, and the advanced biofuel standard had proved insufficient to increase the supply of BBD beyond the statutory minimum of 1.0 billion gallons, an additional 750 million gallons of non-BBD advanced biofuels beyond the BBD standard would have been needed to meet the advanced biofuel volume requirement.

The only advanced biofuel other than BBD available in appreciable quantities in 2012 and 2013 was advanced ethanol, the vast majority of which was imported sugarcane ethanol. EPA had significant concerns as to whether or not the supply of advanced ethanol could increase this significantly (750 million gallons) in a single year. These concerns were heightened by the approaching E10 blendwall, which had the potential to increase the challenges associated with supplying increasing volumes of ethanol to the U.S. If neither BBD volumes nor advanced ethanol volumes increased sufficiently, EPA was concerned that some obligated parties

[126] Although we did not issue a rule establishing the final 2013 standards until August of 2013, we believe that the market anticipated the final standards, based on EPA's July 2011 proposal and the volume targets for advanced and total renewable fuel established in the statute. (76 FR 38844, 38843.)

[127] See 80 FR 33100 (2014–16 standards proposed June 10, 2015); 78 FR 71732 (2014 standards proposed Nov. 29, 2013).

[128] EPA proposed a BBD standard of 1.28 billion gallons (1.92 billion RINs) for 2014 in our November 2013 proposed rule. The number of BBD RINs available in 2014 was 2.67 billion. EPA proposed a BBD standard of 1.70 billion gallons (2.55 billion RINs) for 2015 in our June 2015 proposed rule. The number of BBD RINs available in 2015 was 2.92 billion.

[129] 77 FR 59458, 59462.

[130] 594 million advanced ethanol RINs were generated in 2012.

might be unable to acquire the advanced biofuel RINs necessary to demonstrate compliance with their RVOs in 2013. Therefore, as discussed above, EPA increased the volume requirement for BBD in 2013 to help create greater certainty for BBD producers (by ensuring demand for their product above the 1.0 billion gallon statutory minimum) and obligated parties (by ensuring that sufficient RINs would be available to satisfy their advanced biofuel RVOs). Since 2013, however, EPA has gained significant experience implementing the RFS program. As discussed above, RIN generation data has consistently demonstrated that the advanced biofuel volume requirement, and to a lesser degree the total renewable fuel volume requirement, are capable of incentivizing the supply of BBD above and beyond the BBD volume requirement. The RIN generation data also show that while EPA has consistently preserved the opportunity for fuels other that BBD to contribute towards satisfying the required volume of advanced biofuel, these other advanced biofuels have not been supplied in significant quantities since 2013.

TABLE VI.B.1–2—OPPORTUNITY FOR AND RIN GENERATION OF ''OTHER'' ADVANCED BIOFUELS

[Million RINs]

	Opportunity for ''other'' advanced biofuels [a]	Available advanced (D5) RINs	Available BBD (D4) RINs in excess of the BBD requirement [b]
2011	150	225	322
2012	500	597	45
2013	829	552	594
2014 [c]	192	143	39
2015 [c]	162	147	24
2016	530	97	903
2017	969	144	570

[a] The required volume of ''other'' advanced biofuel is calculated by subtracting the number of cellulosic biofuel and BBD RINs required each year from the number of advanced biofuel RINs required. This portion of the advanced standard can be satisfied by advanced (D5) RINs, BBD RINs in excess of those required by the BBD standard, or cellulosic RINs in excess of those required by the cellulosic standard.

[b] The available BBD (D4) RINs in excess of the BBD requirement is calculated by subtracting the number of BBD RINs required each year from the number of BBD RINs available for compliance in that year. This number does not include carryover RINs.

[c] The 2014 and 2015 volume requirements were established in November 2015 and were set equal to the number of RINs projected to be available for each year.

