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FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–1600]

RIN 7100 AE99

Rules Regarding Delegation of Authority: Delegation of Authority to the Secretary of the Board

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is amending its rules regarding delegation of authority to delegate to the Secretary of the Board the authority to review and determine an appeal of denial of access to Board records under the Freedom of Information Act, the Privacy Act, and the Board's rules regarding such access.

DATES: Effective March 6, 2018.

FOR FURTHER INFORMATION CONTACT: Brian Phillips, Attorney, (202) 452–3321, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Discussion

The Board previously adopted a rule delegating to any member of the Board, as designated by the Chairman, the authority to ''review and determine an appeal of denial of access to Board records under the Freedom of Information Act, the Privacy Act, and the Board's rules regarding such access.'' [1] The Board has determined that the Secretary of the Board is capable of acting on such requests. Accordingly, the Board is amending its rules regarding delegation of authority to delegate to the Secretary of the Board the authority to review and determine an appeal of denial of access to Board records under the Freedom of Information Act, the Privacy Act, and the Board's rules regarding such access, and to delete the existing delegation of authority to individual Board members.

II. Regulatory Analysis

These amendments relate solely to the agency's organization, procedure, or practice. Accordingly, the provisions of the Administrative Procedure Act regarding notice of proposed rulemaking and opportunity for public participation are not applicable.[2]

Because no notice of proposed rulemaking is required to be issued, or has been issued, in connection with this rule, it is not a ''rule'' for purposes of the Regulatory Flexibility Act, and that act, therefore, does not apply.[3]

These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[4]

Section 722 of the Gramm-Leach-Bliley Act [5] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present this rule in a simple and straightforward manner.

The rule is not a ''substantive rule'' for the purposes of the effective-date provision of the Administrative Procedure Act; as such, the act does not require the Board to delay the effective date of the rule.[6] Accordingly, the amendments are effective March 6, 2018.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System amends 12 CFR part 265 as follows:

[1] 12 CFR 265.4(a)(1) (internal citations omitted).

[2] 5 U.S.C. 553(b)(A).

[3] *See* 5 U.S.C. 601(2).

[4] 44 U.S.C. 3501 *et seq.*

[5] Public Law 106–102, 113 Stat. 1338, 1471 (1999) (codified at 12 U.S.C. 4809).

[6] *See* 5 U.S.C. 553(d).

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

■ 1. The authority citation for part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

§ 265.4 [Amended]

■ 2. In § 265.4:
■ a. Remove paragraph (a)(1); and
■ b. Redesignate paragraphs (a)(2) through (4) as paragraphs (a)(1) through (3).

■ 3. In § 265.5:
■ a. Revise the introductory text;
■ b. Redesignate paragraphs (b)(2) and (3) as paragraphs (b)(3) and (4); and
■ c. Add new paragraph (b)(2)

The revisions and additions read as follows:

§ 265.5 Functions delegated to Secretary of the Board.

The Secretary of the Board (or the Secretary's delegee) is authorized:

* * * * *

(b) * * *

(2) *Review of denial of access to Board records; FOIA.* To review and determine an appeal of denial of access to Board records under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and the Board's rules regarding such access (12 CFR parts 261 and 261a, respectively).

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 28, 2018.

Margaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2018–04385 Filed 3–5–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No.: FAA–2016–9275; Amdt. No(s). 27–50, 29–57]

RIN 2120–AK91

Rotorcraft Pilot Compartment View

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is revising its rules for pilot compartment view to allow

ground tests to demonstrate compliance for night operations. The requirement for night flight testing to demonstrate compliance is not necessary in every case. The revision will relieve the burden of performing a night flight test under certain conditions.

DATES: Effective May 7, 2018.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Clark Davenport, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5151; email *Clark.Davenport@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on 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 III, Sections 44701 and 44704. Under section 44701, the FAA is charged with prescribing regulations promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft. Under section 44704, the Administrator issues type certificates for aircraft, aircraft engines, propellers, and specified appliances when the Administrator finds the product is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a). This regulation is within the scope of these authorities because it promotes safety by updating the existing minimum prescribed standards used during the type certification process to address an equivalent method of showing compliance.

I. Background

A. Statement of the Problem

The FAA's rules on airworthiness standards for the pilot compartment in rotorcraft and the requirements for each pilot's view from that compartment are located in parts 27 and 29 of title 14 of the Code of Federal Regulations (14 CFR). Specifically, §§ 27.773(a) and 29.773(a) require that each pilot compartment must be free of glare and reflection that could interfere with the pilot's view. Sections 27.773(b) and 29.773(b) require a flight test to show compliance with paragraph (a) of their respective sections if certification for night operations is requested. While this requirement applies to all applicants for rotorcraft installations that may affect the pilot's ability to see outside the aircraft, the FAA finds that a flight test may not be the only means available to show compliance for some modifications. The purpose of the internal lighting tests is to determine whether the lighting creates glare and reflections within the cockpit that could interfere with the pilot's view outside of the aircraft.

The FAA has conducted rotorcraft ground and flight internal lighting tests over the past 15 years where all external lighting was blocked from entering the cockpit on the ground evaluation and then conducted the follow-on night flight tests. They found that the ground test results were the same as the flight tests. Based on this experience, the FAA concluded that the two tests will provide the same results. The FAA has determined that creating an environment where external light is blocked from entering the cockpit or where the rotorcraft is placed in a darkened hangar or paint booth, provides the same environment as a night flight test would for cockpit lighting evaluations. The FAA has concluded that a ground test provides the same level of safety and that the current requirements in §§ 27.773 and 29.773 for a night flight test are imposing an unnecessary economic burden on applicants for certification for night operations.

B. Summary of the NPRM

On October 17, 2016, the FAA published a notice of proposed rulemaking (NPRM), ''Rotorcraft Pilot Compartment View'' (81 FR 71412). The FAA proposed to allow a ground test as an alternative to a night flight test in certain cases to show compliance for night operations. The FAA included two Draft Advisory Circulars, (AC) 27–1B, Certification of Normal Category Rotorcraft and AC 29–2C, Certification of Transport Category Rotorcraft, setting forth the conditions under which a ground test would be acceptable and an acceptable means of compliance for the ground test.[1]

The original comment period closed on November 16, 2016. However, the FAA did not post the associated draft advisory circulars (AC) for public display until November 9, 2016. As a result, the FAA reopened the comment period (81 FR 83744) until December 13, 2016.

II. Discussion of Public Comments and Final Rule

The FAA received comments from three aviation companies (Aviation Specialists Unlimited, Inc., Garmin International, and The Boeing Company) and three individuals. Two of the aviation companies and an individual supported the proposed rule. The remaining commenters supported the rule but suggested changes, which are discussed below.

A. Ground Test Criteria

An individual requested the FAA clearly define when a ground test can and cannot be performed and address factors such as the amount of interior light emissions, exterior light emissions, color of light emissions, and focal point of light intensity.

The FAA notes that Advisory Circular (AC) 27–1B, Certification of Normal Category Rotorcraft and AC 29–2C, Certification of Transport Category Rotorcraft address the individual's comments. AC 27–1B and AC 29–2C already provide qualitative general guidance to determine appropriate testing methods.[2]

B. Validation of Ground Testing

An individual requested the FAA conduct tests to analyze specific proficiencies and deficiencies of simulated night ground testing. Alternatively, if there is already empirical and observational evidence that proves the safety factors in ground testing, the commenter requested this be identified in the final rule.

The FAA's determination that a ground test provides the same level of safety is based on the FAA's experience with cockpit lighting evaluations for rotorcraft certification projects. The FAA found the two tests had the same results.

C. Requirements for Night Testing

Two individuals requested that night testing account for various lighting scenarios. One of these individuals requested the FAA conduct tests to ensure the accuracy of each ground test simulation using both interior and exterior lighting effects on the rotorcraft

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/.*

[2] Advisory Circular (AC) 27–1B and AC 29–2C will be posted in Docket No. FAA–2016–9275.

windshield and visibility. Another individual requested that testing account for different outside lighting scenarios through multiple ground tests, in both a well-lit airfield and a dark hanger.

The intent of this rule is to allow ground tests, under certain circumstances, to demonstrate compliance for night operations. The FAA notes the request to add additional night testing requirements is beyond the scope of this rulemaking. In light of the comments, the FAA recognizes the material in the AC regarding exterior lighting may create confusion. As a result, we have revised the AC to clarify that exterior lighting is identified as exterior aircraft lighting only.

D. Eliminate Testing Requirement

An aviation company requested that the FAA eliminate the requirement to perform either a ground test or a flight test and require instead that applicants show ''compliance.'' In support of this request, the commenter stated the FAA and industry are generally in agreement that regulations be performance-based without specifying a means of compliance which, instead, is established through policy, guidance, or industry standards.

The requested change to eliminate testing would compromise the level of safety intended by this rule. Because of the complexity and variables involved in lighting interaction in rotorcraft cockpits, the FAA has determined that either a night flight test or a ground test is required.

The FAA is adopting the rule as proposed.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995).

In conducting these analyses, FAA has determined that this proposed rule: (1) Has regulatory cost savings, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

The FAA determined that this action will likely result in regulatory cost savings. The current regulations require night flight testing to demonstrate compliance for night operations. This rule provides a less costly ground test as an alternative to a night flight test for certain interior lighting modifications. Currently, the FAA estimates the total cost for a night flight test to be $37,280. These costs include company costs associated with a ground evaluation ($3,600); company flight test, including flight preparation ($16,240); company preparation of the test report ($800); and FAA flight test, including flight preparation ($16,640). Under this final rule, companies can demonstrate compliance on the ground, thereby avoiding the company and FAA flight test costs and saving an estimated $32,880 per demonstration. Under this rule, the total cost for a ground test is about $4,400, which is substantially less costly than a night flight test of $37,280.

The FAA estimates that 10,506 helicopters in the current fleet will be affected by the final rule. In addition, the FAA receives approximately 120 certification project tests annually. Note that after certification, new helicopters may not need to be upgraded in the next 10 years.[3] However, the other helicopters will need at least 1 cockpit illumination upgrade within the next 10 years based on FAA data. In particular, approximately 4,000 rotorcraft will have to upgrade their automatic dependent surveillance-broadcast (ADS–B) in the first 3 years after the rule goes into effect.[4] All of the remaining 6,506 are expected to have cockpit lighting night testing due to upgrading communication, surveillance systems, or navigation/electronic indicators in the remaining 7 years.[5]

As a result, this rule will relieve industry from performing higher cost night flight tests with lower cost ground tests resulting in cost savings. The FAA estimates industry will gain about $384.9 million in total undiscounted cost savings over a 10-year period of analysis [$32,880 × (10,506 tests + 1,200 certification projects)]. The FAA estimates industry's present value cost savings to be about $277.2 million and annualized costs savings to be about $39.5 million using a 7 percent discount rate. The following table provides cost savings to industry over a 10-year period of analysis.

[3] As a result, we do not include new helicopters in this analysis.

[4] This is due to the requirements in 14 CFR 91.225, which requires equipage by January 1, 2020. At the time of this analysis, this equates to about 1,333 per year in the first three years. The actual number of ADS–B related upgrades available for cost savings may vary from this analysis depending on the publication and implementation of this rule and the ability of all operators to equip ADS–B by January 1, 2020.

[5] This equates to about 929 per year in the remaining seven years of the period of analysis.

INDUSTRY COST SAVINGS OF FORGONE NIGHT FLIGHT TESTS

Year	Number of tests			Cost savings ($) *		
	Certification tests	Rotorcraft tests	Total	Undiscounted	Present value at 7%	Present value at 3%
1	120	1,333	1,453	47,785,600	44,659,439	46,393,786
2	120	1,333	1,453	47,785,600	41,737,794	45,042,511
3	120	1,333	1,453	47,785,600	39,007,284	43,730,593
4	120	929	1,049	34,505,211	26,323,861	30,657,433
5	120	929	1,049	34,505,211	24,601,739	29,764,498
6	120	929	1,049	34,505,211	22,992,279	28,897,571
7	120	929	1,049	34,505,211	21,488,112	28,055,895
8	120	929	1,049	34,505,211	20,082,347	27,238,733
9	120	929	1,049	34,505,211	18,768,549	26,445,371
10	120	929	1,049	34,505,211	17,540,700	25,675,118
Total	1,200	10,500	11,700	384,893,280	277,202,103	331,901,510
Annualized					39,467,343	38,908,982

* The cost savings estimates in this table use $32,880 per forgone rotorcraft night flight test (*e.g.,* in the first year, the undiscounted cost savings = $32,880 × 1,453 rotorcraft = $47.8 million).

This rule will also save the FAA about $1,200 per forgone night flight test from the associated preparation and reviewing of test flight plans, reports, and testing time. The FAA will save about $14 million (undiscounted) over a 10-year period of analysis [$1,200 × (10,506 tests + 1,200 certification projects)]. The FAA estimates its 10-year present value cost savings to be about $10 million and the annualized cost savings to be about $1.4 million at a 7 percent discount rate.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule provides a ground test as an alternative to a night flight test in certain cases, such as internal lighting modifications. The requirements for a ground test are less costly and stringent than a night flight test. Thus, this rule will relieve the industry from the costly burden of performing night flight tests under certain conditions. The rule will result in cost savings for small entities affected by this rulemaking action.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that it will only have a domestic impact and, therefore, no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that this action will not be a ''significant energy action'' under the executive order and will not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action will have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule's economic analysis, above.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the internet.

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Publishing Office's web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects

14 CFR Part 27

Aircraft, Aviation safety.

14 CFR Part 29

Aircraft, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 2. Amend § 27.773 by revising paragraph (b) to read as follows:

§ 27.773 Pilot compartment view.

* * * * *

(b) If certification for night operation is requested, compliance with paragraph (a) of this section must be shown by ground or night flight tests.

* * * * *

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

■ 3. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 4. Amend § 29.773 by revising paragraph (a)(2) to read as follows:

§ 29.773 Pilot compartment view.

(a) * * *

(2) Each pilot compartment must be free of glare and reflection that could interfere with the pilot's view. If certification for night operation is requested, this must be shown by ground or night flight tests.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Daniel K. Elwell,

Acting Administrator.

[FR Doc. 2018–04547 Filed 3–5–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0084; Product Identifier 2018–NE–02–AD; Amendment 39–19212; AD 2018–05–03]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A., Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Safran Helicopter Engines, S.A., Arrius 2F turboshaft engines. This AD requires inspection and replacement of the magnetic heads installed on oil system electrical magnetic plugs. This AD was prompted by reports from the manufacturer of a batch of non-conforming magnetic heads installed on electrical magnetic plugs. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective March 21, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 21, 2018.

We must receive comments on this AD by April 20, 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 Safran Helicopter Engines, S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0084.

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–2018–0084; 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 the Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0012–E, dated January 16, 2018 (referred to hereinafter as ''the MCAI''), to address an unsafe condition for the specified products. The MCAI states:

> Flaking of the cadmium coating of electrical magnetic plugs head Part Number (P/N) 9 520 01 154 5 was detected. Investigation results indicate that this was the result of manufacturing deficiency. This part is installed on electrical magnetic plugs (front and rear position) of the engine, providing warning signals for early detection of internal part(s) structural degradation, propagating in form of presence of metal particles in the lubrication system. The subsequent investigation identified the batch of affected magnetic plugs heads by serial number (s/n).
>
> This condition, if not detected and corrected, could lead to reduced capability of the particle detection system to identify internal structural failures and consequent in-flight shut-down, resulting in forced landing with possible damage to the helicopter and injury to occupants.
>
> To address this potential unsafe condition, Safran Helicopter Engines issued Alert Mandatory Service Bulletin (MSB) A319 79 4840 and Alert MSB A319 79 4841 to provide inspection and replacement instructions.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0084.

Related Service Information Under 1 CFR Part 51

We reviewed Safran Helicopter Engines Alert Mandatory Service Bulletin (MSB) No. A319 79 4840, Version A, dated November 27, 2017, and Safran Helicopter Engines Alert MSB No. A319 79 4841, Version A, dated November 20, 2017. The MSBs describe procedures, respectively, for inspecting and replacing the magnetic heads installed on the electrical magnetic plugs. 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

This product has been approved by France and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

AD Requirements

This final rule requires inspection and replacement of the magnetic heads installed on oil system electrical magnetic plugs.

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 the compliance time for the action is less than the time required for public comment. 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–2018–0084 and Product Identifier 2018–NE–02–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 105 engines installed on helicopters 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
ARRIUS 2F Rear Electrical Mag Plug Inspection	2 work-hours × $85 per hour = $170	$0	$170	$17,850
ARRIUS 2F Front and Rear Electrical Mag Plug Mag Head Replacement.	4 work-hours × $85 per hour = $340	3,061	3,401	357,105

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 engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, 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 this AD:

(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.

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):

2018–05–03 Safran Helicopter Engines (Type Certificate previously held by Turbomeca, S.A.): Amendment 39–19212; Docket No. FAA–2018–0084; Product Identifier 2018–NE–02–AD.

(a) Effective Date

This AD is effective March 21, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Safran Helicopter Engines, S.A., Arrius 2F turboshaft engines, with an oil system electrical magnetic plug magnetic head, part number (P/N) 9520011545, with serial numbers (S/Ns) DU4621 through DU5053 inclusive, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7900, Engine Oil System (Airframe Furnished).

(e) Unsafe Condition

This AD was prompted by reports from the manufacturer of a batch of non-conforming magnetic heads installed on electrical oil debris magnetic plugs. We are issuing this AD to prevent failure of the engine oil debris detection system. This unsafe condition, if not addressed, could result in the inability to detect engine bearing failures, failure of the engine, in-flight shutdown, and loss of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 15 flight hours or 30 days, whichever occurs first after the effective date of this AD, and then after each flight, inspect the magnetic head installed on the rear electrical magnetic plug in accordance with the Accomplishment Instructions, paragraph 2.4.5, of Safran Helicopter Engines Alert Mandatory Service Bulletin (MSB) A319 79 4840, Version A, dated November 27, 2017.

(2) Within 60 days after the effective date of this AD, replace each affected magnetic head, installed on the front or the rear electrical magnetic plug, with a part eligible for installation in accordance with the Accomplishment Instructions, paragraph 2.4.2, of Safran Helicopter Engines Alert MSB A319 79 4841, Version A, dated November 20, 2017.

(3) After replacement of the magnetic head installed on the rear electrical magnetic plug, as required by paragraph (g)(2) of this AD, the repetitive inspections required by paragraph (g)(1) of this AD are no longer required.

(h) Installation Prohibition

After the effective date of this AD, except as part of the inspection required by paragraph (g)(1) of this AD, do not install a magnetic head, P/N 9520011545, with an S/N DU4621 up to and including DU5053 on any engine.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 ECO Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(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.

(j) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2018–0012–E, dated January 16, 2018, for more information. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2018–0084.

(k) 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) Safran Helicopter Engines Alert Mandatory Service Bulletin (MSB) A319 79 4840, Version A, dated November 27, 2017.

(ii) Safran Helicopter Engines Alert MSB A319 79 4841, Version A, dated November 20, 2017.

(3) For Safran Helicopter Engines service information identified in this AD, contact Safran Helicopter Engines, S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15.

(4) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(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 Burlington, Massachusetts, on February 23, 2018.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–04439 Filed 3–5–18; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

RIN 3038–AE58

Annual Adjustment of Civil Monetary Penalties to Reflect Inflation—2018

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending Rule 143.8, its rule that governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the Commodity Exchange Act (CEA) and Commission rules, regulations and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

DATES: This rule is effective on March 6, 2018 and is applicable to penalties assessed after March 6, 2018.

FOR FURTHER INFORMATION CONTACT: Edward J. Riccobene, Associate Chief Counsel, Division of Enforcement, at (202) 418–5327 or *ericcobene@cftc.gov,* Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) [1] requires the head of each Federal agency to periodically adjust for inflation the minimum and maximum amount of CMPs provided by law within the jurisdiction of that agency.[2] A 2015 amendment to the FCPIAA [3] required agencies to make an initial ''catch-up'' adjustment to its civil monetary penalties effective no later than August 1, 2016.[4] For every year thereafter effective not later than January 15, the FCPIAA, as amended, requires agencies to make annual adjustments for inflation, with guidance from the Director of the Office of Management and Budget.[5]

II. Commodity Exchange Act Civil Monetary Penalties

The following sections of the CEA provide for CMPs that meet the FCPIAA definition [6] and these CMPs are, therefore, subject to the inflation adjustment: Sections 6(c), 6b, and 6c of the CEA.[7]

III. Annual Inflation Adjustment for Commodity Exchange Act Civil Monetary Penalties

A. Methodology

The FCPIAA annual inflation adjustment, in the context of the CFTC's CMPs, is determined by increasing the maximum penalty by a ''cost-of-living adjustment'', rounded to the nearest multiple of one dollar.[8] Annual inflation adjustments are based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI–U) preceding the date of the adjustment, and the prior year's October CPI–U.[9] In this case, October 2017 CPI–U (246.663)/October 2015 CPI–U (241.729) = 1.02041.[10] In order to

[1] The FCPIAA, Public Law 101–410 (1990), as amended, is codified at 28 U.S.C. 2461 note. The FCPIAA states that the purpose of the FCPIAA is to establish a mechanism that (1) allows for regular adjustment for inflation of civil monetary penalties; (2) maintains the deterrent effect of civil monetary penalties and promote compliance with the law; and (3) improves the collection by the Federal Government of civil monetary penalties.

[2] For the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules, regulations and orders promulgated thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

[3] Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 129 Stat. 584 (2015) (2015 Act), title VII, Section 701.

[4] FCPIAA Sections 4 and 5. See also, Adjustment of Civil Monetary Penalties for Inflation, 81 FR 41435 (June 27, 2016).

[5] FCPIAA Sections 4 and 5. See also, Executive Office of the President, Office of Management and Budget Memorandum, M–18–03, Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2017) (2017 OMB Guidance) (*https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf*).