In 2014 and 2015, EPA set the BBD and advanced standards at actual RIN generation, and thus the space between the advanced biofuel standard and the biodiesel standard was unlikely to provide an incentive for ''other'' advanced biofuels. EPA now has data on the amount of ''other'' advanced biofuels produced in 2016 and 2017 as shown in the table above. For 2016 and 2017, the gap between the BBD standard and the advanced biofuel provided an opportunity for ''other'' advanced biofuels to be generated to satisfy the advanced biofuel standard. While EPA allowed for up to 530 million and 969 million gallons of ''other'' advanced for 2016 and 2017 respectively, only 97 million and 144 million gallons of ''other'' advanced biofuels were generated. This is significantly less than the volumes of ''other'' advanced available in 2012–2013. Despite creating space within the advanced biofuel standard for ''other'' advanced, in recent years, that space has not been filled with significant volumes of ''other'' advanced and BBD continues to fill most of the gap between the BBD standard and the advanced standard.

Thus, while the advanced biofuel standard is sufficient to drive biodiesel volume separate and apart from the BBD standard, there would not appear to be a compelling reason to increase the ''space'' maintained for ''other'' advanced biofuel volumes. The overall volume of non-cellulosic advanced biofuel volume is proposed to increase by 500 million gallons for 2019. Increasing the BBD volume by the same amount would preserve the space already available for other advanced biofuels to compete.

At the same time, the rationale for preserving the ''space'' for ''other'' advanced biofuels remains. We note that the BBD industry in the U.S. and abroad has matured since EPA first increased the required volume of BBD beyond the statutory minimum in 2013. To assess the maturity of the biodiesel industry, EPA compared information on BBD RIN generation by company in 2012 and 2017 (the most recent year for which complete RIN generation by company is available). In 2012, the annual average RIN generation per company producing BBD was about 11 million RINs (about 7.3 million gallons) with approximately 50 percent of companies producing less the 1 million gallons of BBD a year.[131] The agency heard from multiple commenters during the 2012 and 2013 rulemakings that higher volume requirements for BBD would provide greater certainty for the emerging BBD industry and encourage further investment. Since that time, the BBD industry has matured in a number of critical areas, including growth in the size of companies, the consolidation of the industry, and more stable funding and access to capital. In 2012, the BBD industry was characterized by smaller companies with dispersed market share. By 2017, the average BBD RIN generation per company had climbed to almost 33 million RINs (22 million gallons) annually, a 3-fold increase. Only 33 percent of the companies produced less than 1 million gallons of BBD in 2017.[132]

We are conscious of public comments claiming that BBD volume requirements that are a significant portion of the advanced volume requirements effectively disincentivize the future development of other promising advanced biofuel pathways.[133] A variety of different types of advanced biofuels, rather than a single type such as BBD, would increase energy security (*e.g.,* by increasing the diversity of feedstock sources used to make biofuels, thereby

[131] ''BBD RIN Generation by Company 2012, 2016, and 2017 CBI,'' available in EPA docket EPA–HQ–OAR–2017–0167.

[132] Id.

[133] See, *e.g.* Comments from National Biodiesel Board on the 2018 Annual Standards, available in EPA docket EPA–HQ–OAR–2017–0167.

reducing the impacts associated with a shortfall in a particular type of feedstock) and increase the likelihood of the development of lower cost advanced biofuels that meet the same GHG reduction threshold as BBD.[134]

With the considerations discussed above in mind, as well as our analysis of the factors specified in the statute, we are proposing to set the applicable volume of BBD at 2.43 billion gallons for 2020. This increase, in conjunction with the statutory increase of 500 million gallons of non-cellulosic advanced biofuel in 2019, would continue to preserve a gap between the advanced biofuel volume and the sum of the cellulosic biofuel and BBD volumes. This would allow other advanced biofuels to continue to compete with excess volumes of BBD for market share under the advanced biofuel standard. We believe this volume sets the appropriate floor for BBD, and that the volume of advanced biodiesel and renewable diesel actually used in 2020 will be driven by the level of the advanced biofuel and total renewable fuel standards that the Agency will establish for 2020. It also recognizes that while maintaining an opportunity for other advanced biofuels is important, the vast majority of the advanced biofuel used to comply with the advanced biofuel standard in recent years has been BBD. Based on information now available from 2016 and 2017, despite providing a significant degree of space for ''other'' advanced biofuels, smaller volumes of ''other'' advanced have been utilized to meet the advanced standard. EPA believes that the BBD standard we are proposing to set today still provides sufficient incentive to producers of ''other'' advanced biofuels, while also acknowledging that the advanced standard has been met predominantly with biomass-based diesel. Our assessment of the required statutory factors, summarized in the next section and detailed in a memorandum to the docket (the ''2020 BBD docket memorandum''), supports our proposal.[135] We request comment on the biomass-based diesel volume requirement for 2020.

We believe this approach strikes the appropriate balance between providing a market environment where the development of other advanced biofuels is incentivized, while also maintaining support for the BBD industry. Based on our review of the data, and the nested nature of the BBD standard within the advanced standard, we conclude that the advanced standard continues to drive the ultimate volume of BBD supplied. However, given that BBD has been the predominant source of advanced biofuel in recent years and the 500 million gallon increase in non-cellulosic advanced biofuel we are proposing in this rule, we are proposing a volume of 2.43 billion gallons of BBD for 2020. Setting the BBD standard in this manner would preserve a considerable portion of the advanced biofuel volume that could be satisfied by either additional gallons of BBD or by other unspecified and potentially less costly types of qualifying advanced biofuels.

C. Consideration of Statutory Factors Set Forth in CAA Section 211(o)(2)(B)(ii)(I)–(VI) for 2020

The BBD volume requirement is nested within the advanced biofuel requirement, and the advanced biofuel requirement is, in turn, nested within the total renewable fuel volume requirement.[136] This means that any BBD produced beyond the mandated BBD volume can be used to satisfy both these other applicable volume requirements. The result is that in considering the statutory factors we must consider the potential impacts of increasing or decreasing BBD in comparison to other advanced biofuels.[137] For a given advanced biofuel standard, greater or lesser BBD volume requirements do not change the amount of advanced biofuel used to displace petroleum fuels; rather, increasing the BBD requirement may result in the displacement of other types of advanced biofuels that could have been used to meet the advanced biofuels volume requirement. EPA is proposing to increase the BBD volume for 2020 to 2.43 billion gallons from 2.1 billion gallons in 2019 based on our review of the statutory factors and the other considerations noted above and in the 2020 BBD Docket Memorandum. This increase, in conjunction with the statutory increase of 500 million gallons of non-cellulosic advanced biofuel in 2019, would preserve a gap for ''other'' advanced biofuels, that is the difference between the advanced biofuel volume and the sum of the cellulosic biofuel and BBD volumes. This would allow other advanced biofuels to continue to compete with excess volumes of BBD for market share under the advanced biofuel standard, while also supporting further growth in the BBD industry.

Consistent with our approach in setting the final BBD volume requirement for 2019, EPA's primary assessment of the statutory factors for the 2020 BBD applicable volume is that because the BBD requirement is nested within the advanced biofuel volume requirement, we expect that the 2020 advanced volume requirement, when set next year, will determine the level of BBD production and imports that occur in 2020.[138] Therefore, EPA continues to believe that approximately the same overall volume of BBD would likely be supplied in 2020 even if we were to mandate a somewhat lower or higher BBD volume for 2020 in this final rule. Thus, we do not expect our 2020 BBD volume requirement to result in a difference in the factors we consider pursuant to CAA section 211(o)(2)(B)(ii)(I)–(VI).