[6] FCPIAA Section 3(2).

[7] 7 U.S.C. 9, 13a–1, 13b. Criminal authorities may also seek fines for criminal violations of the CEA (see 7 U.S.C. 13, 13(c), 13(d), 13(e), and 13b). The FCPIAA does not affect the amounts of these criminal penalties.

[8] FCPIAA Sections 4 and 5.

[9] FCPIAA Section 5(b)(1).

[10] The CPI–U is published by the Department of Labor. Interested parties may find the relevant Consumer Price Index on the internet. To access this information, go to the Consumer Price Index Home Page at: *http://www.bls.gov/cpi/.* Click the ''CPI Data/Databases'' heading, and select ''All Urban Consumers (Current Series)'', ''Top Picks.''

complete the 2018 annual adjustment, the CFTC must multiply each of its most recent CMP amounts by the multiplier, 1.02041, and round to the nearest dollar.[11]

B. Civil Monetary Penalty Adjustments

Applying the FCPIAA annual inflation adjustment methodology results in the following amended CMPs:

U.S. Code citation	Civil monetary penalty description		Violations occurring on or after 11/02/2015		
			Penalty amount in January 2017 Final Rule [12]	CPI–U multiplier	New adjusted penalty amount
Civil Monetary Penalty Imposed by the Commission in an Administrative Action					
7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).	For any person other than a registered entity*.	Non-Manipulation or Attempted Manipulation.	$157,892	1.02041	$161,115
	For any person other than a registered entity*.	Manipulation or Attempted Manipulation.	1,138,937	1.02041	1,162,183
7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).	For a registered entity* or any of its directors, officers or employees.	Non-Manipulation or Attempted Manipulation.	869,757	1.02041	887,509
	For a registered entity* or any of its directors, officers or employees.	Manipulation or Attempted Manipulation.	1,138,937	1.02041	1,162,183
Civil Monetary Penalty Imposed by a Federal District Court in a Civil Injunctive Action					
7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).	Any Person	Non-Manipulation or Attempted Manipulation.	173,951	1.02041	177,501
	Any Person	Manipulation or Attempted Manipulation.	1,138,937	1.02041	1,162,183

*The term ''registered entity'' is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act).

The FCPIAA provides that any increase under the FCPIAA in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.[13] Thus, the new CMP amounts established by this rulemaking shall apply to penalties assessed after March 6, 2018, for violations that occurred on or after November 2, 2015, the effective date of the FCPIAA amendment requiring annual adjustments, the 2015 Act.[14]

IV. Administrative Compliance

A. Notice Requirement

The FCPIAA specifically exempted from the Administrative Procedure Act (APA) the rulemakings required to implement annual inflation adjustments.[15] ''This means that the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.'' [16] The Commission further notes that the notice and comment procedures of the APA do not apply to this rulemaking because the Commission is acting herein pursuant to statutory language that mandates that the Commission act in a nondiscretionary matter.[17]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act [18] requires agencies with rulemaking authority to consider the impact of certain of their rules on small businesses. A regulatory flexibility analysis is only required for rules for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) or any other law.[19] Because, as discussed above, the Commission is not obligated by section 553(b) or any other law to publish a general notice of proposed rulemaking with respect to the revisions being made to regulation 143.8, the Commission additionally is not obligated to conduct a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA),[20] which imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. This rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

D. Consideration of Costs and Benefits

Section 15(a) of the CEA [21] requires the Commission to consider the costs and benefits of its action before issuing a new regulation. Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency,

Then check the box for ''U.S. All items, 1982–84=100—CUUR0000SA0'', and click the ''Retrieve data'' button.

[11] 2017 OMB Guidance at 3.

[12] 82 FR 7643.

[13] FCPIAA Section 6.

[14] Prior Commission rulemakings to affect the required inflation adjustments referenced the date the enforcement action was filed without regard to the date of the corresponding violation. This rulemaking specifically references the date of the violation, thereby the Commission clarifies its determination that these adjusted penalties apply only with respect to violations occurring on or after November 2, 2015, the effective date of the 2015 Act.

[15] FCPIAA Section 4(b)(2).

[16] 2017 OMB Guidance at 4.

[17] *Lake Carriers' Ass'n* v. *EPA,* 652 F.3d 1, 10 (DC Cir. 2011).

[18] 5 U.S.C. 601–612.

[19] 5 U.S.C. 603(a).

[20] 44 U.S.C. 3507(d).

[21] 7 U.S.C. 19(a).

competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission believes that benefits of this rulemaking greatly outweigh the costs, if any. As the Commission understands, the statutory provisions by which it is making cost-of-living adjustments to the CMPs in regulation 143.8 were enacted to ensure that CMPs do not lose their deterrence value because of inflation. An analysis of the costs and benefits of these adjustments were made before enactment of the statutory provisions under which the Commission is operating, and limit the discretion of the Commission to the extent that there are no regulatory choices the Commission could make that would supersede the pre-enactment analysis with respect to the five factors enumerated in section 15(a), or any other factors.

List of Subjects in 17 CFR Part 143

Civil monetary penalties, Claims.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends part 143 of title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

■ 1. The authority citation for part 143 continues to read as follows:

Authority: 7 U.S.C. 9, 15, 9a, 12a(5), 13a, 13a–1(d), 13(a), 13b; 31 U.S.C. 3701–3720E; 28 U.S.C. 2461 note.

■ 2. Revise § 143.8 to read as follows:

§ 143.8 Inflation-adjusted civil monetary penalties.

(a) *Statutory inflation adjustment of civil monetary penalties.* The Inflation Adjustment Act of 1990, as amended, requires annual inflation adjustments to the civil monetary penalties imposed under the Commodity Exchange Act for violations that occurred on or after November 2, 2015. The Commission will publish notice of these adjusted penalty amounts in the **Federal Register**. The inflation adjustment is calculated by multiplying the maximum dollar amount of the civil monetary penalty for the previous calendar year by the cost-of-living inflation adjustment multiplier provided by the Office Management and Budget, which is based on the change in the Consumer Price Index, and rounding the total to the nearest dollar. Set forth in the charts in paragraph (b) of this section are the inflation adjusted penalty amounts for violations occurring on or after November 2, 2015 and the penalty amounts for violations that occurred prior to November 2, 2015. These penalty charts are also available on the Commission's website at: *http://www.cftc.gov/LawRegulation/Enforcement/InflationAdjustedCivilMonetaryPenalties/index.htm.*

(b) *2018 inflation adjustment.* The maximum amount of each civil monetary penalty in the following charts applies to penalties assessed after March 6, 2018:

(1) For Non-Manipulation or Attempted Manipulation Violations:

TABLE 1 TO PARAGRAPH (b)(1)

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty			
		10/23/2004 through 10/22/2008	10/23/2008 through 10/22/2012	10/23/2012 through 11/01/2015	11/02/2015 to present
Civil Monetary Penalty Imposed by the Commission in an Administrative Action					
7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).	For any person other than a registered entity [1].	$130,000	$130,000	$140,000	$161,115
7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).	For a registered entity [1] or any of its directors, officers or employees.	625,000	675,000	700,000	887,509
Civil Monetary Penalty Imposed by a Federal District Court in a Civil Injunctive Action					
7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).	Any Person	130,000	140,000	140,000	177,501

[1] The term "registered entity" is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act).

(2) For Manipulation or Attempted Manipulation Violations:

TABLE 1 TO PARAGRAPH (b)(2)

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty			
		10/23/2004 through 05/21/2008	05/22/2008 through 08/14/2011	08/15/2011 through 11/01/2015	11/02/2015 to present
Civil Monetary Penalty Imposed by the Commission in an Administrative Action					
7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).	For any person other than a registered entity [1].	$130,000	$1,000,000	$1,025,000	$1,162,183
7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).	For a registered entity [1] or any of its directors, officers or employees.	625,000	1,000,000	1,025,000	1,162,183

TABLE 1 TO PARAGRAPH (b)(2)—Continued

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty			
		10/23/2004 through 05/21/2008	05/22/2008 through 08/14/2011	08/15/2011 through 11/01/2015	11/02/2015 to present
Civil Monetary Penalty Imposed by a Federal District Court In a Civil Injunctive Action					
7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).	Any Person	130,000	1,000,000	1,025,000	1,162,183

[1] The term ''registered entity'' is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act).

Issued in Washington, DC, on February 28, 2018, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Adjustment of Civil Monetary Penalties for Inflation—2018—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz and Behnam voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2018–04480 Filed 3–5–18; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0126]

Drawbridge Operation Regulation; Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Bridge across the Columbia River, mile 105.6, at Vancouver, WA. The deviation is necessary to accommodate maintenance and replacement of various bridge components. This deviation allows the bridge to remain in the closed-to-navigation position during maintenance activities.

DATES: This deviation is effective from 8 a.m. on March 5, 2018 to 4 p.m. on March 14, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0126 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. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: BNSF, bridge owner, requested that the BNSF Swing Bridge across the Columbia River, mile 105.6, remain in the closed-to-navigation position to marine vessel traffic for maintenance and component replacement activities. The BNSF Swing Bridge provides 39 feet of vertical clearance above Columbia River Datum 0.0 while in the closed-to-navigation position. This deviation allows the BNSF Swing Bridge to remain in the closed-to-navigation position, and need not open for maritime traffic as listed in the table below:

Time/date start	Time/date end	Action
8 a.m. Mar 5, 2018	4 p.m. Mar 5, 2018	span in the closed-to-navigation position.
8 a.m. Mar 6, 2018	4 p.m. Mar 6, 2018	span in the closed-to-navigation position.
8 a.m. Mar 7, 2018	4 p.m. Mar 7, 2018	span in the closed-to-navigation position.
8 a.m. Mar 8, 2018	4 p.m. Mar 8, 2018	span in the closed-to-navigation position.
8 a.m. Mar 9, 2018	4 p.m. Mar 9, 2018	span in the closed-to-navigation position.
8 a.m. Mar 12, 2018	4 p.m. Mar 12, 2018	span in the closed-to-navigation position.
8 a.m. Mar 13, 2018	4 p.m. Mar 13, 2018	span in the closed-to-navigation position.
8 a.m. Mar 14, 2018	4 p.m. Mar 14, 2018	span in the closed-to-navigation position.

The subject bridge operates in accordance with 33 CFR 117.5. The bridge shall operate in accordance to 33 CFR 117.5 at all other times.

Waterway usage on this part of the Columbia River includes vessels ranging from large ships to commercial tug and tow vessels to recreational pleasure craft including cabin cruisers and sailing vessels. Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will be able to open for emergencies during this closure period if a one hour notice is given except on March 6, 2018 and March 8, 2018, and there is no immediate alternate route for vessels to pass. We contacted known river users, and requested objections to reschedule BNSF's maintenance period. We have not received any objections to this deviation. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact 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 designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 8, 2018.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–04434 Filed 3–5–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0131]

Drawbridge Operation Regulation; Youngs Bay and Lewis and Clark River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs three bridges at Astoria, OR, including the US101 (Youngs Bay) highway bridge, across Youngs Bay, the Oregon State (Old Youngs Bay) highway bridge, across Youngs Bay foot of Fifth Street, and the Oregon State (Lewis and Clark River) highway bridge, across Lewis and Clark River. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is appropriate. This deviation will allow the bridge to open during weekends and nighttime hours after receiving a 2 hour advance notice.

DATES: This deviation is effective from 5 p.m. on March 16, 2018 to 7 a.m. on August 10, 2018.

Comments and related material must reach the Coast Guard on or before August 23, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0131 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Chief Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

Due to infrequent drawbridge opening requests between Friday evenings through Monday early mornings, Oregon Department of Transportation (ODOT) (bridge owner), has requested to open the three highway bridges within Youngs Bay and Lewis and Clark River with 2 hours advance notice. The Youngs Bay highway bridge, Old Youngs Bay highway bridge and the Lewis and Clark River highway bridge are within one mile of each other, and currently open on signal for the passage of vessels with one half-hour notice by marine radio, telephone, or other suitable means. These three bridges are operated by the Lewis and Clark River highway bridge operator. The subject bridges operate per 33 CFR 117.899.

Vessels operating on Youngs Bay and the Lewis and Clark River range from small recreational vessels, sailboats, tribal fishing boats and small commercial fishing vessels. No navigational impacts are expected due to few vessels operating on these waterways at the stated hours. Also during roadway maintenance in 2016 and 2017, we approved deviations for the three subject bridges allowing these bridges to open on a three hour notice. No complaints or opening issues were identified at all hours of the day. Vessels able to pass through the subject bridges with the draw in the closed-to-navigation position may do so at any time.

This deviation authorizes ODOT to open the Youngs Bay highway bridge, the Old Youngs Bay highway bridge and the Lewis and Clark River highway bridge, with a two hour advance notice on weekends from 5 p.m. on Friday to 7 a.m. on Monday, including all Federal holidays but Columbus Day, starting 5 p.m. on March 16, 2018 through 7 a.m. on August 10, 2018. The Youngs Bay highway bridge provides a vertical clearance approximately 37 feet above mean high water when in the closed-to-navigation position. The Old Youngs Bay highway bridge provides a vertical clearance approximately 19 feet above mean high water when in the closed-to-navigation position. The Lewis and Clark River highway bridge provides a vertical clearance of 17 feet above mean high water when in the closed-to-navigation position.

The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the subject bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary test deviation. Youngs Bay and the Lewis and Clark River do not have an immediate alternate route for vessels to pass through the subject bridges. The subject bridges will be not be able to open for emergencies.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their 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.

II. 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 notice 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.

Dated: February 27, 2018.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–04436 Filed 3–5–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0273]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, West Palm Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments, extension.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Flagler Memorial (SR A1A) Bridge, mile 1021.8, the Royal Park (SR 704) Bridge, mile 1022.6, and the Southern Boulevard (SR 700/80) Bridge, mile 1024.7, across the Atlantic Intracoastal Waterway, at West Palm Beach, Florida. This deviation will extend the test to change the drawbridge operation schedules to determine whether permanent changes to the schedules are needed. This deviation allows the Flagler Memorial, Royal Park and Southern Boulevard Bridges to operate on alternative schedules when the President of the United States, members of the First Family, or other persons under the protection of the Secret Service visit Mar-a-Lago. This deviation is necessary to accommodate the increase in vehicular traffic when the presidential motorcade is in transit.

DATES: This deviation is effective without actual notice from March 6, 2018 to 11:59 p.m. on May 31, 2018. For purposes of enforcement, this deviation is effective from 8 a.m. on February 27, 2018 to March 6, 2018.

Comments and related material must reach the Coast Guard on or before May 7, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0273 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email LT Ruth Sadowitz, Coast Guard Sector Miami, FL, Waterways Management Division, telephone 305–535–4307, email *ruth.a.sadowitz@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

On August 17, 2017, the Coast Guard published a notice of deviation from drawbridge regulation with request for comments in the **Federal Register** (82 FR 39019) to test proposed changes. Three comments were received, which were in favor of the regulation changes. Due to unanticipated delays in processing this proposed regulatory change, the Coast Guard finds it necessary to extend the test deviation to allow additional time for public comment. The changes to the operating schedules proposed in this deviation will coincide with the establishment of the proposed Presidential Security Zone (see 82 FR 28036).

When the President of the United States, members of the First Family, or other persons under the protection of the Secret Service visit Mar-a-Lago, drawbridge openings have caused traffic backups in the West Palm Beach area. The increase in traffic congestion occurs when the presidential motorcade is in transit, which closes the Southern Boulevard Bridge to vehicle and vessel traffic. This action requires through traffic to use the Flagler Memorial and Royal Park Bridges. The Mayor of Palm Beach has asked the Coast Guard and the bridge owner, Florida Department of Transportation, to test a change to the operating regulations of those bridges.

During this temporary deviation, the Flagler Memorial Bridge is allowed to remain closed to navigation from 2:15 p.m. to 5:30 p.m. with the exception of a once an hour opening at 2:15 p.m., 3:15 p.m., 4:15 p.m. and 5:15 p.m., weekdays only, if vessels are requesting an opening. The Royal Park Bridge is allowed to remain closed to navigation from 2:15 p.m. to 5:30 p.m. with the exception of a once an hour opening at 2:30 p.m., 3:30 p.m., 4:30 p.m. and 5:30 p.m., weekdays only, if vessels are requesting an opening. At all other times the bridges will operate per their normal schedules, published in 33 CFR 117.261(u) and (v), respectively.

The operating schedule of the Southern Boulevard Bridge, which is closest to Mar-a-Lago, will be allowed to remain closed to navigation whenever the presidential motorcade is in transit. At all other times the bridge shall operate under the normal operating schedule, published in 33 CFR 117.261(w).

This test deviation will have an impact on marine traffic while alleviating some vehicle traffic backups. Tugs with tows are not exempt from this regulation. Vessels able to pass through the Flagler Memorial and Royal Park Bridges in the closed position may do so at any time. The bridges will be able to open for emergencies. The Southern Boulevard Bridge will be under the control of the on-scene designated representative.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedules 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.

II. 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 notice as being available in this 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.

Dated: March 1, 2018.

Barry L. Dragon,

Director, Bridge Branch, Seventh Coast Guard District.

[FR Doc. 2018–04497 Filed 3–5–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0129]

Drawbridge Operation Regulation; Snohomish River and Steamboat Slough, Everett and Marysville, WA

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 SR 529 highway bridges, north and south bound, across the Snohomish River, mile 3.6 near Everett, WA, and the SR 529 highway bridges, north and south bound, across Steamboat Slough, mile 1.1 and 1.2, near Marysville, WA. The deviation is necessary to accommodate the Everett Half Marathon run event. This deviation allows the bridges to remain in the closed-to-navigation position during the marathon to allow safe movement of event participants.

DATES: This deviation is effective from 7:30 a.m. to 11 a.m. on April 8, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0129 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. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Washington State Department of Transportation, the bridge owner, has requested that the SR 529 highway bridges, north bound and south bound, across the Snohomish River and Steamboat Slough remain in the closed-to-navigation position. This request is to facilitate safe, uninterrupted roadway passage of participants of the Everett Half Marathon. The SR 529 highway bridges across the Snohomish River, at mile 3.6, provide 37 feet of vertical clearance above mean high water elevation while in the closed-to-navigation position; and these bridges operate in accordance with 33 CFR 117.1059(c). The SR 529 highway bridges across Steamboat Slough, at mile 1.1 and 1.2, provide 10 feet of vertical clearance above mean high water elevation in the closed-to-navigation position; and these bridges operate in accordance with 33 CFR 117.1059(g).

The SR 529 bridges crossing the Snohomish River and Steamboat Slough are authorized to remain in the closed-to navigation position, and need not open for maritime traffic from 7:30 a.m. to 11 a.m. on April 8, 2018. The bridges shall operate in accordance to 33 CFR 117.1059 at all other times. Vessels able to pass under the subject bridges in the closed-to-navigation position may do so at any time, and these bridges will be required to open, if needed, for vessels engaged in emergency response during the closure period.

Waterway usage on this part of the Snohomish River and Steamboat Slough includes vessels ranging from commercial tug and barge to small pleasure craft. An alternate route for vessels to pass is available through Ebey Slough and Union Slough near the entrance of Steamboat Slough at high tide. A request for comment with any objections to this deviation was advertised in the Local Notice to Mariners. We did not receive any comments or objections. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridges so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their 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: February 27, 2018.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–04435 Filed 3–5–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0127]

Drawbridge Operation Regulation; Willamette River, Portland, OR

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 lower deck of the Steel Bridge across the Willamette River, mile 12.1, in Portland, OR. The deviation is necessary to support the Shamrock Stride event. This deviation allows the lower lift span of the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 10:15 a.m. to 11:15 a.m. on March 18, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0127, 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. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil*.

SUPPLEMENTARY INFORMATION: Union Pacific Railroad Company (UPRR) owns and operates the Steel Bridge across the Willamette River, at mile 12.1, in Portland, OR. UPRR requested a temporary deviation from the operating schedule for the Steel Bridge lower lift span. The deviation is necessary to accommodate the Shamrock Stride run/walk event. The Steel Bridge is a double-deck lift bridge, and the lower lift span operates independent of the upper lift span. To facilitate this temporary deviation request, the lower lift span is authorized to remain in the closed-to-navigation position, and need not open to marine vessels from 10:15 a.m. to 11:15 a.m. on March 18, 2018. When the lower span is in the closed-to-navigation position, the bridge provides 26 feet of vertical clearance above Columbia River Datum 0.0. The lower lift span of the Steel Bridge operates in accordance with 33 CFR 117.5.

Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Vessels able to pass through the subject bridge with the lower deck in the closed-to-navigation position may do so at any time. The lower lift of the Steel Bridge will be able to open for emergencies, and there is no immediate alternate route for vessels to pass. The Coast Guard requested objections be submitted to this deviation in the Local Notice to Mariners. We have not received any objections to this temporary deviation from the operating schedule. The Coast Guard will also

inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the subject bridge so that vessel operators can arrange their transits to minimize any impact 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 designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 27, 2018.

Steven Michael Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–04568 Filed 3–5–18; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 265

Production or Disclosure of Material or Information; Technical Corrections

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising a citation and a requirement in the Change of Address Request Format for Process Servers. An incorrect citation is corrected, and the requirement to provide a copy of the statute or regulation that empowers a requester to serve process is revised to be optional rather than mandatory.

DATES: This final rule is effective on March 6, 2018.

FOR FURTHER INFORMATION CONTACT: Natalie A. Bonanno, Chief Counsel, Federal Compliance, *natalie.a.bonanno@usps.gov*, 202–268–2944.

SUPPLEMENTARY INFORMATION: On November 30, 2016 (81 FR 86270), the Postal Service published its revised Freedom of Information Act (FOIA) regulations to comply with the FOIA Improvement Act of 2016 (FOIAIA), effective December 27, 2016. In response to public comments, the Postal Service published an additional change to these regulations on January 10, 2017 (82 FR 2896). After further review, the Postal Service published miscellaneous technical corrections to its regulations on March 8, 2017 (82 FR 12921). The Postal Service is now making two technical corrections to the Change of Address or Boxholder Request Format for process servers found at 39 CFR 265.14. The first revision makes the requirement to provide a copy of the statute or regulation that empowers a requester to serve process optional rather than mandatory. The second revision changes the incorrect citation 39 CFR 265.14(d)(4)(ii) to 39 CFR 265.14(d).