As an additional supplementary assessment, we have considered the potential impacts of selecting an applicable volume of BBD other than 2.43 billion gallons in 2020. Even if BBD volumes were to be impacted by the 2020 BBD standard (which as noted above we do not currently expect), setting a requirement higher or lower than 2.43 billion gallons in 2020 would only be expected to affect BBD volumes minimally, protecting to a greater or lesser degree BBD from competition with other potential advanced biofuels. In this supplementary assessment we have considered all of the statutory factors found in CAA section 211(o)(2)(B)(ii), and as described in the 2020 BBD docket memorandum, our assessment does not, based on available information, lead us to conclude that a higher or lower volume requirement for BBD than 2.43 billion gallons is more appropriate for 2020.

Overall and as described in the 2020 BBD docket memorandum, we have determined that both the primary assessment and the supplemental

[134] All types of advanced biofuel, including BBD, must achieve lifecycle GHG reductions of at least 50 percent. See CAA section 211(o)(1)(B)(i), (D).

[135] ''Memorandum to docket: Draft Statutory Factors Assessment for the 2020 Biomass-Based Diesel (BBD) Applicable Volumes.'' See Docket EPA–HQ–OAR–2018–0167.

[136] See CAA section 211(o)(2)(B)(i)(IV), (II).

[137] While excess BBD production could also displace conventional renewable fuel under the total renewable standard, as long as the BBD applicable volume is lower than the advanced biofuel applicable volume our action in setting the BBD applicable volume is not expected to displace conventional renewable fuel under the total renewable standard, but rather other advanced biofuels. We acknowledge, however, that under certain market conditions excess volumes of BBD may also be used to displace conventional biofuels.

[138] Even though we are not proposing to set the 2020 advanced biofuel volume requirement as part of this rulemaking, we expect that, as in the past, the 2020 advanced volume requirement will be higher than the 2020 BBD requirement, and, therefore, that the BBD volume requirement for 2020 would not be expected to impact the volume of BBD that is actually produced and imported during the 2020-time period.

assessment of the statutory factors specified in CAA section 211(o)(2)(B)(ii)(I)–(VI) for the year 2020 does not lead us to conclude that we should set the BBD standard at a level higher or lower than 2.43 billion gallons in 2020.

VII. Percentage Standards for 2019

The renewable fuel standards are expressed as volume percentages and are used by each obligated party to determine their Renewable Volume Obligations (RVOs). Since there are four separate standards under the RFS program, there are likewise four separate RVOs applicable to each obligated party. Each standard applies to the sum of all non-renewable gasoline and diesel produced or imported. The percentage standards are set so that if every obligated party meets the percentages by acquiring and retiring an appropriate number of RINs, then the amount of renewable fuel, cellulosic biofuel, BBD, and advanced biofuel used will meet the applicable volume requirements on a nationwide basis.

Sections II through V provide our rationale and basis for the proposed volume requirements for 2019.[139] The volumes used to determine the proposed percentage standards are shown in Table VII–1.

TABLE VII–1—VOLUMES FOR USE IN DETERMINING THE PROPOSED 2019 APPLICABLE PERCENTAGE STANDARDS

Cellulosic biofuel	Million ethanol-equivalent gallons	381
Biomass-based diesel	Billion gallons	2.1
Advanced biofuel	Billion ethanol-equivalent gallons	4.88
Renewable fuel	Billion ethanol-equivalent gallons	19.88

For the purposes of converting these volumes into percentage standards, we generally use two decimal places to be consistent with the volume targets as given in the statute, and similarly two decimal places in the percentage standards. However, for cellulosic biofuel we use three decimal places in both the volume requirement and percentage standards to more precisely capture the smaller volume projections and the unique methodology that in some cases results in estimates of only a few million gallons for a single producer.

A. Calculation of Percentage Standards

To calculate the percentage standards, we are following the same methodology for 2019 as we have in all prior years. The formulas used to calculate the percentage standards applicable to producers and importers of gasoline and diesel are provided in 40 CFR 80.1405. The formulas rely on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, which are projected to be used in the year in which the standards will apply. The projected gasoline and diesel volumes are provided by EIA, and include projections of ethanol and biodiesel used in transportation fuel. Since the percentage standards apply only to the non-renewable gasoline and diesel produced or imported, the volumes of renewable fuel are subtracted out of the EIA projections of gasoline and diesel.

Transportation fuels other than gasoline or diesel, such as natural gas, propane, and electricity from fossil fuels, are not currently subject to the standards, and volumes of such fuels are not used in calculating the annual percentage standards. Since under the regulations the standards apply only to producers and importers of gasoline and diesel, these are the transportation fuels used to set the percentage standards, as well as to determine the annual volume obligations of an individual gasoline or diesel producer or importer under § 80.1407.

As specified in the RFS2 final rule,[140] the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the BBD standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. For example, the RFS regulations provide that production or import of a gallon of qualifying biodiesel will lead to the generation of 1.5 RINs. The formula specified in the regulations for calculation of the BBD percentage standard is based on biodiesel-equivalence, and thus assumes that all BBD used to satisfy the BBD standard is biodiesel and requires that the applicable volume requirement be multiplied by 1.5 in order to calculate a percentage standard that is on the same basis (*i.e.,* ethanol-equivalent) as the other three standards. However, BBD often contains some renewable diesel, and a gallon of renewable diesel typically generates 1.7 RINs.[141] In addition, there is often some renewable diesel in the conventional renewable fuel pool. As a result, the actual number of RINs generated by biodiesel and renewable diesel is used in the context of our assessing volumes for purposes of deriving the applicable volume requirements and associated percentage standards for advanced biofuel and total renewable fuel, and likewise in obligated parties' determination of compliance with any of the applicable standards. While there is a difference in the treatment of biodiesel and renewable diesel in the context of determining the percentage standard for BBD versus determining the percentage standard for advanced biofuel and total renewable fuel, it is not a significant one given our approach to determining the BBD volume requirement. Our intent in setting the BBD applicable volume is to provide a level of guaranteed volume for BBD, but as described in Section VI.B, we do not expect the BBD standard to be binding in 2019. That is, we expect that actual supply of BBD, as well as supply of conventional biodiesel and renewable diesel, will be driven by the advanced biofuel and total renewable fuel standards.

B. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, and amended by the Energy Independence and Security Act of 2007, Congress provided a temporary exemption to small refineries[142] through December 31, 2010. Congress provided that small refineries could receive a temporary extension of the exemption beyond 2010 based either on the results of a required DOE study, or based on an EPA determination of ''disproportionate economic hardship'' on a case-by-case basis in response to small refinery petitions. In reviewing petitions, EPA, in consultation with the Department of Energy, evaluates whether the small refinery has demonstrated disproportionate economic hardship,

[139] The 2019 volume requirement for BBD was established in the 2018 final rule.

[140] See 75 FR 14670 (March 26, 2010).

[141] In some cases a gallon of renewable diesel generates either 1.5 or 1.6 RINs.

[142] A small refiner that meets the requirements of 40 CFR 80.1442 may also be eligible for an exemption.

and may grant refineries exemptions upon such demonstration.

EPA has granted exemptions pursuant to this process in the past. However, at this time no exemptions have been approved for 2019, and therefore we have calculated the percentage standards for 2019 without any adjustment for exempted volumes. EPA is maintaining its approach that any exemptions for 2019 that are granted after the final rule is released will not be reflected in the percentage standards that apply to all gasoline and diesel produced or imported in 2019. EPA is not soliciting comments on how small refinery exemptions are accounted for in the percentage standards formulas in 40 CFR 80.1405, and any such comments will be deemed beyond the scope of this rulemaking.