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Postal Service amends 39 CFR part 265 as follows:

PART 265—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601; Pub. L. 114–185.

■ 2. Section 265.14 is amended by revising the figure titled ''Change of Address or Boxholder Request Format—Process Servers'' to read as follows:

§ 265.14 Rules concerning specific categories of records.

* * * * *

(g) * * *

BILLING CODE 7710–12–P

Change of Address or Boxholder Request Format — Process Servers

Date: _____

Mail To:

Postmaster

_____

City, State, ZIP Code

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name:_____

Last Known Address:_____

Note: Only one request may be made per completed form. The name and last known address are required for change of address information. The name, if known, and Post Office box address are required for boxholder information.

The following information is provided in accordance with 39 CFR 265.14(d). There is no fee for providing boxholder or change of address information.

1. Capacity of requester (e.g., process server, attorney, party representing self):_____
2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting pro se - except a corporation acting pro se must cite statute). Requesters are encouraged to enclose a copy of the statute or regulation for faster processing:
3. The names of all known parties to the litigation:_____
4. The court in which the case has been or will be heard:_____
5. The docket or other identifying number (a or b must be completed):
   ____ a. Docket or other identifying number: _____
   ____ b. Docket or other identifying number has not been issued.
6. The capacity in which this individual is to be served (e.g., defendant or witness): _____

WARNING

THE SUBMISSION OF FALSE INFORMATION TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO $10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.

_____ _____

Signature Address

_____ _____

Printed Name City, State, ZIP Code

POST OFFICE USE ONLY

_____No change of address order on file.
_____Moved, left no forwarding address.
_____No such address.

NEW ADDRESS OR BOXHOLDER'S NAME AND STREET ADDRESS

POSTMARK

* * * * *

Tracy A. Quinlan,

Attorney, Federal Compliance.

[FR Doc. 2018–04449 Filed 3–5–18; 8:45 am]

BILLING CODE 7710–12–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0479; FRL–9975–00—Region 3]

Air Quality Plans; Pennsylvania; Lebanon County 2012 Fine Particulate Matter Standard Determination of Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a final determination that the Lebanon County, Pennsylvania nonattainment area (the Lebanon County Area) has attained the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). This determination of attainment, also known as a clean data determination, is based on quality assured and certified ambient air quality data for the 2014–2016 monitoring period. The effect of this determination of attainment suspends certain planning requirements for the area, including the requirement to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures. These requirements would be suspended for as long as the area continues to meet the 2012 annual $PM_{2.5}$ NAAQS. This action is not a redesignation to attainment for the area. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on April 5, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0479. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gavin Huang, (215) 814–2042, or by email at *huang.gavin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2017 (82 FR 50851), EPA published a notice of proposed rulemaking (NPR) for the Lebanon County Area. In the NPR, EPA proposed to determine that the Lebanon County Area attained the 2012 annual $PM_{2.5}$ NAAQS.

Under EPA's longstanding Clean Data Policy,[1] which was codified in EPA's Clean Air Fine Particulate Implementation Rule (72 FR 20586, April 25, 2007), EPA may issue a determination of attainment after notice and comment rulemaking determining that a specific area is attaining the relevant standard. *See* 40 CFR 51.1004. The effect of a clean data determination is to suspend the requirement for the area to submit an attainment demonstration, RACM, RFP plan, contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment for as long as the area continues to attain the standard. In EPA's Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements final rule (81 FR 58010, August 24, 2016), EPA reaffirmed the Clean Data Policy at 40 CFR 51.1015.

II. EPA's Evaluation

Under EPA regulations at 40 CFR part 50, section 50.18 and appendix N, the annual primary $PM_{2.5}$ standard is met when the 3-year average of $PM_{2.5}$ annual mean mass concentrations for each eligible monitoring site is less than or equal to 12.0 micrograms per cubic meter ($\mu g/m^3$). Three years of valid annual means are required to produce a valid annual $PM_{2.5}$ NAAQS design value.

Consistent with the requirements of 40 CFR part 50, section 50.18 and appendix N, EPA determined the Lebanon County Area has attained the 2012 annual $PM_{2.5}$ NAAQS. The certified annual design value for 2014–2016 is 11.2 $\mu g/m^3$, which is below the 2012 annual primary $PM_{2.5}$ standard of 12.0 $\mu g/m^3$.

The specific requirements of this determination of attainment and the rationale for EPA's proposed action, including how the annual design value for 2014–2016 was calculated, are explained in the NPR and will not be restated here. EPA received comments that are addressed in Section III of this rulemaking action.

III. Public Comments and EPA's Responses

EPA received adverse comments from one commenter, the Clean Air Council (hereinafter referred to as the ''Commenter''). The Commenter expressed concern about EPA's calculations performed for this determination of attainment. The Commenter states, ''EPA should perform its calculations again and provide explanations for its conclusions, which were not substantiated by the background documents in the rulemaking docket.'' EPA provided its explanations and support for the determination of attainment in the NPR and explained the certified annual design value for 2014–2016 is 11.2 $\mu g/m^3$, which is below the 2012 annual primary $PM_{2.5}$ standard of 12.0 $\mu g/m^3$. The Commenter's specific concerns are summarized and addressed in this section.

Comment 1: For the 2015 annual mean, the Commenter confirmed the annual mean calculation from EPA but had comments regarding data from the second quarter of 2015. The Commenter noted there was only monitored data for 64 of the 91 days in the quarter which led EPA to conduct a ''data completeness test.'' The Commenter states that ''EPA substituted 30.5 micrograms per cubic meter for each of the 27 days of missing data, based on the premise that this figure was the highest daily average in the second quarters of 2014, 2015, and 2016'' and stated that this figure was the daily average for June 11, 2015, during the second quarter of 2015. The Commenter states that EPA does not acknowledge that there was actually a *higher* daily value of 34 $\mu g/m^3$ on May 11, 2016, during the second quarter of 2016 based on data Commenter obtained from an EPA website.[2] The Commenter states that it is possible that EPA excluded this figure under the rationale that there was an ''extraordinary event.'' The Commenter also notes there was additional monitored data available related to Parameter Occurrence Code 3 (POC 3) from the EPA website for the second quarter of 2015 which EPA did not consider in supporting the determination of attainment. The Commenter notes the design value

[1] ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards,'' Memorandum from Stephen D. Page, December 14, 2004.

[2] *https://www.epa.gov/outdoor-air-quality-data/download-daily-data.*

would still be lower than the NAAQS but notes EPA should provide a legal and technical explanation and should perform the calculations again based on the correct data.

Response 1: In accordance with 40 CFR part 50, appendix N, section 3.0(d)(1), the Pennsylvania Department of Environmental Protection (PADEP) installed a $PM_{2.5}$ monitor with federal reference method (FRM) code 145, parameter occurrence code 1 (POC 1) at the Lebanon County site (Site ID 42–075–0100) and designated this monitor as the primary monitor in January 2016.[3] PADEP also has a collocated monitor with federal equivalent method (FEM) code 170, parameter occurrence code 3 (POC 3). 40 CFR part 50, appendix N, section 3.0(d)(1), states: ''The default dataset for $PM_{2.5}$ mass concentrations for a site shall consist of the measured concentrations recorded from the designated primary monitor(s). All daily values produced by the primary monitor are considered part of the site record; this includes all creditable samples and all extra samples.'' Additionally 40 CFR part 58, appendix A, section 3.2.3 states: ''For each pair of collocated monitors, designate one sampler as the primary monitor whose concentrations will be used to report air quality for the site, and designate the other as the quality control monitor. There can be only one primary monitor at a monitoring site for a given time period.'' As previously mentioned on January 1, 2016, PADEP designated POC 1 as the primary monitor. Therefore, after January 1, 2016, on days where the primary monitor POC 1 produces a daily value, it is considered part of the site record and not the data from collocated monitor POC 3.

Additionally, 40 CFR part 50, appendix N, section 3.0(d)(2), states that, ''Data for the primary monitors shall be augmented as much as possible with data from collocated monitors. *If a valid daily value is not produced by the primary monitor for a particular day (scheduled or otherwise), but a value is available from a collocated monitor, then that collocated value shall be considered part of the combined site data record* (emphasis added). If more than one collocated daily value is available, the average of those valid collocated values shall be used as the daily value. The data record resulting from this procedure is referred to as the 'combined site data record.' ''

Pursuant to 40 CFR part 50, appendix N, section 3.0(d)(2), the data from collocated monitor POC 3 is only considered as part of the combined site data record (to be used in determining design value for the 2012 annual $PM_{2.5}$ NAAQS) when there is no valid daily value from the primary monitor POC 1. For the data substitution test[4] performed by EPA in the second quarter of 2015 due to missing data values, EPA used the highest daily site record for the second quarter substitution value. 40 CFR part 50, appendix N, section 1(c) defines the value used for the maximum data substitution test and provides ''[t]he *maximum quarterly value data substitution test* substitutes actual 'high' reported daily $PM_{2.5}$ values from the same site (specifically, the highest reported non-excluded quarterly value(s) (year non-specific) contained in the combined site record for the evaluated 3-year period) for missing daily values.'' The daily site record included data from POC 1 and POC 3 depending on which monitor was primary and which monitor had valid data between April 1 and June 30 in 2014, 2015, and 2016, *i.e.* the second quarters of 2014, 2015, and 2016. EPA determined that the highest daily site record for the second quarter substitution value was 30.5 μg/m³ recorded on June 11, 2015 from POC 1. The higher daily value of 34 μg/m³ was recorded on May 11, 2016 by the collocated monitor, POC 3. However, because POC 1 produced a valid daily value of 29.1 μg/m³ on this same day, May 11, 2016, the data value from POC 3 was not used in the data substitution test as the highest daily site record and therefore the daily value of 30.5 μg/m³ recorded on June 11, 2015 was the highest daily site record for the second quarter between 2014–2016. EPA's use of 30.5 μg/m³ in the data substitution test for 2015 was therefore correct and in accordance with 40 CFR part 50 appendix N, and no calculations need to be redone for the 2015 annual mean. EPA notes that we did not exclude this data (the 34 μg/m³ recorded on May 11, 2016 by the collocated monitor, POC 3) in our data substitution analysis due to any ''exceptional event,'' as we did not use this data because data from the primary monitor POC 1 was available on that same day. *See* 40 CFR part 50, appendix N, section 3.0(d)(2).

Comment 2: For the 2016 annual mean, the Commenter states that it is unclear which monitor is intended to be the primary monitor. The Commenter claims that the 2016 annual mean should be 12.22 μg/m³ instead of EPA's calculated mean of 9.72 μg/m³ and states it was unclear how EPA calculated its annual mean for 2016. Therefore, based on the Commenter's calculations, the annual design value for 2014–2016 should be 12.03 μg/m³ using the higher annual mean for 2016 calculated by the Commenter. The Commenter claims the difference is material because the analysis leads to a determination that Lebanon County is still not attaining the standard of 12.0 μg/m³. Additionally, the Commenter requests that if EPA ''has relied primarily on data from POC 1, to the exclusion of data from POC 3, it should provide an explanation of the legal and technical authority for doing so.'' The Commenter notes data from POC 1 was generally lower than data from POC 3 when both monitors were operating on the same dates.

Response 2: As discussed in Response 1, POC 1 became the designated primary monitor as of January 2016. *See* 40 CFR part 50, appendix N, section 3.0(d)(1) and (2) and Docket ID EPA–R03–OAR–2017–0479–0016. When calculating the 2016 annual mean, EPA used the data from primary monitor POC 1 and substituted any missing days from the primary monitor with data from collocated monitor POC 3. *Id.* This resulted in 2016 quarterly means of 12.18, 8.70, 8.62, 9.37 μg/m³ and an annual mean of 9.72 μg/m³, and not 12.22 μg/m³, which Commenter calculated by inappropriately combining data from POC 1 and POC 3. POC 1 is the primary monitor and thus the primary source of data for determining the mean unless data is missing. *Id.* Thus, EPA correctly calculated the 2016 annual mean and the 2014–16 design value as explained in the NPR. While EPA disagrees with

[3] *See* Docket ID EPA–R03–OAR–2017–0479–0016. Page 2 of the ''Air Quality System (AQS) Monitor Description Report,'' notes POC 1's official start date as January 1, 2016. Therefore, EPA will be referencing the January 1, 2016 date. PADEP's 2016 Annual Ambient Air Monitoring Network Plan notes the start date as January 7, 2016.

[4] EPA notes that ''data substitution test'' is defined in 40 CFR part 50, appendix N as ''diagnostic evaluations performed on an annual $PM_{2.5}$ NAAQS design value (DV) or a 24-hour $PM_{2.5}$ NAAQS DV to determine if those metrics, which are judged to be based on incomplete data in accordance with 4.1(b) or 4.2(b) of this appendix shall nevertheless be deemed valid for NAAQS comparisons, or alternatively, shall still be considered incomplete and not valid for NAAQS comparisons. There are two data substitution tests, the 'minimum quarterly value' test and the 'maximum quarterly value' test. *Design values (DVs)* are the 3-year average NAAQS metrics that are compared to the NAAQS levels to determine when a monitoring site meets or does not meet the NAAQS, calculated as shown in section 4.'' In the NPR, EPA discussed its application of the data substitution test using the maximum quarterly value test. Appendix N provides that the ''*maximum quarterly value data substitution test*'' substitutes actual ''high'' reported daily $PM_{2.5}$ values from the same site (specifically, the highest reported non-excluded quarterly value(s) (year non-specific) contained in the combined site record for the evaluated 3-year period) for missing daily values.

the Commenter's analysis as stated above, EPA notes that the Commenter's calculated design value of 12.03 μg/m^3 (even if correct) would still demonstrate an attaining design value for the 2012 annual $PM_{2.5}$ NAAQS. 40 CFR part 50, appendix N, section 4.3(a) states, ''[a]nnual $PM_{2.5}$ NAAQS DVs (design values) shall be rounded to the nearest tenth of a μg/m^3 (decimals x.x5 and greater are rounded up to the next tenth, and any decimal lower than x.x5 is rounded down to the nearest tenth).'' Therefore, based on the rounding conventions established at 40 CFR part 50, appendix N, section 4.3(a), 12.03 μg/m^3 would round to 12.0 μg/m^3 and still meet the 2012 annual $PM_{2.5}$ NAAQS.

Comment 3: The Commenter states that an EPA guidance document contemplates supplementing data from a primary monitor with data from a secondary monitor. *See* AQS Tech Note POC 6–28–13, Technical Note—Guidance on the Use of Parameter Occurrence Codes (POCs) When Using Multiple Instruments at Monitoring Sites, *https://www.epa.gov/aqs/aqs-tech-note-poc-6-28-13* (''The regulatory language for particulate matter (PM) and lead (Pb) monitoring allows for the combining of data when the primary monitor at the site does not sample on a particular day either due to it not being a scheduled sampling day or the instrument did not collect a valid sample.'').

Response 3: ''AQS (Air Quality System) Tech Note POC 6–28–13'' is a technical memo from EPA to states, local, tribal, and other data users who use the Air Quality System[5] (AQS) to submit and retrieve air quality data. The memo explains that each individual monitor should be reported to AQS under a specific POC even if the data from these monitors is going to routinely be combined as the site record. Reporting data this way allows data users to properly assess the quality of data from a specific monitor while providing the proper sample completeness at a monitoring site. The memo goes further to explain that in 2008, AQS was enhanced to automatically combine $PM_{2.5}$ values from collocated data in accordance with 40 CFR part 50, appendix N. As described in Response 1, EPA does allow the data from a collocated monitor to be considered as part of the combined site data record when there is no valid daily value from the primary monitor. EPA thus correctly considered data from the collocated monitor in Lebanon County when appropriate in accordance with 40 CFR part 50, appendix N.

Comment 4: The Commenter states that there is a discrepancy for the third quarter of 2016, as the Commenter found 92 data samples instead of 91 data samples using data downloaded from EPA's website.

Response 4: EPA has reviewed the third quarter data for 2016 and has determined that on August 10, 2016, neither POC 1 nor POC 3 produced a valid daily value. Therefore, 91 data samples were used in calculating the third quarter 2016 mean. Thus, no discrepancy or error exists.

Comment 5: The Commenter claims that EPA relied on data from POC 3 exclusively for 2014 and 2015 and excluded data from POC 3 in the face of lower data from a new POC 1.

Response 5: As previously discussed in Response 1, POC 1 is the designated primary monitor as of January 2016 and POC 3 is a collocated monitor. *See* 40 CFR part 50, appendix N, section 3.0(d)(1) and (2). Therefore, the data from primary monitor POC 1 is used as the site record, but is augmented with data from collocated monitor POC 3 whenever there is missing data from POC 1. In 2016, POC 3 data was used as the site record 60 days out of the 364 days used to calculate the 2016 annual mean because data from POC 1, the designated primary monitor, was not available. EPA therefore appropriately used data from POC 1 when available in 2016 in calculating the annual mean and used data from POC 3 in 2016 when data from POC 1 was unavailable in accordance with CAA regulations.

IV. Final Action

EPA is making a final determination that the Lebanon County Area has attained the 2012 annual $PM_{2.5}$ NAAQS. As provided in 40 CFR 51.1015, finalization of this determination suspends the requirements for this area to submit an attainment demonstration, associated RACM, RFP plan, contingency measures, and any other planning SIP requirements related to the attainment of the 2012 $PM_{2.5}$ NAAQS, so long as this area continues to meet the standard. This determination of attainment does not constitute a redesignation to attainment. The Lebanon County Area will remain designated nonattainment for the 2012 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan, pursuant to sections 107 and 175A of the CAA.

V. Statutory and Executive Order Reviews

A. General Requirements

This rulemaking action proposes to make a determination of attainment of the 2012 $PM_{2.5}$ NAAQS based on air quality data and does not impose additional requirements. For that reason, this proposed determination of attainment:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the Lebanon County Area does not include any Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

[5] AQS is EPA's repository of ambient air quality data. AQS stores data from over 10,000 monitors, 5,000 of which are currently active. *See https://www.epa.gov/aqs.*

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 7, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action determining that the Lebanon County Area attained the 2012 annual $PM_{2.5}$ NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 15, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2059 is amended by adding paragraph (w) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(w) *Determination of Attainment.* EPA has determined based on 2014 to 2016 ambient air quality monitoring data, that the Lebanon County, Pennsylvania moderate nonattainment area has attained the 2012 annual fine particulate matter ($PM_{2.5}$) primary national ambient air quality standard (NAAQS). This determination, in accordance with 40 CFR 51.1015, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning state implementation plan revisions related to attainment of the standard for as long as this area continues to meet the 2012 annual $PM_{2.5}$ NAAQS.

[FR Doc. 2018–04424 Filed 3–5–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0590; FRL–9974–96—Region 1]

Air Plan Approval; Massachusetts; Logan Airport Parking Freeze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This SIP revision increases the total number of commercial parking spaces allowed in the Logan Airport Parking Freeze area by 5,000 parking spaces. The intended effect of this action is to reduce carbon monoxide (CO) and nitrogen oxide (NO_X) emissions by reducing the increased vehicle miles traveled (VMT) resulting from insufficient available parking at Logan Airport. This action is being taken under the Clean Air Act.

DATES: This rule is effective on April 5, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2017–0590. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, tel. (617) 918–1697, email *mcwilliams.anne@epa.gov.*

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

Table of Contents

I. Background and Purpose

On December 5, 2017 (83 FR 57415), EPA published a Notice of Proposed Rulemaking (NPRM) for the Commonwealth of Massachusetts. The NPRM proposed approval of revisions to 310 Code of Massachusetts Regulations (CMR) 7.30 Massachusetts Port Authority (Massport)/Logan Airport Parking Freeze. The formal SIP revision was submitted by Massachusetts on July 13, 2017.

The revised 310 CMR 7.30 increases the total number of commercial spaces in the Logan Parking Freeze area by 5,000 spaces to a total of 26,088. In the event that the remaining 702 park-and-fly spaces in the East Boston Parking Freeze cap were converted to commercial spaces at Logan Airport in the future, the maximum total number of spaces permitted would be 26,790.

In addition, the revision requires Massport to complete the following studies within 24 months of June 30, 2017: (1) Potential improvements to high occupancy vehicle access to Logan Airport; (2) a cost and pricing assessment for different modes of transportation to and from Logan Airport in order to generate revenue for the promotion of high-occupancy

vehicle (HOV) use by airport travelers and visitors; and (3) the feasibility and effectiveness of potential operational measures to reduce non-HOV pick-up/drop-off modes of transportation to Logan Airport.

Finally, the revision allows Massport to satisfy its annual reporting requirements through its submission of annual Environmental Data Reports or similar airport-wide documents under the Massachusetts Environmental Policy Act (MEPA).

The rationale for EPA's proposed action is explained in the NPR and will not be restated here. EPA received comments from the Conservation Law Foundation (CLF) in support of the NPRM after the close of the comment period, and they have been included in the docket for this action. Initially, CLF opposed the addition of 5,000 commercial parking spaces. However, with the development of a binding agreement between CLF and Massport, CLF now supports this SIP revision due to the agreed upon addition of substantial transportation mitigation measures and increased HOV targets. The only comment received during the public comment period was not germane or specific to this rulemaking, and did not state how or why the rule should be changed. Therefore, no additional response to the comment will be provided here.

II. Final Action

EPA is approving revised 310 CMR 7.30 Massport/Logan Airport Parking Freeze as a revision to the Massachusetts SIP.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of 310 CMR 7.30 Massport/Logan Airport Parking Freeze described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov.*

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 7, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 26, 2018.