C. Proposed Standards

The formulas in 40 CFR 80.1405 for the calculation of the percentage standards require the specification of a total of 14 variables covering factors such as the renewable fuel volume requirements, projected gasoline and diesel demand for all states and territories where the RFS program applies, renewable fuels projected by EIA to be included in the gasoline and diesel demand, and exemptions for small refineries. The values of all the variables used for this final rule are shown in Table VII.C–1.[143]

TABLE VII.C–1—VALUES FOR TERMS IN CALCULATION OF THE PROPOSED 2019 STANDARDS[144]

[Billion gallons]

Term	Description	Value
RFV_{CB}	Required volume of cellulosic biofuel	0.381
RFV_{BBD}	Required volume of biomass-based diesel	2.10
RFV_{AB}	Required volume of advanced biofuel	4.88
RFV_{RF}	Required volume of renewable fuel	19.88
G	Projected volume of gasoline	143.76
D	Projected volume of diesel	56.46
RG	Projected volume of renewables in gasoline	14.74
RD	Projected volume of renewables in diesel	2.83
GS	Projected volume of gasoline for opt-in areas	0.00
RGS	Projected volume of renewables in gasoline for opt-in areas	0.00
DS	Projected volume of diesel for opt-in areas	0.00
RDS	Projected volume of renewables in diesel for opt-in areas	0.00
GE	Projected volume of gasoline for exempt small refineries	0.00
DE	Projected volume of diesel for exempt small refineries	0.00

Projectedvolumes of gasoline and diesel, and the renewable fuels contained within them, were derived from the April 2018 version of EIA's Short-Term Energy Outlook.

Using the volumes shown in Table VII.C–1, we have calculated the proposed percentage standards for 2019 as shown in Table VII.C–2.

TABLE VII.C–2—PROPOSED PERCENTAGE STANDARDS FOR 2019

Cellulosic biofuel	0.209
Biomass-based diesel	1.72
Advanced biofuel	2.67
Renewable fuel	10.88

VIII. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How do I submit comments?

We are opening a formal comment period by publishing this document. We will accept comments during the period indicated under the **DATES** section above. If you have an interest in the proposed standards, we encourage you to comment on any aspect of this rulemaking. We also request comment on specific topics identified throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. Commenters are especially encouraged to provide specific suggestions for any changes that they believe need to be made. You should send all comments, except those containing proprietary information, to our Docket (see **ADDRESSES** section above) by the end of the comment period.

You may submit comments electronically through the electronic public docket, *www.regulations.gov,* by mail to the address shown in **ADDRESSES**, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit Confidential Business Information (CBI) or information that is otherwise protected by statute, please follow the instructions in Section VIII.B below.

EPA will also hold a public hearing on this proposed rule. We will announce the public hearing date and location for this proposal in a supplemental **Federal Register** document.

B. How should I submit CBI to the agency?

Do not submit information that you consider to be CBI electronically through the electronic public docket, *www.regulations.gov,* or by email. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105, Attention Docket ID EPA–HQ–OAR–2018–0167. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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

[143] To determine the 49-state values for gasoline and diesel, the amount of these fuels used in Alaska is subtracted from the totals provided by EIA because petroleum based fuels used in Alaska do not incur RFS obligations. The Alaska fractions are determined from the June 30, 2017 EIA State Energy Data System (SEDS), Energy Consumption Estimates.

[144] See ''Calculation of proposed % standards for 2019'' in docket EPA–HQ–OAR–2018–0167.

CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comments that include any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. This non-CBI version of your comments may be submitted electronically, by mail, or through hand delivery/courier. If you submit the copy that does not contain CBI on disk or CD ROM, 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 without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of illustrative costs associated with this action. This analysis is presented in Section V of this preamble.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in EPA's analysis of the illustrative costs associated with this action. This analysis is presented in Section V of this preamble.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0637 and 2060–0640. The proposed standards will not impose new or different reporting requirements on regulated parties than already exist for the RFS program.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule.

The small entities directly regulated by the RFS program are small refiners, which are defined at 13 CFR 121.201. We have evaluated the impacts of this proposed rule on small entities from two perspectives: As if the 2019 standards were a standalone action or if they are a part of the overall impacts of the RFS program as a whole.