Alexandra Dapolito Dunn,

Regional Administrator, EPA New England.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart W—Massachusetts

■ 2. In § 52.1120, in paragraph (c), amend the table by revising the entry ''310 CMR 7.30'' to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	State effective date	EPA approval date [1]	Explanations
*	*	*	*	* * *
310 CMR 7.30 ...	Massport/Logan Airport Parking Freeze.	6/30/2017	3/6/2018 ..... [Insert **Federal Register** citation].	Revises the existing commercial parking freeze limits and requires the Massachusetts Port Authority to complete several studies to evaluate ways to further support alternative transit options.
*	*	*	*	* * *

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

* * * * *

[FR Doc. 2018–04488 Filed 3–5–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0080; FRL–9973–39]

Lipochitooligosaccharide (LCO) SP104; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for lipochitooligosaccharide (LCO) SP104 in or on all food commodities when used in accordance with label directions and good agricultural practices. Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of LCO SP104 under FFDCA.

DATES: This regulation is effective March 6, 2018. Objections and requests for hearings must be received on or before May 7, 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–2017–0080, 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: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@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 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(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0080 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 7, 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–2017–0080, 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. Background

In the **Federal Register** of June 8, 2017 (82 FR 26641) (FRL–9961–14), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F8520) by Monsanto Company, 1300 I (Eye) St. NW, Suite 450 East, Washington, DC 20005. The petition requested that 40 CFR 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the plant growth regulator LCO SP104 in or on raw agricultural commodities and processed foods. That document referenced a summary of the petition prepared by the petitioner, Monsanto Company, which is available in the docket via *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(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. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption 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. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.'' FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

EPA evaluated the available toxicity and exposure data on LCO SP104 and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Lipochitooligosaccharides (LCOs) are signaling molecules produced by bacteria, which are involved in the initiation of plant-microbe endosymbiosis (the scenario when a microbe colonizes a plant) in an estimated 70–80% of terrestrial plants. As a pesticide, LCO SP104, a synthetically produced LCO, is intended for use as a plant growth regulator (PGR) to increase growth and decrease stress in growing crops. Typical of a PGR, LCO SP104 should be applied at low concentrations because use at high concentrations can result in detrimental effects to the plant. LCO SP104 is structurally similar to naturally occurring LCOs. Humans are exposed to naturally occurring LCOs as they are present in the roots of food crops and in the bacteria and fungi that are associated with the roots of these crops. Molecules identical to LCO breakdown products (such as chitin) are also present in insects, crustaceans, fungi, bacteria, and humans, and are regularly consumed by humans as part of a normal diet.

Based on the data submitted in support of this petition (summarized in Unit II. B., below) and the comprehensive risk assessment conducted by the Agency (included in the Docket for this action), EPA concludes that there is a reasonable certainty of no harm from aggregate exposures to LCO SP104, including the consumption of food treated with this active ingredient in accordance with label directions and good agricultural practices. EPA has made this determination because available toxicology data indicate that the active ingredient is not acutely toxic and, based upon a weight of the evidence (WOE) approach, it has been determined not to be a developmental toxicant, a mutagen, or toxic via repeat oral exposure (i.e. not subchronically toxic via the oral route). As such the Agency has not identified any endpoints of concern for LC SP104 and has conducted a qualitative assessment of exposure. The Agency has determined that residues of LCO SP104 in drinking water are not expected when products are used according to label instructions. The active ingredient is applied at low concentrations, is very soluble in water, and will dissociate within minutes once applied. Non-occupational exposures are not expected since LCO SP104 is not intended for residential use. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the January 22, 2018, document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for Lipochitooligosaccharide (LCO) SP104.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

Based upon its evaluation, EPA concludes that LCO SP104 is of low acute toxicity and no toxicological endpoints have been identified for this compound. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of LCO SP104. Therefore, EPA is establishing an exemption from the requirement of a tolerance for residues of LCO SP104.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes due to the lack of concern about safety for LCO SP104 at any exposure level.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning

Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, 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. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA 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, EPA 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 EPA's 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).

V. 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: February 23, 2018.

Richard Keigwin, Jr.,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.1353 to subpart D to read as follows:

§ 180.1353 Lipochitooligosaccharide (LCO) SP104; exemption from the requirement of a tolerance.

Residues of the biochemical pesticide Lipochitooligosaccharide (LCO) SP104 (which has been used in accordance with label directions and good agricultural practices) are exempt from the requirement of a tolerance in or on all food commodities.

[FR Doc. 2018–04534 Filed 3–5–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0519; FRL–9972–96]

Kasugamycin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of kasugamycin in or on the cherry subgroup 12–12A and walnut. The Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 6, 2018. Objections and requests for hearings must be received on or before May 7, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0519, 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 L. Goodis, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

To access the OCSPP test guidelines referenced in this document

electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0519 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 7, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0519, 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 June 8, 2017 (82 FR 26641) (FRL–9961–14), 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 6E8450) by IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.614 be amended by establishing tolerances for residues of the fungicide kasugamycin, (3-*O*-[2-amino-4-[(carboxyimino-methyl)amino]-2,3,4,6-tetradeoxy-α-D-*arabino*-hexopyranosyl]-D-*chiro*-inositol, in or on fruit, stone, subgroup 12–12A at 0.6 parts per million (ppm) and walnut at 0.04 ppm. That document referenced a summary of the petition prepared by Arysta LifeScience North America, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

In accordance with EPA's significance figures policy, as discussed in Unit IV.C., the established tolerance for cherry subgroup 12–12A is adjusted slightly from the petition request.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Kasugamycin is an aminoglycoside antibiotic pesticide with limited activity against some plant bacterial and fungal pathogens. There are no human or veterinary therapeutic applications due to low efficacy, but at one time was used clinically in Japan to treat *Pseudomonas* kidney infections in humans (Shuwirth *et al.* (2006) *Nat. Struct. Mol. Biol.* 13(10):879–886). The mode of action is distinct from other aminoglycosides such as streptomycin, which also has pesticidal uses. Kasugamycin inhibits formation of the 30S ribosomal subunit at initiation of protein synthesis by perturbing the mRNA-tRNA codon/anticodon interaction; other aminoglycoside antibiotics bind to the 30S ribosomal subunit, but disrupt translation of mRNA at later stages of initiation.

The primary target organs identified for kasugamycin were the testes and kidney. These effects were seen at higher dose levels, generally at the highest dose tested (HDT). In the rat combined chronic toxicity/carcinogenicity study, an increased incidence and severity of testicular tubular atrophy was observed at histopathological evaluations at 6, 12 and 24 months. Testicular degeneration and atrophy were also observed in adult F1 males in the rat reproductive toxicity study at the highest dose. Testicular tubular dilatation and degeneration were observed in the subchronic mouse study at a dose that exceeded the limit dose, but not in the mouse carcinogenicity study, which tested at much lower doses. In the dog chronic toxicity study, testicular inflammation was reported at the high dose, but was not accompanied by atrophic or degenerative changes, and was not considered a treatment-related adverse effect.

Kidney toxicity is often associated with exposure to aminoglycoside antibiotics. In the rat reproductive toxicity study, kidney dilatation and increased incidence of chronic progressive nephropathy were observed in F1 males. In the subchronic rat study, increased incidence of eosinophilic bodies (slight severity) in the renal proximal tubular cells was reported in males at several dose levels. These effects were considered treatment-related but not adverse due to the low severity and lack of associated findings.

However, in female rats, increased epithelial cells in the urinary sediment, along with decreased urine pH (also seen in males), was considered evidence of possible kidney toxicity. Slight lipofuscin deposition in the rat combined chronic toxicity/carcinogenicity study was not considered adverse due to the lack of other related findings (this study tested up to the NOAEL of the subchronic study). The rat metabolism study indicated higher levels of radioactivity in the kidneys than other tissues. In the subchronic mouse study, minimal to severe basophilia/hyperplasia in the renal *pars recta* in females was observed. No renal effects were seen in the mouse carcinogenicity study or in the dog.

Kasugamycin caused decreased body weight and/or weight gain in subchronic studies in the rat, mouse and dog. The chronic studies, which tested at lower doses, did not show body weight effects. Decreased body weight was also observed in developmental and reproductive studies in the rat and the range-finding study for the rabbit developmental study. Body weight effects in the mouse immunotoxicity study were observed only at a dose exceeding the limit dose.

Kasugamycin appears to be irritating to the oral and gastrointestinal tract mucosa. Anal lesions and perianal/perigenital staining were observed in the subchronic mouse study. Red and swollen skin around the anal opening, and inflammation and ulceration of the rectum, were noted in male and female rats of both generations in the 2-generation reproduction study. In the rat developmental toxicity study, distention of the large intestine with stool in the cecum, and an increased incidence of loose stool, were reported. Similar findings were seen in the rabbit developmental range-finding study among females that died or were sacrificed *in extremis.* These effects may be related to the acidity (or other irritant property) of the active ingredient, which is primarily excreted unabsorbed and un-metabolized in the feces. In the dog, tongue and mouth lesions were reported at the highest dose tested in the subchronic toxicity study (but not the chronic study, which tested at a lower dose). Systemic effects were not observed in the rat 21-day dermal study at doses up to the limit dose, but local dermal irritation was observed.

The available studies, including rat acute and subchronic neurobehavioral screening studies, did not show evidence of neurotoxicity. A 28-day mouse immunotoxicity study did not show evidence of immune system effects.

There was no evidence of increased quantitative or qualitative susceptibility in rat or rabbit developmental toxicity studies, or in the rat reproductive study. No developmental effects were seen in the rat developmental study up to doses causing maternal toxicity (decreased body weight gain, food consumption, and feed efficiency). No maternal or developmental toxicity was observed in the main rabbit developmental toxicity study, in the dose range-finding study, but maternal weight loss, reduced food consumption during dosing and abortions (GD 18 or later) were observed at higher doses. Fetal weight was decreased at the maternally toxic dose, but could not be evaluated at higher doses due to maternal death and abortions. In the rat reproductive toxicity study, parental toxicity included decreased body weight/weight gain. No offspring toxicity was observed. Reproductive toxicity at the highest dose tested (above the parental LOAEL) included testicular atrophy, decreased fertility and fecundity in the F1 parents for both litters, and an increased pre-coital interval during the F2b litter mating period.

Kasugamycin is classified as ''not likely to be carcinogenic to humans,'' based on lack of evidence of carcinogenicity in rat and mouse carcinogenicity studies. There was no evidence of genotoxicity.

Specific information on the studies received and the nature of the adverse effects caused by kasugamycin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''*Kasugamycin. Human Health Risk Assessment for the Proposed Section 3 Registration of New Uses of the Antibiotic Fungicide on Cherry Subgroup 12–12A and Walnuts*'' on pages 30–39 in docket ID number EPA–HQ–OPP–2016–0519.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.* A summary of the toxicological endpoints for kasugamycin used for human risk assessment is discussed in Unit III.B of the final rule published in the **Federal Register** of August 29, 2014 (79 FR 51492) (FRL–9911–57).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to kasugamycin, EPA considered exposure under the petitioned-for tolerances as well as all existing kasugamycin tolerances in 40 CFR 180.614. EPA assessed dietary exposures from kasugamycin in food as follows:

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

No such effects were identified in the toxicological studies for kasugamycin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United Stated Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA; 2003–2008). As to residue levels in food, EPA assumed tolerance level residues and 100% crop treated for all registered and proposed crops.

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

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

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for kasugamycin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of kasugamycin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Root Zone Model 5/Variable Volume Water Model (VVWM) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of kasugamycin for chronic exposures are estimated to be 1.63 parts per billion (ppb) for surface water and 41.71 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 41.71 ppb was used to assess the contribution to drinking water.

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

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

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased quantitative or qualitative pre- and/or postnatal susceptibility in developmental toxicity studies in two species, or the rat 2-generation reproductive toxicity study. Abortions and a reduction in fetal body weight in the rabbit developmental toxicity range-finding study were considered secondary to maternal toxicity (weight loss, and decreased food consumption). No toxicity to offspring was observed in the rat reproductive toxicity study.

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

i. The toxicity database for kasugamycin is complete.

ii. There is no indication that kasugamycin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

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

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

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, kasugamycin is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to kasugamycin from food and water will utilize 4.2% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for kasugamycin.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no residential uses, kasugamycin is not expected to pose a short-term risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level. Because there are no residential uses, kasugamycin is not expected to pose an intermediate-term risk.

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

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children

from aggregate exposure to kasugamycin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An approved tolerance enforcement method for crops is available for kasugamycin using a reverse-phase, ion pairing HPLC/UV method (Morse Laboratories Method #Meth-146, Revision #4) for collecting data and enforcing tolerances for kasugamycin in plant commodities. 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 kasugamycin.

C. Revisions to Petitioned-For Tolerances

In establishing the tolerance for cherry subgroup 12–12A, EPA added a significant figure (0.60 ppm rather than the proposed 0.6 ppm). This is in order to avoid the situation where rounding of an observed residue to the level of precision of the tolerance expression would be considered non-violative (such as 0.64 ppm being rounded to 0.6 ppm).

V. Conclusion

Therefore, tolerances are established for residues of kasugamycin, (3-*O*-[2-amino-4-[(carboxyimino-methyl)amino]-2,3,4,6-tetradeoxy-α-D-*arabino*-hexopyranosyl]-D-*chiro*-inositol), in or on cherry subgroup 12–12A at 0.60 ppm and walnut at 0.04 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001); Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or 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: February 23, 2018.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.614, add alphabetically the entries ''Cherry subgroup 12–12A''; and ''Walnut'' to the table in paragraph (a) to read as follows:

§ 180.614 Kasugamycin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Cherry subgroup 12–12A	0.60
* * * * *	
Walnut	0.04

* * * * *

[FR Doc. 2018–04529 Filed 3–5–18; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 83, No. 44
Tuesday, March 6, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 235

[FNS–2017–0039]

RIN 0584–AE60

Hiring Flexibility Under Professional Standards

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add four flexibilities to the hiring standards for new school nutrition program directors in small local educational agencies (LEAs) and new school nutrition program State directors under the professional standards regulations for the National School Lunch and School Breakfast Programs. First, to address the hiring challenge faced by small LEAs, those with 2,499 or fewer students, this rule would require relevant food service experience rather than school nutrition program experience for new directors. Second, it would provide State agencies with discretion to consider volunteer or unpaid work as relevant food service experience for new school nutrition program directors in small LEAs. Third, to further assist LEAs with less than 500 students, this proposed rule would expand the existing regulatory flexibility which gives State agencies discretion to accept less than the required years of food service experience when an applicant for a new director position has the minimum required education. Fourth, this rule would also add flexibility to the hiring standards for State directors of school nutrition programs by considering applicants with either a bachelor's or a master's degree in specific, relevant fields. These proposed changes are expected to expand the pool of candidates qualified to serve as leaders in the school nutrition programs while continuing to ensure that school nutrition professionals are able to perform their duties effectively and efficiently.

DATES: Written comments must be received on or before May 7, 2018 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, 12th Floor, Alexandria, Virginia 22302.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tina Namian, Chief, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, 12th Floor, Alexandria, Virginia 22302; 703–305–2590.

SUPPLEMENTARY INFORMATION: On July 1, 2015, FNS implemented professional standards for school nutrition personnel who manage and operate the National School Lunch Program (NSLP) and School Breakfast Program (SBP), as required by the final rule *Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010* (80 FR 11077) and section 7(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(g)). The professional standards consist of hiring and training standards as follows:

- Hiring standards for new school nutrition program directors of school food authorities (SFAs). These hiring standards, established at 7 CFR 210.30(b)(1)(i), (ii) and (iii), are based on student enrollment for three local educational agency (LEA) sizes: 2,499 students or less; 2,500–9,999 students; and 10,000 or more students.
- Hiring standards for new State directors of school nutrition programs and new State directors of distributing agencies. These hiring standards are established at 7 CFR 235.11(g)(1) and (2), respectively.
- Annual training hours for all State directors of school nutrition programs and all State directors of distributing agencies (established at 7 CFR 235.11(g)(3) and (4)); and annual training hours for all local school nutrition program personnel—directors (at 7 CFR 210.30(b)(3)), managers (at 7 CFR 210.30(c)), and staff (at 7 CFR 210.30(d)).

The professional standards are intended to ensure that school nutrition professionals who manage and operate the NSLP and SBP have adequate knowledge and training to meet program requirements. Requiring proper qualifications to serve in the NSLP and SBP is expected to improve the quality of school meals, reduce errors, and enhance program integrity.

School Nutrition Program Directors

As explained earlier, at the local level, the hiring standards are based on the LEA size. To facilitate recruitment and hiring of new SFA directors in small LEAs with less than 500 students, current regulations at 7 CFR 210.30(b)(1)(i)(D) give State agencies discretion to allow the hiring of a new school nutrition program director who holds a high school diploma but less than the required three years of school nutrition program experience.

Since implementation of the professional standards in 2015, FNS has received multiple inquiries from State agencies on behalf of SFAs that are facing challenges with the hiring standards applicable to LEAs with 500 to 2,499 students. The majority of the inquiries and/or waiver requests received by FNS originated in the Mountain Plains Region, which includes States with small LEAs such as those in rural and/or in Tribal communities. These small LEAs often have difficulty recruiting new school nutrition program directors with previous school nutrition program experience, as currently required by the professional standards regulations.

The current regulations at 7 CFR 210.30(b)(1)(i) require from one to three

years of prior school nutrition program experience, depending on the level of education attained by the new director. Applicants with an associate's degree, or the equivalent, in a relevant field are required to have at least one year of relevant school nutrition program experience. Applicants with a high school diploma, or the equivalent, are required to have at least three years of relevant school nutrition program experience. School nutrition program experience is not required for new directors with: (1) A bachelor's degree or higher with a specific academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; or (2) a bachelor's degree with any academic major or area of concentration and a State-recognized certificate for school nutrition directors.

Informal input received by FNS at State agency meetings and through other State agency contacts reveals that SFAs operating in small LEAs, particularly those in rural or less populated areas, often struggle to find applicants with school nutrition program experience. In the school meal programs, there are approximately 6,500 LEAs with an enrollment between 500–2,499 students, which represents about 36 percent of the LEA population nationwide. These small LEAs are found in States across the nation, including California, Colorado, Iowa, Montana, New Mexico, South Dakota, and Wisconsin. For example, within the last two years, six SFAs in one State agency were diligent in advertising director vacancies but were not able to hire new directors with the required school nutrition program experience due to the limited pool of applicants in the local labor market. Most applicants in these small LEAs have acquired relevant food service experience by working as managers or chefs at local restaurants and healthcare facilities. If a SFA hires a new director without the required education or school nutrition program experience, in violation of program requirements, the SFA is not permitted to use funds from the non-profit school food service account, which includes NSLP and SBP reimbursements, to pay the salary of the director at issue. This fiscal impact could jeopardize a SFA's financial viability and ability to participate in the NSLP and SBP.

To assist these SFAs with this challenge and provide more local control over hiring decisions that reflect their unique labor markets, FNS proposes the following changes to the hiring standards at 7 CFR 210.30(b)(1)(i) for LEAs with 2,499 students or less:

- Remove the school nutrition program experience requirement for new directors, and instead require relevant food service experience for this LEA size only;
- Provide State agencies the discretion to consider applicants' volunteer or unpaid food service experience on a case-by-case basis. This optional flexibility is expected to be particularly useful for small LEAs, such as charter and Tribal schools; and
- In small LEAs with less than 500 students, provide the State agency discretion to approve the hire of a director who has less than the required years of food service experience, provided that the applicant has the minimum education specified in the hiring standards for LEAs with 2,499 students or less.

These proposed flexibilities are intended to provide LEAs with 2,499 students or less increased access to a larger pool of applicants with relevant food service experience gained inside or outside the NSLP/SBP and applicable to the director's position. This food service experience could be either in a paid food service position (*e.g.,* restaurant manager or cook) or could be gained in an unpaid food service position (*e.g.,* an unpaid apprenticeship/internship program or as a volunteer food service work in a community organization, such as a homeless shelter). The flexibility to consider unpaid experience, which is available at the discretion of the State agency on a case-by-case basis, acknowledges that in small communities there are few employment opportunities in food service but residents often volunteer to manage food service activities for civic and community organizations. Upon implementation of this proposed rule, an applicant with paid and/or unpaid experience managing the food service at a healthcare facility, restaurant, civic/community organization, or other type of establishment could be considered for a director's position, provided that the applicant also has the required education.

To provide additional assistance to small LEAs with less than 500 students, this proposed rule would modify the current optional flexibility at 7 CFR 210.30(b)(1)(i)(D), which provides State agencies discretion to allow an SFA to hire a new school nutrition program director with a high school diploma and less than the required years of experience. This proposed rule would allow the State agency to apply this optional flexibility to address hiring issues in LEAs with less than 500 students if an applicant has either a high school diploma, an associate's degree, or a bachelor's degree but less than the required years of food service experience. Ideally, a new program director in this situation would have some paid or unpaid food service experience. By expanding the existing optional flexibility at § 210.30(b)(1)(i)(D) to include other educational levels, FNS affirms its commitment to provide small LEAs with less than 500 students more local control to address their unique hiring challenges.

Based on the inquiries, waiver requests, and anecdotal input from State agencies, FNS understands that these proposed flexibilities would be helpful for LEAs with 2,499 students or less, such as rural and Tribal schools, residential child care institutions, and charter schools. It is important to stress that these proposed flexibilities only address the specialized experience requirement at 7 CFR 210.30(b)(1)(i) and would not affect the number of years of experience required, which ranges from one to three years based on the level of education of the new director, except in specific situations where the State agency may use its discretion to assist an LEA with less than 500 students (as explained earlier).

Also, although this proposed rule would remove the specialized experience requirement for new SFA directors in LEAs with 2,499 students or less, hiring a new school nutrition program director with school nutrition program experience is a best practice. Minimizing the learning curve helps contribute to a smooth transition during a personnel change, especially at this level of program administration. Otherwise, significant State agency support and guidance would be essential during the first year to ensure that the new director is able to manage the SFA's meal service as required by program regulations. Additionally, the *Orientation to School Nutrition Management Seminar* and other training resources from the Institute of Child Nutrition are available to help a new director who has little or no program experience conduct the day-to-day operations of the NSLP and SBP successfully.

This proposed rule would not amend the school nutrition program experience requirement for new directors in larger LEAs, those with 2,500 students or more. Operational experience since implementation of the professional standards in 2015 has not revealed issues with the experience requirement for larger LEAs, which are often located in large towns or cities in urban areas. FNS understands that such LEAs, which have a more complex school food service operation, generally have access

to a more robust pool of applicants. Therefore, specific school nutrition program experience would remain in place for new directors in LEAs with 2,500 students or more, as required under 7 CFR 210.30(b)(1)(ii) and (iii).

State Directors

At the State agency level, the professional standards consist of hiring standards for new State directors of school nutrition programs, hiring standards for new directors of distributing agencies, and annual training standards for new and current State directors. These requirements are established at 7 CFR 235.11(g).

FNS is proposing to allow flexibility in the hiring standards for new State directors of school nutrition programs to attract a larger number of professionals qualified to lead and manage the school nutrition programs statewide. For a new State director of school nutrition programs, the current regulations at 7 CFR 235.11(g)(1)(i) require a bachelor's degree with an academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field. A master's degree in one of the specified fields is strongly preferred.

To accommodate applicants who have a master's degree in one of the specified fields but a bachelor's degree in a non-related field, FNS proposes to add a master's degree in a relevant field to the basic qualifications listed in 7 CFR 235.11(g)(1)(i). This is intended to help ensure that highly educated individuals are not unintentionally prevented from serving as State director of school nutrition programs. Adding a master's degree in a relevant field to the basic qualifications acknowledges that many professionals change careers and gain relevant experience through advanced education in areas relevant to school nutrition. For example, a State agency supervisor who has a bachelor's degree in political science and a master's degree in nutrition education or public administration could be considered to serve as a State director of school nutrition programs.

Accordingly, this proposed rule would add more flexibility to the hiring standards in 7 CFR 210.30(b)(1)(i) for new LEA-level school nutrition program directors, and in 7 CFR 235.11(g)(1)(i) for new statewide school nutrition program directors to expand the pool of candidates qualified to serve in the school nutrition programs. FNS invites public comments on the specific flexibilities addressed in this proposed rule. Public comments will be extremely helpful in the development of the final rule.

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule promotes flexibility in the hiring standards for State and local school nutrition personnel but has no measurable costs or benefits. This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. This proposed rule would not have an adverse impact on small entities in the National School Lunch Program and School Breakfast Program rather it would ease program operations by adding flexibility in the hiring standards for new directors in small local educational agencies and new directors of State agencies.

Impact: The provisions of this proposed rule would apply to LEAs with 2,499 students or less, and to State agencies operating the National School Lunch Program and School Breakfast Program. These entities meet the definitions of ''small governmental jurisdiction'' and ''small entity'' in the Regulatory Flexibility Act. These entities would be able to quickly benefit from the hiring flexibilities proposed in this rule.

Executive Order 13771

This proposed rule is an E.O. 13771 deregulatory action that seeks to ease the professional standards regulations for State directors of school nutrition programs and for school nutrition program directors in small LEAs with 2,499 students or less, which are often found in rural communities facing labor market challenges. This rule addresses hiring challenges identified by the State agencies that administer the Child Nutrition Programs. It would add flexibility to hiring standards by expanding the range of allowable education for new State directors, and the range of allowable food service experience for new local directors in small LEAs.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program and School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Number 10.555 and Number 10.553, respectively, and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.) Since the Child Nutrition Programs are State-administered, USDA's Food and Nutrition Service (FNS) Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an

ongoing basis regarding program requirements and operation. Discussions also take place in response to technical assistance requests submitted by the State agencies to the FNS Regional Offices. This regular interaction with State and local operators provides FNS valuable input that informs rulemaking. Based on the inquiries and waiver requests from the State agencies disclosing challenges with the professional standards regulations, FNS is proposing specific flexibilities to address the requirement issues in a manner that promotes program efficiency and effectiveness.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on Program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in the National School Lunch Program and School Breakfast Program, or limit the ability of protected classes of individuals to serve as new directors in LEAs and State agencies. The provisions of this proposed rule would add flexibility to the existing hiring standards for new directors in order to address difficulties faced by program operators in finding qualified applicants.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FNS will notify Tribal leaders about this proposed rule to encourage public comments, and intends to brief Tribal leaders at one of the quarterly consultations or conference calls scheduled by the Office of Tribal Relations.

FNS has assessed the impact of this proposed rule on Indian tribes and determined that this rule does not, to our knowledge, have negative Tribal implications that require Tribal consultation under E.O. 13175. If a Tribe requests consultation on this rule, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress. We are unaware of any current Tribal laws that could be in conflict with the proposed provisions of this rule and anticipate that the proposed hiring flexibilities will benefit Tribal schools.

When implemented, the flexibilities provided by this rule are expected to increase the pool of candidates qualified to serve as new directors of school nutrition programs in small LEAs. This is expected to benefit Tribal communities, which often experience difficulty attracting qualified school nutrition personnel.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The provisions of this proposed rule do not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

Children, Commodity school program, Food assistance programs, Grant programs—health, Grant programs—education, School breakfast and lunch programs, Nutrition, Reporting and recordkeeping requirements.

7 CFR Part 235

Administrative practice and procedure, Food assistance programs, Grant programs—health, Grant programs—education, School breakfast and lunch programs, Nutrition, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 210 and 235 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. Amend § 210.30 by:

■ a. Revising paragraph (b)(1)(i) and;

■ b. In the table to paragraph (b)(2), in the column under the heading ''Student enrollment 2,499 or less'', removing the words ''school nutrition program experience'' wherever they appear and adding in their place the words ''food service experience''.

§ 210.30 School nutrition program professional standards.

* * * * *

(b) * * *

(1) * * *

(i) *School nutrition program directors with local educational agency enrollment of 2,499 students or fewer.* Directors must meet the requirements in either paragraph (b)(1)(i)(A), (B), (C), or (D) of this section.

(A) A bachelor's degree, or equivalent educational experience, with an academic major or concentration in food and nutrition, food service management,

dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(B) A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and either a State-recognized certificate for school nutrition directors or at least one year of relevant food service experience. At the discretion of the State agency, and on a case-by-case basis, the relevant food service experience may be unpaid;

(C) An associate's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field and at least one year of relevant food service experience. At the discretion of the State agency, and on a case-by-case basis, the relevant food service experience may be unpaid; or

(D) A high school diploma or equivalency (such as the general educational development diploma), and at least three years of relevant food service experience. At the discretion of the State agency, and on a case-by-case basis, the relevant food service experience may be unpaid. Directors hired under this criterion are strongly encouraged to work toward attaining an associate's degree in an academic major in the fields listed in paragraph (b)(1)(i).

(E) For a local educational agency with less than 500 students, the State agency has discretion to approve the hire of a director who meets one of the educational criteria in paragraph (b)(1)(i)(A)–(D) but has less than the required years of relevant food service experience.

* * * * *

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

■ 3. The authority citation for part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

§ 235.11 [Amended]

■ 4. In paragraph (g)(1)(i), add at the end the words ''or a bachelor's degree with any academic major and a master's degree with an academic major in areas including food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;'' and in paragraph (g)(1)(iv)(A), remove the words ''Master's degree'' and add in their place the words ''Both a bachelor's degree and a master's degree''.

Dated: January 16, 2018.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2018–04233 Filed 3–5–18; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0087; Airspace Docket No. 18–AGL–3]

Proposed Amendment of Class E Airspace; Mineral Point, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace designated as a surface area at Iowa County Airport, Mineral Point, WI, by removing the part-time language from the airspace description. The FAA is proposing this action to change the status from part-time to full-time at the request of Chicago Air Route Traffic Control Center (ARTCC). This action would also make an editorial change to the airspace description by removing the city from the airport name.

DATES: Comments must be received on or before April 20, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2018–0087; Airspace Docket No. 18–AGL–3, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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 *http://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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace designated as a surface area at Iowa County Airport, Mineral Point, WI, to support instrument flight rule operations.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2018–0087; Airspace Docket No. 18–AGL–3.'' The postcard

will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace designated as a surface area at Iowa County Airport, Mineral Point, WI, by removing the part-time language from the airspace description. This proposal is made at the request of Chicago ARTCC to change the airspace from part-time to full-time.

This action also would make an editorial change by removing the name of the city associated with the airport in the airspace designation to comply with a recent change to FAA Order 7400.2L, Procedures for Handling Airspace Matters, dated October 12, 2017.

Class E airspace designations are published in paragraph 6002 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 Class E airspace designation listed in this document will be published subsequently 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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AGL WI E2 Mineral Point, WI [Amended]

Iowa County Airport, WI
(Lat. 42°53′13″ N, long. 90°14′12″ W)

Within a 4.1-mile radius of Iowa County Airport.

Issued in Fort Worth, Texas, on February 26, 2018.

Christopher L. Southerland,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2018–04416 Filed 3–5–18; 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]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to establish Canadian area navigation (RNAV) route T–705 in the Northeastern United States (U.S.). This proposal would extend the Canadian Route into U.S. airspace. The FAA is proposing this action at the request of NAVCANADA and the Boston Air Route Traffic Control Center (ARTCC) 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: Comments must be received on or before April 20, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2018–0050 and Airspace Docket No. 17–AEA–3 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

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 *http://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 would support the route structure in the northeastern United States to expand the availability of RNAV routing.

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2018–0050 and Airspace Docket No. 17–AEA–3) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2018–0050 and Airspace Docket No. 17–AEA–3.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 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 proposed rule. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR), part 71 to establish Canadian RNAV route T–705 by extending the Canadian route into U.S. airspace. T–705 currently extends between the IKNAR, Canada, waypoint (WP) located approximately 90 nautical miles (NM) north of Montreal, Canada, and the DUNUP, Canada, WP located approximately 25 NM southeast of Montreal. This proposal would extend 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 would proceed to the RIGID, NY, fix, and from that point, it would overlie VOR Federal airway V–196 to the Utica, NY, VORTAC. The amended T–705 would provide 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 would be subsequently published in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for part 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 February 26, 2018.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2018–04415 Filed 3–5–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0103]

RIN 1625–AA08

Special Local Regulation; Pensacola Bay, Pensacola, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation on Pensacola Bay in Pensacola, FL. The proposed rulemaking is needed to protect the persons participating in the Pensacola Triathlon marine event. This proposed rulemaking restricts transit into, through and within the regulated area unless specifically authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 5, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0103 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Kyle D. Berry, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251–441–5940, email *kyle.d.berry@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On January 16, 2018, the marine event sponsor for the annual Pensacola Triathlon marine event submitted an application for a marine event permit. The Captain of the Port Sector Mobile (COTP) has determined a special local regulation is needed to protect the persons participating in and viewing the Pensacola Triathlon marine event.

The purpose of this proposed rulemaking is to restrict transit into, through and within the regulated area on Pensacola Bay extending in a 300 yard radius from position 30°24′16.4″ N, 87°12′55.2″ W in Pensacola, FL during the Pensacola Triathlon. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary special local regulation on Pensacola Bay extending in a 300 yard radius from position 30°24′16.4″ N, 87°12′55.2″ W in Pensacola, FL. The proposed rulemaking is needed to needed to protect the persons participating in the Pensacola Triathlon marine event. This proposed rulemaking restricts transit into, through and within the regulated area unless specifically authorized by the COTP. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM would be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''. All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The

''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer would be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel. Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative would terminate enforcement of the special local regulations at the conclusion of the event.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, and duration of the proposed rulemaking. The proposed special local regulation on Pensacola Bay extending in a 300 yard radius from position 30°24′16.4″ N, 87°12′55.2″ W in Pensacola, FL from 4 a.m. to 10 a.m. on April 29, 2018. Additionally, the Coast Guard will issue Broadcast Notices to Mariners via VHF–FM marine channel 16 about the regulation so that waterway users may plan accordingly for transits during this restriction. The rule also allows vessels to seek permission from the COTP or a designated representative to enter the regulated area.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this 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 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 a special local regulation on Pensacola Bay extending in a 300 yard radius from position 30°24′16.4″ N, 87°12′55.2″ W in Pensacola, FL. 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 Record of Environmental Consideration (REC) supporting this determination would be 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, 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 § 100.35T08–0103 to read as follows:

§ 100.35T08–0103 Special Local Regulation; Pensacola Bay, Pensacola, FL

(a) *Regulated area.* All navigable waters of Pensacola Bay extending in a 300 yard radius from position 30°24′16.4″ N, 87°12′55.2″ W in Pensacola, FL.

(b) *Enforcement period.* This section will be enforced on April 29, 2018.

(c) *Special local regulations.*

(1) In accordance with the general regulations in § 100.801, entry into, transit within or through, or exit from this area is prohibited unless authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

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

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

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

(5) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

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

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

(8) The COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule

Dated: February 26, 2018.

M.R. McLellan,

Captain, U.S. Coast Guard, Captain of the Port Sector Mobile.

[FR Doc. 2018–04503 Filed 3–5–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0029]

RIN 1625–AA00

Safety Zone for Fireworks Display; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain waters of the Patapsco River. This action is necessary to provide for the safety of life on the navigable waters of the Inner Harbor at Baltimore, MD, during a fireworks display on April 21, 2018. If necessary, due to inclement weather, the event will be rescheduled to April 22, 2018. This action will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 5, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0029 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 Mr. Ronald Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On December 15, 2017, the Baltimore Office of Promotion and The Arts notified the Coast Guard that it will be conducting a fireworks display from 11:59 p.m. on April 21, 2018, to 12:06 a.m. on April 22, 2018, or if necessary, due to inclement weather, from 11:59 p.m. on April 22, 2018 to 12:06 a.m. on April 23, 2018. Final details of the event were received by the Coast Guard on January 30, 2018. The public fireworks display will be conducted by Fireworks by Grucci, Inc., and launched from five floating platforms located within the waters of Inner Harbor Baltimore, between Inner Harbor Pier 3 and Inner Harbor Pier 5 in Baltimore, MD. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within 75 yards of each of the five fireworks discharge sites.

The purpose of this rulemaking is to ensure the safety of persons and vessels on the navigable waters of the Inner Harbor before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 11 p.m. on April 21, 2018, until 1 a.m. on April 22, 2018, or if necessary, due to inclement weather, from 11 p.m. on April 22, 2018, until 1 a.m. on April 23, 2018. The safety zone will cover all navigable waters of the Patapsco River, Inner Harbor, from shoreline to shoreline, within an area bounded on the east by longitude 076°36′12″ W, and bounded on the west by the Inner Harbor west bulkhead, located at Baltimore, MD. The duration of the zone is intended to ensure the safety of persons and vessels on the specified navigable waters before, during, and after the scheduled 11:59 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Although this safety zone would restrict the entire width of the waterway, it would impact a small designated area of the Inner Harbor for two hours during the evening when vessel traffic is normally low. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine band channel 16 to provide information about the safety zone.

B. Impact on Small Entities

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

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (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 safety zone lasting two hours that would prohibit vessel movement within the Inner Harbor at Baltimore, MD. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T05–0029 to read as follows:

§ 165.T05–0029 Safety Zone for Fireworks Display; Patapsco River, Inner Harbor, Baltimore, MD.

(a) *Definitions.* As used in this section:

(1) *Captain of the Port Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcement of the safety zone described in paragraph (a) of this section.

(b) *Location.* The following area is a safety zone: All navigable waters of the Patapsco River, Inner Harbor, from shoreline to shoreline, within an area bounded on the east by longitude 076°36′12″ W, and bounded on the west by the Inner Harbor west bulkhead, located at Baltimore, MD. All coordinates refer to datum NAD 1983.

(c) *Regulations.* The general safety zone regulations found in 33 CFR part 165, subpart C apply to the safety zone created by this section.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone shall obtain authorization from the Captain of the Port Maryland-National Capital Region or designated representative. To request permission to transit the area, the Captain of the Port Maryland-National

Capital Region and or designated representatives can be contacted at telephone number 410–576–2693 or on marine band radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted to enter the safety zone, all persons and vessels shall comply with the instructions of the Captain of the Port Maryland-National Capital Region or designated representative and proceed as directed while within the zone.

(4) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 11 p.m. on April 21, 2018, until 1 a.m. on April 22, 2018, or if necessary, due to inclement weather, from 11 p.m. on April 22, 2018, until 1 a.m. on April 23, 2018.

Dated: February 22, 2018.

Lonnie P. Harrison, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2018–04487 Filed 3–5–18; 8:45 am]

BILLING CODE 9110–04–P

PRESIDIO TRUST

36 CFR Parts 1007, 1008, 1009, and 1011

RIN 3212–AA08; 3212–AA09; 3212–AA10; 3212–AA11

Freedom of Information Act; Privacy Act; Federal Tort Claims Act; Debt Collection

AGENCY: Presidio Trust.

ACTION: Proposed rule; request for comments.

SUMMARY: The Presidio Trust (Trust) proposes revisions to its regulations addressing requests under the Freedom of Information Act (FOIA), requests under the Privacy Act, administrative claims under the Federal Tort Claims Act (FTCA), and Debt Collection. The Trust is revising these regulations to update and streamline the language of several procedural provisions, and to reflect amendments pursuant to the FOIA Improvement Act of 2016 and the Digital Accountability and Transparency Act of 2014.

DATES: Written comments must be received by the Trust on or before April 24, 2018. Comments received by mail will be considered timely if they are postmarked on or before that date.

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

- *Email: scarp@presidiotrust.gov.* Include ''Proposed Rule'' in the subject line of the message.
- *Mail:* Steve Carp, Legal Analyst, Presidio Trust, 103 Montgomery Street, P.O. Box 29052, San Francisco, CA 94129–0052.
- *Hand Delivery/Courier:* Steve Carp, Legal Analyst, Presidio Trust, 103 Montgomery Street, San Francisco, CA 94129–0052.

FOR FURTHER INFORMATION CONTACT: Steve Carp, Legal Analyst, 415.561.5300, *scarp@presidiotrust.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 104(j) of the Presidio Trust Act (16 U.S.C. 460bb appendix) authorizes the Trust to prescribe regulations governing the manner in which it conducts its business and exercises its powers. This rulemaking revises the Trust's administrative regulations at 36 CFR part 1007 (FOIA), part 1008 (Privacy Act), part 1009 (FTCA), and part 1011 (Debt Collection), as described below. In addition, the Trust has made minor ministerial changes and corrected typographical errors to these parts of its regulations.

Proposed Revisions to 36 CFR Part 1007 (Requests Under the FOIA)

The Trust adopted FOIA regulations effective January 29, 1999. The FOIA Improvement Act of 2016 (Act) amended the FOIA on June 30, 2016. Those FOIA amendments require federal agencies to review and update their FOIA regulations in accordance with the provisions of the Act. The Trust proposes revisions to conform its regulations to the Act, as well as to the Department of Justice's revised FOIA regulations. Specifically, this rulemaking proposes revisions to § 1007.1 (Purpose and scope) by adding references to the text of FOIA and the Trust's Privacy Act regulations; § 1007.2 (Records available) by adopting a policy of presumption of openness and the ''foreseeable harm'' standard; § 1007.3 (Requests for records) by providing a requester an opportunity to consult with the Trust's FOIA Officer to perfect a request and adding procedures to verify the requester's identity; § 1007.4 (Preliminary processing of requests) by specifying the date used for searching, adding consultation and referral procedures for requests of records of other departments and agencies, and adding procedures to notify submitters and requesters of actions taken with respect to requests containing commercial or financial information; § 1007.5 (Action on initial requests) by specifying decisions that constitute adverse determinations of requests, adding procedures for notifying requesters of dispute resolution services, and adding types of requests that would qualify for expedited processing; § 1007.7 (Appeals) by changing the time period for requesters to file an administrative appeal from 20 working days to 90 calendar days and requiring an appeal of an adverse determination before seeking a court order; § 1007.8 (Action on appeals) by adding procedures for notifying requesters of dispute resolution services; and § 1007.9 (Fees) by adding definitions for the terms ''direct costs'' and ''review.''

The Trust also proposes revisions to § 1007.9 to update the fees charged by the Trust for processing FOIA requests. The Trust previously published its fees on December 2, 1998 in its Interim Compendium. Under the proposed revisions to § 1007.9, the Trust's Executive Director will set fees for processing these requests and will publish the fees on the Trust's website instead of the Interim Compendium. With these changes, the fees previously listed in § 1007.9 of the Interim Compendium will no longer be effective.

Proposed Revisions to 36 CFR Part 1008 (Requests Under the Privacy Act)

The Trust adopted Privacy Act regulations effective January 29, 1999. There has been little statutory change to the Privacy Act of 1974 since the Trust adopted its Privacy Act regulations. However, the Trust proposes revisions to conform its regulations to guidance issued by the Department of Justice and the Office of Management and Budget. Specifically, this rulemaking proposes revisions to § 1008.2 (Definitions) by changing the definition of ''individual''; § 1008.9 (Disclosure of records) by adding procedures for notice of court-ordered and emergency disclosures; and §§ 1008.11 (Request for notification of existence of records: Submission), 1008.14 (Requests for access to records: Submission), and 1008.19 (Petitions for amendment: Submission and form) by adding procedures to verify the requester's identity.

The Trust also proposes revisions to § 1008.15 (Requests for access to records: Initial decision) to update the fees charged by the Trust for processing

Privacy Act requests. The Trust previously published its fees on December 2, 1998 in its Interim Compendium. Under the proposed revisions to § 1008.15, the Trust's Executive Director will set fees for processing these requests and will publish the fees on the Trust's website instead of the Interim Compendium. With these changes, the fees previously listed in § 1008.15 of the Interim Compendium will no longer be effective.