When evaluating the standards as if they were a standalone action separate and apart from the original rulemaking which established the RFS2 program, then the standards could be viewed as increasing the cellulosic biofuel volume by 93 million gallons and the advanced and total renewable fuel volumes required of obligated parties by 590 million gallons between 2018 and 2019. To evaluate the impacts of the volume requirements on small entities relative to 2018, EPA has conducted a screening analysis [145] to assess whether it should make a finding that this action would not have a significant economic impact on a substantial number of small entities. Currently available information shows that the impact on small entities from implementation of this rule would not be significant. EPA has reviewed and assessed the available information, which shows that obligated parties, including small entities, are generally able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.[146] This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchase separated RINs. The costs of the RFS program are thus generally being passed on to consumers in the highly competitive marketplace. Even if we were to assume that the cost of acquiring RINs were not recovered by obligated parties, and we used the maximum values of the illustrative costs discussed in Section V of this preamble and the gasoline and diesel fuel volume projections and wholesale prices from the April 2018 version of EIA's Short-Term Energy Outlook, and current wholesale fuel prices, a cost-to-sales ratio test shows that the costs to small entities of the RFS standards are far less than 1 percent of the value of their sales.

While the screening analysis described above supports a certification that this rule would not have a significant economic impact on small refiners, we continue to believe that it is more appropriate to consider the standards as a part of ongoing implementation of the overall RFS program. When considered this way, the impacts of the RFS program as a whole on small entities were addressed in the RFS2 final rule (75 FR 14670, March 26, 2010), which was the rule that implemented the entire program as required by EISA 2007. As such, the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process that took place prior to the 2010 rule was also for the entire RFS program and looked at impacts on small refiners through 2022.

For the SBREFA process for the RFS2 final rule, EPA conducted outreach, fact-finding, and analysis of the potential impacts of the program on small refiners, which are all described in the Final Regulatory Flexibility Analysis, located in the rulemaking docket (EPA–HQ–OAR–2005–0161). This analysis looked at impacts to all refiners, including small refiners, through the year 2022 and found that the program would not have a significant economic impact on a substantial number of small entities, and that this impact was expected to decrease over time, even as the standards increased. For gasoline and/or diesel small refiners subject to the standards, the analysis included a cost-to-sales ratio test, a ratio of the estimated annualized compliance costs to the value of sales per company. From this test, it was estimated that all directly regulated small entities would have compliance costs that are less than one percent of their sales over the life of the program (75 FR 14862, March 26, 2010).

We have determined that this proposed rule would not impose any additional requirements on small entities beyond those already analyzed, since the impacts of this rule are not

[145] ''Screening Analysis for the Proposed Renewable Fuel Standards for 2019,'' memorandum from Dallas Burkholder, Nick Parsons, and Tia Sutton to EPA Air Docket EPA–HQ–OAR–2018–0167.

[146] For a further discussion of the ability of obligated parties to recover the cost of RINs see ''Denial of Petitions for Rulemaking to Change the RFS Point of Obligation,'' EPA–420–R–17–008, November 2017.

greater or fundamentally different than those already considered in the analysis for the RFS2 final rule assuming full implementation of the RFS program. This rule proposes to increase the 2019 cellulosic biofuel volume requirement by 93 million gallons and the advanced and total renewable fuel volume requirements by 590 million gallons relative to the 2018 volume requirements, but those volumes remain significantly below the statutory volume targets analyzed in the RFS2 final rule. This exercise of EPA's waiver authority reduces burdens on small entities, as compared to the burdens that would be imposed under the volumes specified in the Clean Air Act in the absence of waivers—which are the volumes that we assessed in the screening analysis that we prepared for implementation of the full program. Regarding the BBD standard, we are proposing to increase the volume requirement for 2020 by 330 million gallons relative to the 2019 volume requirement we finalized in the 2018 final rule. While this volume is an increase over the statutory minimum value of 1 billion gallons, the BBD standard is a nested standard within the advanced biofuel category, which we are significantly reducing from the statutory volume targets. As discussed in Section VI, we are proposing to set the 2020 BBD volume requirement at a level below what is anticipated will be produced and used to satisfy the reduced advanced biofuel requirement. The net result of the standards being proposed in this action is a reduction in burden as compared to implementation of the statutory volume targets as was assumed in the RFS2 final rule analysis.