Proposed Revisions to 36 CFR Part 1009 (Administrative Claims Under the FTCA)

The Trust adopted FTCA regulations effective January 29, 1999. This rulemaking proposes revisions to § 1009.4 (Payment of claims) by adding procedures the Trust uses to pay FTCA claims from its proceeds or revenues.

Proposed Revisions to 36 CFR Part 1011 (Debt Collection)

The Trust adopted debt collection regulations effective January 12, 2006. The Digital Accountability and Transparency Act of 2014 amended federal debt collection law to require federal agencies to refer eligible delinquent debts to the Department of the Treasury for administrative offset after 120 days, rather than 180 days. This rulemaking proposes minor revisions to §§ 1011.4 (What notice will the Presidio Trust send to a debtor when collecting a debt?), 1011.9 (When will the Presidio Trust transfer a debt to the Financial Management Service for collection?), and 1011.10 (How will the Presidio Trust use administrative offset (offset of non-tax federal payments) to collect a debt?) to reflect this requirement.

Regulatory Analysis of the Proposed Revisions

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant. This rule:

(1) Will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule only affects management and operations of the Presidio Trust.

(3) Does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) Does raise novel legal or policy issues.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Trust has developed this proposed rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of the Executive Order requires that the new incremental costs associated with new regulations must, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. The OMB's interim guidance issued on February 2, 2017 explains that the above requirements only apply to each new ''significant regulatory action that imposes costs.'' The OMB has determined that this proposed rule is only related to the Trust's organization and management and is not a ''significant regulatory action that imposes costs.'' Thus, this rule does not trigger the above requirements of Executive Order 13771.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This proposed rule will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million or more; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule relates to internal administrative procedures and management of government function. It does not regulate external entities, impose any costs on them, or eliminate any procedures or functions that would result in a loss of employment or income on the part of the private sector.

Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. This rule produces no costs outside of the Federal government and does not create an additional burden on State, local, or tribal governments, or the private sector.

Takings (Executive Order 12630)

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

This proposed rule does not have sufficient federalism implications, as defined by section 1 of Executive Order 13132, to warrant the preparation of a federalism summary impact statement. This rule only affects use of Trust administered lands. It has no outside effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate

errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Effects on the Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Consultation With Indian Tribes (Executive Order 13175)

This proposed rule has no substantial direct effects on federally recognized Indian tribes. Consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new collections of information that require approval by the OMB under the Paperwork Reduction Act. The rule does not impose new recordkeeping or reporting requirements on State, tribal, or local governments; individuals; businesses; or organizations.

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act (NEPA) and the Trust's NEPA regulations at 36 CFR 1010.16. It is a modification of existing Trust regulations in order to make them clearer, more complete, and consistent with current Federal statutory law. Moreover, a detailed statement under the NEPA is not required because the rule is covered by a categorical exclusion. The Trust has determined that the proposed rule is categorically excluded under 36 CFR 1010.7(a)(10)(i) as it is a revision of Trust regulations that does not increase public use to the extent of compromising the nature and character of the Presidio Area B or of causing significant physical damage to it. Further, the rule will not result in the introduction of non-compatible uses, which might compromise the nature and characteristics of the Presidio Area B or cause significant physical damage to it. Finally, the rule will not conflict with adjacent ownerships or land uses or cause a significant nuisance to adjacent owners or occupants. The Trust has also determined that the rule does not involve any of the extraordinary circumstances listed in 36 CFR 1010.7(b) that would require further analysis under the NEPA.

Clarity of This Regulation

The Trust is required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the Trust publishes must: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use common, everyday words and clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

If you feel that the Trust has not met these requirements, send the Trust your comments by one of the methods listed in the **ADDRESSES** section. To better help the Trust revise the rule, your comments should be as specific as possible. For example, you should tell the Trust the numbers of the sections or paragraphs that you find unclear, which paragraphs or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

It is the policy of the Trust, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by following the instructions in the **ADDRESSES** section of this document.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask in your comment to withhold your personal identifiable information from public view, the Trust cannot guarantee that it will be able to do so.

List of Subjects

36 CFR Part 1007

Administrative practice and procedure, Archives and records, Freedom of information, National parks, Natural resources, Public lands, Records, Recreation and recreation areas.

36 CFR Part 1008

Administrative practice and procedure, National parks, Natural resources, Personally identifiable information, Privacy, Public lands, Recreation and recreation areas.

36 CFR Part 1009

Administrative practice and procedure, Claims, National parks, Natural resources, Public lands, Recreation and recreation areas, Tort claims.

36 CFR Part 1011

Administrative practice and procedure, Claims, Credit, Debt collection, Government employees, National parks, Natural resources, Public lands, Recreation and recreation areas, Reporting and recordkeeping requirements, Wages.

For the reasons set forth in the preamble, the Presidio Trust proposes to amend Chapter X of title 36 of the Code of Federal Regulations as follows:

PART 1007—REQUESTS UNDER THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 1007 continues to read as follows:

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552; E.O. 12,600, 52 FR 23781, 3 CFR, 1988 Comp., p. 235.

■ 2. Revise § 1007.1 to read as follows:

§ 1007.1 Purpose and scope.

(a) This part contains the procedures for submission to and consideration by the Presidio Trust of requests for records under the FOIA. As used in this part, the term ''FOIA'' means the Freedom of Information Act, 5 U.S.C. 552. The regulations in this part should be read in conjunction with the text of the FOIA. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Presidio Trust's Privacy Act regulations as well as under this subpart.

(b) Before invoking the formal procedures set out below, persons seeking records from the Presidio Trust may find it useful to consult with the Presidio Trust's FOIA Officer, who can be reached at The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: 415.561.5300. As used in this part, the term ''FOIA Officer'' means the employee designated by the Executive Director to process FOIA requests and otherwise supervise the Presidio Trust's compliance with the FOIA, or the alternate employee so designated to perform these duties in the absence of the FOIA Officer.

(c) The procedures in this part do not apply to:

(1) Records published in the **Federal Register**, the Bylaws of the Presidio

Trust, statements of policy and interpretations, and other materials that have been published by the Presidio Trust on its internet website (*http://www.presidiotrust.gov*) or are routinely made available for inspection and copying at the requester's expense.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 1007.2(c)(7) if:

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that:

(A) The subject of the investigation or proceeding is not aware of its pendency; and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by the United States Park Police under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

■ 3. Revise § 1007.2 to read as follows:

§ 1007.2 Records available.

(a) *Policy.* It is the policy of the Presidio Trust to make its records available to the public to the greatest extent possible consistent with the purposes of the Presidio Trust Act and the FOIA. The Presidio Trust administers the FOIA with a presumption of openness. As a matter of policy, the Presidio Trust may make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. This policy does not create any right enforceable in court.

(b) *Statutory disclosure requirement.* The FOIA requires that the Presidio Trust, on a request from a member of the public submitted in accordance with the procedures in this part, make requested records available for inspection and copying.

(c) *Statutory exemptions.* Exempted from the FOIA's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(ii) Are in fact properly classified pursuant to such Executive order.

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Presidio Trust to withhold information falling within an exemption only if:

(1) Disclosure is prohibited by statute or Executive order; or

(2) Sound grounds exist for invocation of the exemption.

(e) *Disclosure of reasonably segregable nonexempt material.* If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this part to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released. In such circumstances, the records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

■ 4. Revise § 1007.3 to read as follows:

§ 1007.3 Requests for records.

(a) *Submission of requests.* A request to inspect or copy records shall be submitted to the Presidio Trust's FOIA Officer at P.O. Box 29052, San Francisco, CA 94129–0052.

(b) *Form of perfected requests.* (1) Requests under this part shall be in writing and must specifically invoke the FOIA.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Presidio Trust familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case. If after receiving a request the FOIA Officer determines that the request does not reasonably describe the records sought, the FOIA Officer will inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the FOIA Officer. If a request does not reasonably describe the records sought, the Presidio Trust's response to the request may be delayed or an adverse determination under § 1007.5(e).

(3)(i) A perfected request shall:

(A) Specify the fee category (commercial use, educational institution, noncommercial scientific institution, news media, or other, as defined in § 1007.9) in which the requester claims the request falls and the basis of this claim;

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver; and

(C) Provide contact information for the requester, such as phone number, email address and/or mailing address, to assist the Presidio Trust in communicating with them and providing released records.

(ii) Requesters who make requests for records about themselves must verify their identity.

(iii) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of administrative discretion, the Presidio Trust may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(iv) Requesters are advised that, under § 1007.9 (f), (g) and (h), the time for responding to requests may be delayed:

(A) If a requester has not sufficiently identified the fee category applicable to the request;

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Presidio Trust; or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Presidio Trust.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 1007.10 are met.

(5) To expedite processing, both the envelope containing a request and the face of the request should bear the legend ''FREEDOM OF INFORMATION REQUEST.''

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Presidio Trust determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Presidio Trust may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

■ 5. Revise § 1007.4 to read as follows:

§ 1007.4 Preliminary processing of requests.

(a) *Scope of requests.* Unless a request clearly specifies otherwise, requests to the Presidio Trust may be presumed to seek only records of the Presidio Trust in possession of the Presidio Trust at the time the Presidio Trust begins it search. If any other date is used, the Presidio Trust will inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request.

(b) *Records of other departments and agencies.* (1) When reviewing records in response to a request, the Presidio Trust will determine whether another Federal department or agency is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the Presidio Trust will proceed in one of the following ways:

(i) *Consultation.* When records originating with the Presidio Trust, but contain within them information of interest to another Federal department or agency, the Presidio Trust will consult with that other entity prior to making a release determination; or

(ii) *Referral.* (A) When the Presidio Trust believes that another department or agency is best able to determine whether to disclose the record, the Presidio Trust will refer the responsibility for responding to the request regarding the record to that department or agency. Ordinarily, the department or agency that originated the record is presumed to be the best entity to make the disclosure determination. However, if the Presidio Trust and the originating department or agency jointly agree that the Presidio Trust is in the best position to respond to the request, then the record may be handled as a consultation.

(B) If the Presidio Trust refers any part of the responsibility for responding to a request to another department or agency, the Presidio Trust will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the department or agency to which the record was referred, including that entity's FOIA contact information.

(2) Timing of responses to consultations and referrals. All consultations and referrals received by the Presidio Trust will be handled according to the date that the Presidio Trust received the perfected FOIA request.

(3) A request for documents that were classified by another agency shall be referred to that agency.

(c) Consultation with submitters of commercial and financial information. (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the Presidio Trust shall provide the submitter with notice of the request whenever:

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive; or

(ii) The Presidio Trust has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

(2) Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(3) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(4) A submitter who fails to respond within the time period specified in the notice will be deemed to have no objection to disclosure of the information. The Presidio Trust shall not be required to consider any information received from the submitter after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(5) The Presidio Trust will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(6) If a submitter's statement cannot be obtained within the time limit for processing the request under § 1007.6,

the requester shall be notified of the delay as provided in § 1007.6(f).

(7) Notification to a submitter is not required if:

(i) The Presidio Trust determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this part);

(iv) Disclosure is clearly prohibited by a statute, as described in § 1007.2(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm;

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Presidio Trust more than ten years prior to the date of the request, unless the Presidio Trust has reason to believe that it continues to be confidential.

(8) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

■ 6. Revise § 1007.5 to read as follows:

§ 1007.5 Action on initial requests.

(a) *Authority.* (1) Requests shall be decided by the FOIA Officer.

(2) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the General Counsel.

(b) *Acknowledgement of requests.* (1) The Presidio Trust shall send the requester a written acknowledgement of the receipt of the request, provide the requester with an individualized tracking number, and provide the requester with contact information for the FOIA Officer.

(2) Requesters must include the individualized tracking number in all communications with the Presidio Trust regarding the request.

(c) *Estimated dates of completion and interim responses.* Upon request, the Presidio Trust will provide an estimated date by which the Presidio Trust expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the Presidio Trust may provide interim responses, releasing records on a rolling basis.

(d) *Form of grant.* (1) When a requested record has been determined to be available, the FOIA Officer shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the FOIA Officer shall state the amount of fees due and the procedures for payment, as described in § 1007.9.

(2) The FOIA Officer shall honor a requester's specified preference of form or format of disclosure (*e.g.,* paper, microform, audiovisual materials, or electronic records) if the record is readily available to the Presidio Trust in the requested form or format or if the record is reproducible by the Presidio Trust with reasonable efforts in the requested form or format.

(3) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(4) If a claim of confidentiality has been found frivolous in accordance with § 1007.4(c)(7)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(e) *Adverse determinations of requests.* Adverse determinations, or denials of requests, include decisions that:

(1) The requester has not submitted a perfected request;

(2) The requested record is exempt, in whole or in part;

(3) The request does not reasonably describe the records sought;

(4) The information is not a record subject to the FOIA;

(5) The requested record does not exist, cannot be located, or has been destroyed; or

(6) The requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waivers or denials of requests for expedited processing.

(f) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A listing of the names and titles or positions of each person responsible for the denial;

(ii) A reference to the specific exemption or exemptions authorizing the withholding;

(iii) If neither a statute nor an Executive order requires withholding, the sound ground for withholding;

(iv) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(v) A statement that the denial may be appealed and a reference to the procedures in § 1007.7 for appeal; and

(vi) A statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible;

(iii) A statement that the matter may be appealed and a reference to the procedures in § 1007.7 for appeal; and

(iv) A statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services.

(g) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined by the FOIA Officer that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten calendar days of receiving of a request for expedited processing, the FOIA Officer shall decide whether to grant the request for expedited processing and shall notify the requester of the decision. If a request for expedited processing is granted, the underlying FOIA request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

■ 7. Revise § 1007.6 to read as follows:

§ 1007.6 Time limits for processing initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within 20 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* (1) The 20 working day time limit begins to run when a perfected request meeting the requirements of § 1007.3(b) is received at the Presidio Trust.

(2) The running of the basic time limit may be delayed or tolled as explained in § 1007.9 (f), (g) and (h) if a requester:

(i) Has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver; or

(ii) Has not made a required advance payment.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended by more than 20 working days:

(1) The need to search for and collect the requested records from facilities or other establishments that are separate from the main office of the Presidio Trust;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another department or agency having a substantial interest in the determination of the request.

(d) *Notice of extension.* A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made.

(e) *Treatment of delay as denial.* If no determination has been reached at the end of the 20 working day period for deciding an initial request, or an extension thereof under § 1007.6(c), the requester may deem the request denied and may exercise a right of appeal in accordance with § 1007.7.

(f) *Notice of delay.* When a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal, including a reference to the procedures for filing an appeal in § 1007.7.

■ 8. Revise § 1007.7 to read as follows:

§ 1007.7 Appeals.

(a) *Right of appeal.* A requester may appeal to the Executive Director when:

(1) Records have been withheld;

(2) A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located;

(3) A fee waiver has been denied;

(4) A request has not been decided within the time limits provided in § 1007.6; or

(5) A request for expedited processing under § 1007.5(g) has been denied.

(b) *Time for appeal.* An appeal must be received at the office of the Presidio Trust no later than 90 calendar days after the date of the initial denial, in the case of a denial of an entire request, or 90 calendar days after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(3) To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend ''FREEDOM OF INFORMATION APPEAL.''

(d) *Appeal required.* Before seeking review by a court of an adverse determination by the Presidio Trust, a requester must first submit a timely administrative appeal.

■ 9. Revise § 1007.8 to read as follows:

§ 1007.8 Action on appeals.

(a) *Authority.* Appeals shall be decided by the Executive Director after consultation with the FOIA Officer and the General Counsel.

(b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 1007.7(c).

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 1007.6(c) or was extended for fewer than ten working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than ten working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 1007.6(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted administrative remedies, giving rise to a right of review in the United States District Court for the Northern District of California, as specified in 5 U.S.C. 552(a)(4).

(4) When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched, and of the right to seek judicial review.

(5) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the FOIA Officer shall immediately make the records available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the U.S. District Court for the Northern District of California and shall set forth the names and titles or positions of each person responsible for the denial. The determination shall also inform the requester of the dispute resolution services offered by the Office of Government Information Services.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), the submitter shall be provided notice as described in § 1007.5(b)(3).

■ 10. Revise § 1007.9 to read as follows:

§ 1007.9 Fees.

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 1007.10, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Executive Director and published on the Presidio Trust's website. Such charges shall be set at the level necessary to recoup the full allowable direct costs to the Presidio Trust.

(2) Fees shall not be charged if the total amount chargeable does not exceed the costs of routine collection and processing of the fee. The Presidio Trust shall periodically determine the cost of routine collection and processing of a fee and publish such amount on its website.

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(4) Fees shall be charged to recover the full costs of providing such services as certifying that records are true copies or sending records by a method other than regular mail, when the Presidio Trust elects to provide such services.

(5) The following definitions shall apply to this part:

(i) A *commercial use request* is a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(ii) The term *direct costs* refers to those expenses the Presidio Trust incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(iii) The term *duplication* refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (*e.g.,* magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(iv) An *educational institution* is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(v) A *noncommercial scientific institution* is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(vi) A *representative of the news media* is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (*e.g.,* electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. Free-lance journalists may be considered representatives of the news media if they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(vii) The term *review* refers to the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure under § 1007.4(c) made by a submitter of confidential commercial information, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(viii) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents, databases and information in other electronic records. Searches shall be undertaken in the most efficient and least expensive manner possible, consistent with the Presidio Trust's obligations under the FOIA and other applicable laws.

(b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for direct costs incurred in document search and review (even if the search and review fails to locate records that are not exempt from disclosure) and duplication.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if

the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in:

(i) Searching for requested records;

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure;

(iii) Deleting reasonably segregable exempt matter;

(iv) Monitoring the requester's inspection of agency records; or

(v) Resolving legal and policy issues affecting access to requested records.

(d) *News media requests.* (1) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in:

(i) Searching for requested records;

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure;

(iii) Deleting reasonably segregable exempt matter;

(iv) Monitoring the requester's inspection of agency records; or

(v) Resolving legal and policy issues affecting access to requested records.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c), or (d) of this section shall be charged fees for the direct costs for document search (even if the search fails to locate records that are not exempt from disclosure) and duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in:

(i) Examining requested records to determine whether they are exempt from disclosure;

(ii) Deleting reasonably segregable exempt matter;

(iii) Monitoring the requester's inspection of agency records; or

(iv) Resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient information to determine whether it is covered by paragraph (b), (c), (d), or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Presidio Trust, and the requester has not sought and been granted a full waiver of fees under § 1007.10, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed $250.00, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 days of the date of billing, processing of any request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the request.

(3) Advance payment of fees may not be required except as described in paragraphs (h) (1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 1007.6 until receipt of payment.

(i) *Form of payment.* Payment of fees should be made by check or money order payable to the Presidio Trust. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection shall be prepared for each request that requires collection of fees.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of State or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees.

PART 1008—REQUESTS UNDER THE PRIVACY ACT

■ 11. The authority citation for part 1008 continues to read as follows:

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552a.

■ 12. Amend § 1008.2 to revise the definition of *individual* in alphabetical order to read as follows:

§ 1008.2 Definitions.

* * * * *

Individual means a citizen of the United States or an alien who is currently lawfully admitted for permanent residence.

* * * * *

■ 13. Revise § 1008.9 to read as follows:

§ 1008.9 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) To those officers or employees of the Presidio Trust who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 552.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) For a routine use which has been described in a system notice published in the **Federal Register**;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code.

(3) To a recipient who has provided the system manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality

has made a written request to the Presidio Trust specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(9) Pursuant to the order of a court of competent jurisdiction; or

(10) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(e)).

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to ensure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information Act request made under this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Presidio Trust indicating that the record may not be fully accurate, complete, or timely.

(e) *Notice of court-ordered and emergency disclosures.* (1) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the Presidio Trust will make reasonable efforts to provide notice of this to the individual. Notice will be given within a reasonable time after the Presidio Trust's receipt of the order—except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known address and will contain a copy of the order and a description of the information disclosed. Notice will not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(2) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the Presidio Trust will notify that individual of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed, the person, organization or agency to which it was disclosed, the date of the disclosure, and the compelling circumstances justifying the disclosure.

■ 14. Revise § 1008.10 to read as follows:

§ 1008.10 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 1008.9(c), an accounting shall be made.

(2) The accounting shall record:

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency; and

(ii) The name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 1008.9(b) or 1008.9(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at the individual's request.

(2) An individual desiring access to an accounting of disclosures of a record pertaining to the individual shall submit a request by following the procedures of § 1008.13.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 1008.9(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

■ 15. Revise § 1008.11 to read as follows:

§ 1008.11 Request for notification of existence of records: Submission.

(a) *Submission of requests.* (1) Individuals desiring to determine under the Privacy Act whether a system of records contains records pertaining to them shall address inquiries to the Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring to determine whether records pertaining to them are maintained in two or more systems shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To expedite processing, both the envelope containing a request and the face of the request should bear the legend ''PRIVACY ACT INQUIRY.''

(3) The request shall state that the individual is seeking information concerning records pertaining to him or herself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) The request must include verification of the requester's identity, including the requester's full name, current address, and date and place of birth. The request must be signed by the requester, and the signature must be notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization.

(5) If the request is made on behalf of a minor or someone determined by a court to be incompetent, for access to records about that individual, the requester must establish:

(i) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the requester's option, the Social Security number of the individual;

(ii) The requester's identity, as required in paragraph 4 above of this section;

(iii) That the requester is the parent or guardian of that individual, which the requester may prove by providing a copy of the individual's birth certificate showing the requester's parentage or by providing a court order establishing the requester's guardianship; and

(iv) That the requester is acting on behalf of that individual in making the request.

(6) Individuals who have reason to believe that information pertaining to them may be filed under a name other than the name they are currently using (*e.g.,* maiden name), shall include such information in the request.

■ 16. Revise § 1008.14 to read as follows:

§ 1008.14 Requests for access to records: Submission.

(a) *Submission of requests.* (1) Requests for access to records shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring access to records maintained in two or more separate systems shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing and addressed to Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(2) To expedite processing, both the envelope containing a request and the face of the request should bear the legend ''PRIVACY ACT REQUEST FOR ACCESS.''

(3) Requesters shall specify whether they seek all of the records contained in the system which relate to them or only some portion thereof. If only a portion of the records which relate to the individual are sought, the request shall reasonably describe the specific record or records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 1008.15(d) the failure to state willingness to pay fees as high as are anticipated by the Presidio Trust will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) The request must include verification of the requester's identity, including the requester's full name, current address, and date and place of birth. The request must be signed by the requester, and the signature must be notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization.

(7) If the request is made on behalf of a minor or someone determined by a court to be incompetent, for access to records about that individual, the requester must establish:

(i) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the requester's option, the Social Security number of the individual;

(ii) The requester's identity, as required in paragraph 6 above of this section;

(iii) That the requester is the parent or guardian of that individual, which the requester may prove by providing a copy of the individual's birth certificate showing the requester's parentage or by providing a court order establishing the requester's guardianship; and

(iv) That the requester is acting on behalf of that individual in making the request.

(8) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the requester of the deficiency in the request.

■ 17. Revise § 1008.15 to read as follows:

§ 1008.15 Requests for access to records: Initial decision.

(a) *Acknowledgements of requests.* Upon receipt of a request, the Presidio Trust ordinarily will send an acknowledgement letter to the requester which will confirm the requester's agreement to pay fees and will provide an assigned request number for further reference.

(b) *Decisions on requests.* A request made under this part for access to a record shall be granted promptly unless the record:

(1) Was compiled in reasonable anticipation of a civil action or proceeding; or

(2) Is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(c) *Authority to deny requests.* A decision to deny a request for access under this part shall be made by the Privacy Act Officer in consultation with the General Counsel.

(d) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 1008.15(e), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall:

(i) State the basis for denial of the request;

(ii) Contain a statement that the denial may be appealed to the Executive Director pursuant to § 1008.16 by writing to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052; and

(iii) State that the appeal must be received by the foregoing official within 20 working days of the date of the decision.

(3) If the decision denying a request for access involves records which fall under the jurisdiction of another agency, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial;

(ii) Include the name, position title, and address of the official responsible for the denial; and

(iii) Advise the individual that an appeal of the declination may be made only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of decisions denying requests for access made pursuant to paragraphs (d)(2) and (d)(3) of this section will be provided to the Privacy Act Officer.

(e) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 1008.14.

(2) Unless the Privacy Act Officer determines that reduction or waiver of fees is appropriate, fees for copying a record in response to a request made under § 1008.14 shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Executive Director and published on the Trust's website. Such charges shall be set at the level necessary to recoup the full allowable direct costs to the Trust.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated a willingness to pay, the Privacy Act Officer shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

■ 18. Revise § 1008.18 to read as follows:

§ 1008.18 Amendment of records.

The Privacy Act permits individuals to request amendment of records pertaining to them contained in a system of records if they believe the records are not accurate, relevant, timely or complete. 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this part.

■ 19. Revise § 1008.19 to read as follows:

§ 1008.19 Petitions for amendment: Submission and form.

(a) Submission of petitions for amendment. (1) A request for amendment of a record shall be submitted to the Privacy Act Officer unless the system notice describing the

system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted with respect to each system.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) Form of petition. (1) A petition for amendment shall be in writing, shall specifically identify the record for which amendment is sought, and shall be addressed to the Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(2) To expedite processing, both the envelope containing a petition and the face of the petition should bear the legend ''PRIVACY ACT PETITION FOR AMENDMENT.''

(3) The petition shall state, in detail, the reasons why the petitioner believes the record, or the objectionable portion thereof, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(4) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

(5) The petition must include verification of the petitioner's identity, including the petitioner's full name, current address, and date and place of birth. The petition must be signed by the petitioner, and the signature must be notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization.

(6) If the petition is made on behalf of a minor or someone determined by a court to be incompetent, for access to records about that individual, the petitioner must establish:

(i) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the petitioner's option, the Social Security number of the individual;

(ii) The petitioner's identity, as required in paragraph 5 above of this section;

(iii) That the petitioner is the parent or guardian of that individual, which the petitioner may prove by providing a copy of the individual's birth certificate showing the petitioner's parentage or by providing a court order establishing the petitioner's guardianship; and

(iv) That the petitioner is acting on behalf of that individual in making the request.

(7) Petitions failing to meet the requirements of this paragraph shall be returned to the petitioner with a written notice advising the petitioner of the deficiency in the petition.

PART 1009—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

■ 20. The authority citation for part 1009 continues to read as follows:

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 28 U.S.C. 2672.

■ 21. Revise § 1009.1 to read as follows:

§ 1009.1 Purpose.

The purpose of this part is to establish procedures for the filing and settlement of claims under the Federal Tort Claims Act (in part, 28 U.S.C. secs. 2401(b), 2671–2680, as amended). The officers to whom authority is delegated to settle tort claims shall follow and be guided by the regulations issued by the Attorney General prescribing standards and procedures for settlement of tort claims (28 CFR part 14).

■ 22. Revise § 1009.4 to read as follows:

§ 1009.4 Payment of claims.

(a) In making an award from proceeds or revenues of the Presidio Trust, the Presidio Trust will process payment using an agreement signed by the claimant and the Executive Director, or his or her designee. In making an award from proceeds or revenues not provided for by the Presidio Trust, the Presidio Trust will process payment as prescribed by 28 CFR 14.10.

(b) Prior to payment, appropriate releases shall be obtained as provided in 28 CFR 14.10.

(c) Any award, compromise, or settlement in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his or her designee.

PART 1011—DEBT COLLECTION

■ 23. The authority citation for part 1011 continues to read as follows:

Authority: 16 U.S.C. 460bb appendix, as amended.

■ 24. Revise § 1011.4(a)(7) to read as follows:

§ 1011.4 What notice will the Presidio Trust send to a debtor when collecting a debt?

(a) * * *

(7) The following timelines for the referral of a delinquent debt to the FMS:

(i) That debts over 120 days delinquent and eligible for the centralized administrative offset collection actions described in paragraph (a)(6)(i) of this section must be referred to the FMS for collection (see §§ 1011.10 through 1011.12);

(ii) That debts over 180 days delinquent not previously referred to the FMS under paragraph (i) of this section must be referred to the FMS for cross servicing debt collection (see § 1011.9).

■ 25. Revise § 1011.9(a) to read as follows:

§ 1011.9 When will the Presidio Trust transfer a debt to the Financial Management Service for collection?

(a) *Cross-servicing.* Unless a delinquent debt has previously been transferred to the FMS for administrative offset in accordance with § 1011.10, the Presidio Trust will transfer any eligible debt that is more than 180 days delinquent to the FMS for debt collection services, a process known as ''cross-servicing.'' The Presidio Trust may transfer debts delinquent 180 days or less to the FMS in accordance with the procedures described in 31 CFR 285.12. The FMS takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. Appropriate action includes, without limitation, contact with the debtor, referral of the debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the debt to credit bureaus, and administrative wage garnishment.

■ 26. Revise § 1011.10(a)(1) to read as follows:

§ 1011.10 How will the Presidio Trust use administrative offset (offset of non-tax federal payments) to collect a debt?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) The Presidio Trust will refer any eligible debt over 120 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. The Presidio Trust may refer any eligible debt less than 120 days delinquent to the Treasury Offset Program for offset.

* * * * *

Dated: February 16, 2018.

Nancy J. Koch,

General Counsel.

[FR Doc. 2018–03939 Filed 3–5–18; 8:45 am]

BILLING CODE 4310–4R–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0006; FRL–9973–27]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 5, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, 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: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

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.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

III. Amended Tolerances

1. *PP 7F8583.* (EPA–HQ–OPP–2017–0448). Bayer Crop Science Division, 2 TW Alexander Drive, Durham, NC 27709, requests to amend the tolerance in 40 CFR 180.645 for residues of the herbicide thiencarbazone-methyl in or on wheat, forage at 0.15 parts per million (ppm). The high pressure liquid chromatography/triple stage quadrupole

mass spectrometry (LC/MS/MS) is used to measure and evaluate the chemical thiencarbazone-methyl. *Contact:* RD.

2. *PP 7F8590.* (EPA–HQ–OPP–2017–0744). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, requests to establish the tolerance in 40 CFR 180.507 for residues of the fungicide, azoxystrobin, in or on Beet, sugar, roots at 5.0 ppm and Vegetable, root, subgroup 1B at 0.5 ppm. The gas chromatography with nitrogen-phosphorus detection (GC–NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC–UV) is used to measure and evaluate the chemical azoxystrobin. *Contact:* RD.

3. *PP 7F8590.* (EPA–HQ–OPP–2017–0744). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, requests to amend the tolerances in 40 CFR 180.507 for residues of the fungicide, azoxystrobin by removing the tolerance on Vegetable, root, subgroup 1A at 0.5 ppm. The GC–NPD or in mobile phase by HPLC–UV detection is used to measure and evaluate the chemical azoxystrobin. *Contact:* RD.

IV. New Tolerance Exemptions for Non-Inerts (Except PIPS)

1. *PP 6F8535.* (EPA–HQ–OPP–2017–0315). Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616 (on behalf of Lesaffre Yeast Corporation, 7475 W. Main St., Milwaukee, WI 53214), requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the systemic resistance inducer (SRI) Cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) in or on all food commodities. The petitioner believes no analytical method is needed because it is expected that, when used as proposed, Cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) would not result in residues that are of toxicological concern. *Contact:* BPPD.

2. *PP 7F8562.* (EPA–HQ–OPP–2017–0593). Otsuka Pharmaceutical Co., Ltd., 2–9 Kanda-Tsukasamachi, Chiyoda-ku, Tokyo, 101–8535, Japan (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616), requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the bactericide bacteriophages active against *Xylella fastidiosa* in or on all food commodities. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being proposed. *Contact:* BPPD.

3. *PP 7F8573.* (EPA–HQ–OPP–2017–0702). OmniLytics, Inc., 9100 South 500 West, Sandy, UT 84070, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the bactericide bacteriophage active against *Erwinia amylovora* in or on apple and pear. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being proposed. *Contact:* BPPD.

4. *PP 7F8589.* (EPA–HQ–OPP–2017–0722). Adjuvants Plus, Inc., 1755 Division Rd. North, Kingsville, Ontario N9Y 2Y8, Canada (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616), requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide *Clonostachys rosea* strain ACM941 in or on all food commodities. The petitioner believes no analytical method is needed because an analytical method for residues is not applicable; it is expected that, when used as proposed, *Clonostachys rosea* strain ACM941 would not result in residues that are of toxicological concern. *Contact:* BPPD.

5. *PP 7F8594.* (EPA–HQ–OPP–2017–0721). Adjuvants Plus, Inc., 1755 Division Rd. North, Kingsville, Ontario N9Y 2Y8, Canada (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616), requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide *Clonostachys rosea* strain 88–710 in or on all food commodities. The petitioner believes no analytical method is needed because an analytical method for residues is not applicable; it is expected that, when used as proposed, *Clonostachys rosea* strain 88–710 would not result in residues that are of toxicological concern. *Contact:* BPPD.

V. New Tolerances for Non-Inerts

1. *PP 7F8577.* EPA–HQ–OPP–2017–0719. Sipcam Agro USA, 2525 Meridian Parkway, Suite 350, Durham, NC 27713, requests to establish a tolerance in 40 CFR part 180.275 for residues of the fungicide, chlorothalonil in or on sugarbeet roots at 0.5 ppm; sugarbeet, dried pulp at 0.05 ppm; sugarbeet, refined sugar at 0.05 ppm; sugarbeet, molasses at 0.05 ppm. The gas chromatography method is used to measure and evaluate the chemical chlorothalonil. *Contact:* RD.

2. *PP 7F8582.* (EPA–HQ–OPP–2017–0417). FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 requests to establish a tolerance in 40 CFR 180 for residues of the fungicide, valifenalate, in or on the raw agricultural commodity potato at 0.01 ppm; bulb vegetable crop group 3–07 at 0.40 ppm; celery at 5.0 ppm; cucurbit crop group 9 at 0.30 ppm; fruiting vegetable crop group 8–10 at 0.50 ppm; grape import tolerance at 5.0 ppm; and tomato-wet peel at 0.90 ppm. The LC/MS/MS method is used to measure and evaluate the chemical valifenalate (beta-Alanine, *N*-[(1-methylethoxy)carbonyl]-*L*-valyl-3-(4-chlorophenyl)-, methyl ester). *Contact:* RD.

3. *PP 7F8618.* (EPA–HQ–OPP–2017–0673). Gowan Company, LLC, P.O. Box 556 Yuma, AZ 85364, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide fenazaquin, [3-[2-[4-(1,1-dimethylethyl) phenyl] ethoxy] quinazoline], in or on Alfalfa, forage, at 4.0 ppm; Alfalfa, hay, at 15 ppm; Avocado at 0.15 ppm; Beef, fat at 0.05 ppm; Bushberry, subgroup 13–07B at 0.8 ppm; Caneberry, subgroup 13–07A at 0.7 ppm; Corn, field, aspirated grain fractions at 3.0 ppm; Corn, field, forage at 7.0 ppm; Corn, field, grain at 0.09 ppm; Corn, field, refined oil at 0.2 ppm; Corn, field, stover at 40 ppm; Corn, sweet, forage at 9.0 ppm; Corn, sweet, grain at 0.03 ppm; Cotton, gin byproducts at 15.0 ppm; Cotton, undelinted seed at 0.4 ppm; Fruit, citrus group 10–10 at 0.4 ppm; Fruit, low growing berry subgroup 13–07G at 2.0 ppm; Fruit, pome group 11–10 at 0.4 ppm; Fruit, small fruit vine climbing, except fuzzy kiwifruit subgroup 13–07F at 0.7 ppm; Fruit, stone group 12–12 at 1.5 ppm; Grape, raisins at 0.8 ppm; Kidney at 0.01 ppm; Liver at 0.02 ppm; Milk at 0.01 ppm; Mint at 10.0 ppm; Pork, fat at 0.05 ppm; Sheep, fat at 0.05 ppm; Vegetables, cucurbit group 9 at 0.3 ppm; Vegetables, fruiting group 8–10 at 0.3 ppm; Vegetables, legumes, dried shelled pea and bean (except soybean) subgroup 6C at 0.3 ppm; Vegetables, legumes, edible-podded subgroup 6A at 0.4 ppm; and Vegetables, legumes, succulent shelled pea and bean subgroup 6B at 0.02 ppm. LC/MS/MS is used to measure and evaluate the chemical fenazaquin. *Contact:* RD.

4. *PP 7F8623.* (EPA–HQ–OPP–2017–0653). Nippon Soda Co., Ltd c/o Nisso America, Inc., 88 Pine Street, 14th Floor, New York, NY 10005 requests to establish a tolerance in 40 CFR for residues of the fungicide picarbutrazox, in or on Crop Group 9, Cucurbit Vegetables at 0.20 ppm, Crop Subgroup 4–16A, Leafy Greens at 10 ppm, Corn, forage at 0.01 ppm, Corn, grain at 0.01 ppm, Corn, stover at 0.01 ppm, Corn, sweet, forage at 0.01 ppm, Corn, sweet, kernel plus cob with husks removed at 0.01 ppm, Corn, sweet, stover at 0.01 ppm, Popcorn, grain at 0.01 ppm, Soybean, forage at 0.01 ppm, Soybean, hay at 0.01 ppm and Soybean, seed at 0.01 ppm. The LC/MS/MS method is

used to measure and evaluate the chemical picarbutrazox (tert-butyl (6-{[(Z)-(1-methyl-1H–5-tetrazolyl) (phenyl)methylene]aminooxymethyl}-2-pyridyl)carbamate) and its metabolite TZ–1E (IUPAC: tert-butyl (6-{[(E)-(1-methyl-1H–5-tetrazolyl) (phenyl)methylene]aminooxymethyl}-2-pyridyl) carbamate). *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: January 29, 2018.

Hamaad A. Syed,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–04522 Filed 3–5–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 9

[Docket ID: FEMA–2015–0006]

RIN 1660–AA85

Updates to Floodplain Management and Protection of Wetlands Regulations To Implement Executive Order 13690 and the Federal Flood Risk Management Standard

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) withdraws a notice of proposed rulemaking (NPRM) that published on August 22, 2016. The NPRM proposed changes to FEMA's ''Floodplain Management and Protection of Wetlands'' regulations to implement Executive Order 13690, which established the Federal Flood Risk Management Standard (FFRMS). FEMA also withdraws the proposed supplementary policy (FEMA Policy: 078–3), which clarified how FEMA would apply the FFRMS. On August 15, 2017, the President issued Executive Order 13807, which revoked Executive Order 13690. Accordingly, the NPRM and supplementary policy are withdrawn.

DATES: FEMA is withdrawing the proposed rule published August 22, 2016 (81 FR 57402) as of March 6, 2018.

ADDRESSES: The docket for this withdrawn rulemaking is available on the internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kristin Fontenot, Director, Office of Environmental Planning and Historic Preservation (OEHP), Federal Insurance and Mitigation Administration, DHS/FEMA, 400 C Street SW, Suite 313, Washington, DC 20472–3020. Phone: 202–646–2741; Email: *Kristin.Fontenot@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On August 22, 2016, FEMA published an NPRM entitled ''Updates to Floodplain Management and Protection of Wetlands Regulations To Implement Executive Order 13690 and the Federal Flood Risk Management Standard'' in the **Federal Register** (81 FR 57402). This rulemaking proposed to revise FEMA's regulations on ''Floodplain Management and Protection of Wetlands'' to implement Executive Order 13690 (''Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input''), which amended Executive Order 11988 (''Floodplain Management'') and established the FFRMS. FEMA also proposed a supplementary policy entitled ''FEMA Policy: Guidance for Implementing the Federal Flood Risk Management Standard (FFRMS)'' (FEMA Policy 078–3), which would have further clarified how FEMA would apply the FFRMS. The notice of availability and request for comments for the supplementary policy also published in the August 22, 2016 **Federal Register** at 81 FR 56558.

On August 15, 2017, the President issued Executive Order 13807 (''Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects'') which revoked Executive Order 13690. See 82 FR 40463, Aug. 24, 2017. Executive Order 13807 left in place Executive Order 11988, which provides for uniform floodplain management standards and procedures across the Executive Branch, and which is currently reflected in FEMA regulations. *See* 44 CFR part 9. Accordingly, in light of the revocation of Executive Order 13690, FEMA is withdrawing the NPRM and supplementary policy. FEMA will continue to seek more effective ways in its programs to assess and reduce the risk of current and future flooding and increase community resilience.

Executive Order 13771

The withdrawal of the NPRM qualifies as a deregulatory action under Executive Order 13771. *See* OMB's Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

Authority

Executive Order 11988, Floodplain Management, as amended; 42 U.S.C. 5201 *et seq.*

Dated: February 27, 2018.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–04495 Filed 3–5–18; 8:45 am]

BILLING CODE 9111–66–P

Notices

Federal Register
Vol. 83, No. 44
Tuesday, March 6, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Oklahoma State University of Stillwater, Oklahoma, an exclusive license to the variety of peanut described in Plant Variety Protection Certificate Number 201500363, ''VENUS'', issued on June 27, 2017.

DATES: Comments must be received on or before April 5, 2018.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2018–04492 Filed 3–5–18; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Mississippi State University of Mississippi State, Mississippi, an exclusive license to the variety of blueberry described in U.S. Plant Patent Application Serial No. 15/731,025, ''BLUEBERRY PLANT NAMED 'GUMBO','' filed on April 7, 2017.

DATES: Comments must be received on or before April 5, 2018.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2018–04494 Filed 3–5–18; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Oklahoma State University of Stillwater, Oklahoma, an exclusive license to the variety of peanut described in Plant Variety Protection Certificate Number 201600156, ''LARIAT'', issued on November 28, 2016.

DATES: Comments must be received on or before April 5, 2018.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the

requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2018–04493 Filed 3–5–18; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Boundary and Annexation Survey

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 March 7, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket Number USBC–2018–0002, 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: Direct requests for additional information or copies of the information collection instrument(s) and instructions to Robin A. Pennington, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233 (or via the internet at *robin.a.pennington@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Overview

The Boundary and Annexation Survey (BAS) is one of many voluntary geographic partnership programs that collects boundaries to update the U.S. Census Bureau's geographic database of addresses, streets, and boundaries. The Census Bureau uses its geographic database to link demographic data from surveys and the decennial census to locations and areas, such as cities, school districts, and counties. In order to tabulate statistics by localities, the Census Bureau must have accurate addresses and boundaries.

The boundaries collected during the BAS and other geographic programs become bounding features for census blocks, which are the building blocks for all Census Bureau geographic boundaries. While the Census Bureau's geographic programs differ in requirements, time frame, and participants, the BAS and other geographic programs all follow the same basic process:

1. The Census Bureau invites eligible participants to the program. For the BAS, the Census Bureau invites legal governments.
2. If they elect to participate in the program, participants receive a copy of the boundaries or addresses that the Census Bureau has on file. BAS participants can choose to review and update their boundaries using Geographic Update Partnership Software (GUPS)—which is a free customized mapping software—paper maps, or their own mapping software.
3. Participants return their updates to the Census Bureau.
4. The Census Bureau processes and verifies all submissions for accuracy, and updates its geographic database with boundary or address updates submitted by the participants.
5. The Census Bureau uses the newly updated boundaries and addresses to tabulate statistics.

II. Abstract

The Census Bureau conducts the Boundary and Annexation Survey (BAS) to collect and maintain information about the inventory of legal boundaries and legal actions affecting the boundaries of:

- Counties and equivalent entities.
- Federally recognized American Indian and Alaska Native federal reservations and off-reservation trust lands.
- Incorporated places.
- Minor civil divisions (MCDs).
- Tribal subdivisions.