While the rule will not have a significant economic impact on a substantial number of small entities, there are compliance flexibilities in the program that can help to reduce impacts on small entities. These flexibilities include being able to comply through RIN trading rather than renewable fuel blending, 20 percent RIN rollover allowance (up to 20 percent of an obligated party's RVO can be met using previous-year RINs), and deficit carry-forward (the ability to carry over a deficit from a given year into the following year, providing that the deficit is satisfied together with the next year's RVO). In the RFS2 final rule, we discussed other potential small entity flexibilities that had been suggested by the SBREFA panel or through comments, but we did not adopt them, in part because we had serious concerns regarding our authority to do so.

Additionally, we realize that there may be cases in which a small entity may be in a difficult financial situation and the level of assistance afforded by the program flexibilities is insufficient. For such circumstances, the program provides hardship relief provisions for small entities (small refiners), as well as for small refineries.[147] As required by the statute, the RFS regulations include a hardship relief provision (at 40 CFR 80.1441(e)(2)) that allows for a small refinery to petition for an extension of its small refinery exemption at any time based on a showing that the refinery is experiencing a ''disproportionate economic hardship.'' EPA regulations provide similar relief to small refiners that are not eligible for small refinery relief (see 40 CFR 80.1442(h)). EPA has currently identified a total of 10 small refiners that own 12 refineries subject to the RFS program, all of which have been identified as being small refineries.

EPA evaluates these petitions on a case-by-case basis and may approve such petitions if it finds that a disproportionate economic hardship exists. In evaluating such petitions, EPA consults with the U.S. Department of Energy, and takes the findings of DOE's 2011 Small Refinery Study and other economic factors into consideration. EPA successfully implemented these provisions by evaluating petitions for exemption from 20 small refineries for the 2016 RFS standards (3 of which were owned by a small refiner) and 29 small refineries for the 2017 RFS standards (8 of which were owned by a small refiner).[148]

Given that this proposed rule would not impose additional requirements on small entities, would decrease burden via a reduction in required volumes as compared to statutory volume targets, would not change the compliance flexibilities currently offered to small entities under the RFS program (including the small refinery hardship provisions we continue to implement), and available information shows that the impact on small entities from implementation of this rule would not be significant viewed either from the perspective of it being a standalone action or a part of the overall RFS program, we have therefore concluded that this action would have no net regulatory burden for directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action implements mandates specifically and explicitly set forth in CAA section 211(o) and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they produce, purchase, and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes (CAA section 211(o)) and does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action proposes the required renewable fuel content of the transportation fuel supply for 2019, consistent with the CAA and waiver authorities provided therein. The RFS program and this rule are designed to

[147] See CAA section 211(o)(9)(B).

[148] EPA is currently evaluating 4 additional 2017 petitions, bringing the total number of petitions for 2017 to 33.

achieve positive effects on the nation's transportation fuel supply, by increasing energy independence and security and lowering lifecycle GHG emissions of transportation fuel.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This proposed rule does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

X. Statutory Authority

Statutory authority for this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of this proposed rule comes from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: June 26, 2018.

E. Scott Pruitt,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—Renewable Fuel Standard

■ 2. Section 80.1405 is amended by adding new paragraph (a)(10) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(10) *Renewable Fuel Standards for 2019.*

(i) The value of the cellulosic biofuel standard for 2019 shall be 0.209 percent.

(ii) The value of the biomass-based diesel standard for 2019 shall be 1.72 percent.

(iii) The value of the advanced biofuel standard for 2019 shall be 2.67 percent.

(iv) The value of the renewable fuel standard for 2019 shall be 10.88 percent.

* * * * *

[FR Doc. 2018–14448 Filed 7–9–18; 8:45 am]

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