This information provides an accurate identification of geographic areas for the Census Bureau to use in conducting the decennial and economic censuses and ongoing surveys, preparing population estimates, and supporting other statistical programs of the Census Bureau and the legislative programs of the federal government.

Through the BAS, the Census Bureau asks each government to review materials and verify the accuracy of the information the Census Bureau has on file or submit corrections. The Census Bureau also requests that if necessary, each government update the boundaries, supply information documenting each legal boundary change, and provide changes in the inventory of governments.

The BAS allows the Census Bureau to collect accurate boundaries for legal areas, which improves the accuracy of the statistics the Census Bureau tabulates. The Census Bureau uses the BAS results to support a number of programs, including congressional and state legislative redistricting, the decennial census and related preparatory tests, the economic census, and the Special Census Program. The American Community Survey and Population Estimates Program use the legal boundaries updated through the BAS to disseminate survey results and estimates.

Numerous federal programs rely on accurate boundaries from the BAS. The U.S. Geological Survey depicts the annual legal boundaries submitted to the BAS on the National Map online. The Department of Housing and Urban Development uses the legal boundaries updated through the BAS to determine jurisdictional eligibility for various grant programs, such as the Community Development Block Grant program. The Department of Agriculture uses legal boundaries updated through the BAS to determine eligibility for various rural housing and economic development programs.

Legal Information

While the Census Bureau has a national implementation of the BAS, the Census Bureau reviews each state's laws for inclusion in the BAS materials sent to participants. In addition, if it comes to the Census Bureau's attention that an area of non-tribal land is in dispute between two or more jurisdictions, the Census Bureau will not make annexations or boundary corrections until all affected parties come to a written agreement, or there is a documented final court decision regarding the matter and/or dispute. If there is a dispute over an area of tribal land, the Census Bureau will not make additions or boundary corrections until

the participants provide supporting documents or the U.S. Department of the Interior issues a comment. If necessary, the Census Bureau will request clarification regarding current boundaries or supporting documentation from the U.S. Department of the Interior, Office of the Solicitor.

BAS Universe

The BAS includes approximately 40,000 entities. The BAS universe and mailing materials vary depending upon the needs of the Census Bureau in fulfilling its censuses and household surveys. Every survey year includes the following:

- Counties or equivalent entities.
- Incorporated places with a population of at least 2,500 people.
- MCDs in the six New England states.
- Federally recognized American Indian reservations (AIRs), off-reservation trust lands (ORTLs), and tribal subdivisions.
- A single respondent for the Hawaiian home land (HHL) boundary and status information.
- A single respondent for the municipio, barrio, and subbarrio boundary and status information in Puerto Rico.

As illustrated in the table below from 2016 to 2021, the BAS universe varies throughout the decade. The Census Bureau divides the reporting universe years into three categories:

BAS UNIVERSE INFORMATION FOR 2016–2021

BAS year	Details
2018—2020 ...	Full BAS universe years.
2016, 2017, 2021.	Select BAS universe years.
2016—2020 ...	Redistricting Data Program (RDP) coordination years.

Full BAS Universe Years

From 2018 to 2020, the BAS includes all governmentally active counties and equivalent entities, all incorporated places, all legally defined MCDs, HHLs, legal governments in Puerto Rico, and legally defined federally recognized American Indian and Alaska Native (AIAN) areas (including the Alaska Native Regional Corporations (ANRCs)). Each governmental entity surveyed will receive materials covering its jurisdiction and one or more forms. These three years coincide with the Census Bureau's preparation for the decennial census.

Select BAS Universe Years

In all other years, including 2021, the BAS reporting universe includes all governmental counties and equivalent entities, MCDs in the six New England states, those incorporated places that have a population of 2,500 or greater, and all legally defined federally recognized AIAN areas, including ANRCs. During these years, the Census Bureau may enter into agreements with individual states to modify the universe of MCDs and/or incorporated places to include additional entities that are known by that state to have had boundary changes, without regard to population size.

Redistricting Data Program Coordination Years

In the years 2016 through 2020, state participants in the Redistricting Data Program (RDP) may request coordination between the BAS and RDP submissions for the Block Boundary Suggestion Project (BBSP) and Voting District Project (VTDP). The alignment of the BAS with the BBSP and VTDP facilitates increased cooperation between state and local governments and provides the opportunity to align their effort with updates from state and local government officials participating in the BAS.

III. Method of Collection

The Census Bureau maintains several methods to collect information and updates for legal boundaries. The Census Bureau provides the participant with current geography derived from the Master Address File/Topologically Integrated Geographic Encoding and Referencing Database (MTDB) on CD/DVD, paper maps, or online services. The participant reviews the geography and provides the Census Bureau any changes or updates. The Census Bureau updates the MTDB based on the submitted changes and uses that data to tabulate statistics for other programs like the American Community Survey, the Population Estimates Program, and the economic and decennial censuses.

The two methods for BAS participants to view and update the Census Bureau's record of legal boundaries are through digital map files (Digital BAS) or paper maps (Paper BAS).

The following BAS collection methods allow the Census Bureau to coordinate among various levels of governments and obtain the most accurate boundary information:

- Annual Response.
- Boundary Quality Assessment and Reconciliation Project (BQARP).
- Boundary Validation Program (BVP).
- Consolidation Agreements.
- Memorandum of Understanding (MOU).
- State Certification.

Digital BAS

In digital BAS, participants fill out the online BAS forms and choose one of the following options:

- Download free software and MTDB spatial data.
- Receive free software and MTDB spatial data on CD/DVD.
- Download MTDB spatial data and use their own Geographic Information Systems (GIS) software.

The free software provided by the Census Bureau, called GUPS, consists of specialized BAS tools intended for both novice and experienced GIS users. Digital BAS respondents use GUPS or their own GIS to review the boundaries the Census Bureau has on file and make boundary updates or corrections. Once the BAS participant is finished updating the boundaries, the participant submits the files electronically by using the Secure Web Incoming Module (SWIM) or burn the updates to a CD/DVD and return it to the Census Bureau.

If the BAS participant elects to receive GUPS on CD/DVD, the package contains:

1. Introductory letter from the Director of the Census Bureau.
2. Appropriate BAS form(s) that contains entity-specific identification information.
   a. BAS–1: Incorporated places and consolidated cities.
   b. BAS–2: Counties, parishes, and boroughs.
   c. BAS–3: MCDs.
   d. BAS–5: AIAN areas.
3. CD or DVD and software CD for GUPS.
4. CD(s) or DVD(s) of Census Bureau spatial boundaries files.

Paper BAS

For the traditional paper package, respondents complete the BAS form and reviews Census Bureau maps of their legal area. If needed, respondents draw boundary updates or corrections on the maps using pencils provided in the package. The package contains large format maps, printed forms, and supplies to complete the survey.

The typical BAS package contains:

1. Introductory letter from the Director of the Census Bureau.
2. Appropriate BAS form(s) that contains entity-specific identification information.
   a. BAS–1: Incorporated places and consolidated cities.
   b. BAS–2: Counties, parishes, and boroughs.

c. BAS–3: MCDs.
d. BAS–5: AIAN areas.
3. BAS Respondent Guide.
4. Set of maps.
5. Return postage-paid envelope to submit boundary changes.
6. Supplies for updating paper maps.

Annual Response

In Annual Response, the Census Bureau invites governments to participate in the BAS. The Annual Response is an announcement email letter and a one-page form for the state and county governments that do not have a consolidation agreement. Tribal, county, and local governments indicate whether they have boundary changes to report and provide a current contact person. The Census Bureau uses email and encourages governments to use the online form and download BAS materials online to reduce cost and respondent burden. All governments, without a consolidation agreement, receive the Annual Response email regardless of population size.

The following table shows the details of the Annual Response, which occurs between January and May of each year.

ANNUAL RESPONSE SCHEDULE FOR BAS

January	The Census Bureau emails the Annual Response to BAS contacts in January of each year.
January–May	Governments request BAS packages or download materials online.
March 1	First deadline. Legal boundary updates sent by March 1 are included in the geography the Census Bureau uses for the American Community Survey and Population Estimates Program.
May 31	Final deadline. Updates sent by May 31 are included in the following year's BAS materials.

In the year 2020, all legal documentation for inclusion in the 2020 Census must be effective as of January 1, 2020, or earlier. All legal boundary changes will be placed on hold and updated during the 2021 BAS if effective January 2, 2020, or later.

Boundary Quality Assessment and Reconciliation Project

To improve boundary quality in the Census Bureau's MTDB, the Census Bureau uses the Boundary Quality Assessment and Reconciliation Project (BQARP) to support the BAS program. The goal of the BQARP is to assess, analyze, and improve the spatial quality of legal and administrative boundaries within the MTDB, which the BAS would then continue the collection of annexations and de-annexations on a transaction basis as they occur over time. The BQARP is a one-time project that eases the burden of BAS participants by addressing smaller boundary corrections. After a state has completed the BQARP, BAS participants will only need to submit boundary changes, such as annexations or de-annexations. Ensuring quality and spatially accurate boundaries is a critical component of the geographic preparations for the 2020 Census and the Census Bureau's ongoing geographic partnership programs and surveys. In addition, the improvement of boundary quality is an essential element of the Census Bureau's commitment as the responsible agency for legal boundaries under the Office of Management and Budget (OMB) Circular A–16.

Boundary Validation Program

The Census Bureau will conduct the 2020 Boundary Validation Program (BVP) in conjunction with the 2020 BAS. The Census Bureau conducts the BVP every ten years to provide the highest elected or appointed officials (HEOs) of tribal and local governments an opportunity to review the boundary data collected during the BAS over the last decade. The 2020 BVP will cover:

- All actively functioning counties or statistically equivalent entities.
- Incorporated places (including consolidated cities).
- MCDs.
- All federally recognized AIRs and off-reservation trust land entities in the United States.
- Municipios, barrios, barrio-pueblos and subbarrios in Puerto Rico.

In addition, the Census Bureau will send a letter to the governor of each state explaining the 2020 BVP process and noting that the Census Bureau will review the state boundaries in conjunction with relevant county boundaries as part of the BVP.

The Census Bureau will conduct the 2020 BVP in two phases: Initial and final. During the initial BVP phase, every HEO in the BAS universe will receive a BVP form, a letter with instructions, and a CD/DVD containing a complete set of 2020 BAS maps in PDF format for their governmental unit. The Census Bureau asks the HEO to review the 2020 BAS maps contained on the CD/DVD and return the BVP form within ten days of receipt. If the HEO determines that there are no changes to report, the HEO will sign and return the validated BVP form. If the HEO determines that their entity requires boundary changes, the Census Bureau will instruct the HEO to return the unsigned BVP form and work with their local BAS contact to submit boundary changes through the 2020 BAS process. If either the HEO or the BAS contact submits 2020 BAS boundary updates, effective as of January 1, 2020, by the deadline of March 1, 2020, the entity will be included in the final phase of the BVP.

In the final BVP phase, once the Census Bureau applies the participant's 2020 BAS boundary updates to the MTDB, the Census Bureau will provide each HEO a complete set of updated paper maps. This is participants' final opportunity to review the boundary and verify that the Census Bureau clearly reflects the 2020 BAS changes in the MTDB. In the final BVP phase, each HEO submits any remaining corrections within five days directly to the Census Bureau using the instructions provided in the BAS respondent guide.

Consolidation Agreements

Consolidation agreements allow state and county government officials the opportunity to reduce the response burden for their local governments in states where there are no legislative requirements for local governments to report their legal updates to the state or county. Under a consolidation agreement, a state or county is allowed to respond on behalf of the local governments documented in the agreement. The Census Bureau sends the BAS materials to the state or county, as appropriate, and sends a reminder notification to the local government to report their updates to their BAS consolidator.

Memorandum of Understanding

In states with legislation requiring local governments to report all legal boundary updates to a state agency, state officials may enter into a memorandum of understanding (MOU) with the Census Bureau. States have the option to report the list of governments with known legal boundary changes to the Census Bureau. The BAS will include only those governments listed or the state may report the legal boundary changes directly to the Census Bureau on behalf of the governments.

The Census Bureau will not survey the local governments if the state reports for them. The Census Bureau will send a reminder email notification to the governments requesting them to report to the state contact, per the terms and agreements agreed upon in the MOU.

State Certification

Through the BAS State Certification program, the Census Bureau invites the governor-appointed State Certifying Official (SCO) from each state to review the boundary and governmental unit information collected during the previous BAS cycle. The purpose of the State Certification program is to verify the accuracy, validity, and completeness of the BAS information with state governments. Every year, excluding 2020, the Census Bureau mails materials containing the listings of the information collected from the previous BAS year to the SCO for review. These listings include the attribute information for disincorporations and legal boundary changes as well as the names and functional statuses of incorporated places and minor civil divisions (MCDs). The SCO may request that the Census Bureau edit the attribute data, add missing records, or remove invalid records if their state government maintains an official record of all effective changes to legal boundaries and governmental units as mandated by state law. State certification packages contain a letter to the governor, a state certifying official letter, a discrepancy letter, and a state certification respondent guide.

IV. Data

OMB Control Number: 0607–0151.

Form Number: BAS–1, BAS–2, BAS–3, BAS–5, BAS–6, BAS–ARF BASSC–1, BASSC–2, BASSC–3, BASSC–4, BVP–1, BVP–L1, BVP–L1–AIA, BVP–L1–PR, BVP–2, BVP–L3, BVP–2, BVP–L4, and BVP–L4–AIA.

Type of Review: Regular submission.

Affected Public: All active, functioning counties or statistically equivalent entities; incorporated places (including consolidated cities); MCDs; all federally recognized AIRs and ORTLs entities in the United States; municipios, barrios, barrio-pueblos, and subbarrios in Puerto Rico; and HHLs.

Estimated Number of Respondents:

Annual Response Notification: 39,400 governments.

No Change Response: 25,000 governments.

Telephone Follow-up: 14,000 governments.

Packages with Changes: 5,000 governments.

State Certification Review: 49 states.

State Certification Local Review: 1,000 governments.

Boundary Quality Assessment and Reconciliation Project: 16 states.

Redistricting Data Program Reconciliation State Review: 50 states.

Redistricting Data Program Reconciliation Local Review: 2,000 governments.

Boundary Validation Program: 48,000 governments.

Estimated Total Number of Respondents: 134,555 governments.

Estimated Time per Response:

Annual Response Notification: 30 minutes.

No Change Response: 4 hours.

Telephone Follow-up: 30 minutes.

Packages with Changes: 8 hours.

State Certification Review: 10 hours.

State Certification Local Review: 2 hours.

Boundary Quality Assessment and Reconciliation Project: 25 hours.

Redistricting Data Program Reconciliation State Review: 20 hours.

Redistricting Data Program Reconciliation Local Review: 2 hours.

Boundary Validation Program: 2 hours.

Estimated Total Burden Hours per Year:

Annual Response Notification: 19,700.

No Change Response: 100,000.

Telephone Follow-up: 7,000.

Packages with Changes: 40,000.

State Certification Review: 490.

State Certification Local Review: 2,000.

Boundary Quality Assessment and Reconciliation Project: 400.

Redistricting Data Program Reconciliation State Review: 1,000.

Redistricting Data Program Reconciliation Local Review: 4,000.

Boundary Validation Program: 96,000.

Estimated Total Burden Hours: 270,710.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 6.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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. 2018–04514 Filed 3–5–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Survey of Residential Building or Zoning Permit Systems.

OMB Control Number: 0607–0350.

Form Number(s): C–411(V), C–411(M), C–411(C).

Type of Request: Extension of a currently approved collection.

Number of Respondents: 2,000.

Average Hours per Response: 15 minutes.

Burden Hours: 500.

Needs and Uses: The U.S. Census Bureau is requesting an extension of a currently approved collection for Form C–411, ''Survey of Residential Building or Zoning Permit Systems.

The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. These statistics help state and local governments and the federal government, as well as private industry, to analyze this important sector of the economy. The accuracy of the Census Bureau statistics regarding the amount of construction authorized depends on data supplied by building and zoning officials throughout the country. The Census Bureau uses Form C–411 to obtain information from state and local building permit officials needed for updating the universe of permit-issuing

places which serves as the sampling frame for the Report of Privately-Owned Residential Building or Zoning Permits Issued (OMB number 0607–0094), also known as the Building Permits Survey (BPS), and the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110), also known as Survey of Construction (SOC). These two sample surveys provide widely used measures of construction activity, including the principal economic indicators New Residential Construction and New Home Sales. Data from the BPS and SOC are also used by the Bureau of Economic Analysis (BEA) in the calculation of estimates of the Residential Fixed Investment portion of the Nation's Gross Domestic Product (GDP). In addition, data from the BPS are used by the Census Bureau in the calculation of annual population estimates; these estimates are widely used by government agencies to allocate funding and other resources to local governments.

The questions on Form C–411 pertain to the legal requirements for issuing building or zoning permits in the local jurisdictions. Information is obtained on such items as geographic coverage and types of construction for which permits are issued. We do not plan any changes to the information we collect on the C–411 forms.

The appropriate form is sent to a jurisdiction when the Census Bureau has reason to believe that a new permit system has been established or an existing one has changed. This is based on information from a variety of sources including survey respondents, regional councils and the Census Bureau's Geography Division which keeps abreast of changes in corporate status.

We use the information to verify the existence of new permit systems or changes to existing systems. Based on the information, the Census Bureau adds new permit-issuing places to the universe, delete places no longer issuing permits, and makes changes to the universe to reflect those places that have merged.

Failure to maintain the universe of permit-issuing places would result in deficient samples and inaccurate statistics. This in turn jeopardizes the accuracy of the above mentioned economic indicators. These indicators are closely monitored by the Board of Governors of the Federal Reserve System and other economic policy makers because of the sensitivity of the housing industry to changes in interest rates.

Affected Public: State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–04448 Filed 3–5–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2047]

Expansion of Foreign-Trade Zone 84 Under Alternative Site Framework Houston, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, submitted an application to the Board (FTZ Docket B–66–2015, docketed October 6, 2015, amended October 17, 2017) for authority to expand FTZ 84 under the ASF to include a new magnet site located in Hitchcock, Texas, adjacent to the Houston Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (80 FR 61358, October 13, 2015; 82 FR 52265, November 13, 2017) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to expand FTZ 84 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 51 if not activated within five years from the month of approval.

Dated: February 28, 2018.

Christian B. Marsh,

Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2018–04502 Filed 3–5–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843, A–570–901 and C–533–844]

Certain Lined Paper Products From India and the People's Republic of China; Continuation of Antidumping Duty Orders and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the countervailing duty (CVD) order on certain lined paper products (lined paper) from India and the antidumping duty (AD) orders on lined paper from India and the People's Republic of China (China) would likely lead to continuation or recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, Commerce is publishing a notice of the continuation of the AD orders and the CVD order.

DATES: Applicable March 6, 2018.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, Commerce published in the **Federal Register** the AD orders on lined paper from India, Indonesia, and China, and the CVD orders on lined paper from India and Indonesia.[1]

On August 1, 2011, Commerce and the ITC initiated the first sunset reviews of the Orders pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On August 24, 2012, pursuant to sections 751(c) and 752(a) of the Act, the ITC determined that revocation of the AD orders on lined paper from India and China and the CVD order on lined paper from India, but not the AD and CVD orders on lined paper from Indonesia, would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3] Accordingly, on August 31, 2012, Commerce published a notice of the continuation of the CVD order on line paper from India and the AD orders on lined paper from India and China, and revoked the AD and CVD orders on lined paper from Indonesia.[4]

On July 3, 2017, Commerce initiated and the ITC instituted second sunset reviews of the CVD order on lined paper from India and the AD orders on lined paper from India and China pursuant to section 751(c) of the Act.[5] As a result of the second sunset reviews, Commerce found that revocation of the AD orders on lined paper from India and China would likely lead to continuation or recurrence of dumping, and that revocation of the CVD order on lined paper from India would likely lead to continuation or recurrence of countervailable subsidies.[6] Commerce, therefore, notified the ITC of the magnitude of the dumping margins and net countervailable subsidy rates likely to prevail should the AD orders and CVD order be revoked.

On February 2, 2018, pursuant to sections 751(c) and 752(a) of the Act, the ITC published its determination that revocation of the AD orders on lined paper from India and China and revocation of the CVD order on lined paper from India would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[7]

Scope of the Orders

The scope of these orders includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for loose leaf filler paper), including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, loose leaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8–3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of these orders whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of these orders are:

- Unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Orders*).

[2] *See Initiation of Five-Year (Sunset) Review,* 76 FR 45778 (August 1, 2011), and *Certain Lined Paper School Supplies from China, India, and Indonesia–Institution of Five-Year Reviews Concerning the Countervailing Duty Orders on Certain Lined Paper School Supplies from India and Indonesia and the Antidumping Duty Orders on Certain Lined Paper School Supplies from China, India, and Indonesia,* 76 FR 45851 (August 1, 2011).

[3] *See Certain Lined Paper School Supplies from China, India, and Indonesia,* 77 FR 51570 (August 24, 2012). *See also Certain Lined Paper School Supplies from China, India, and Indonesia,* Inv. Nos. 701–TA–442–443 and 731–TA–1095–1097 (Review), USITC Publication 4344 (August 2012).

[4] *See Certain Lined Paper Products from Indonesia: Revocation of Antidumping and Countervailing Duty Orders,* 77 FR 53174 (August 31, 2012), and *Certain Lined Paper Products from India and the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders,* 77 FR 53172 (August 31, 2012).

[5] *See Initiation of Five-Year (Sunset) Reviews,* 82 FR 30844 (July 3, 2017) (*CLPP Sunset 2017*), and *Lined Paper School Supplies from China and India; Institution of Five-Year Reviews;* 82 FR 30902 (July 3, 2017).

[6] *See Certain Lined Paper Products from India: Final Results of Expedited Second Sunset Review of Countervailing Duty Order,* 82 FR 51390 (November 6, 2017), and *Certain Lined Paper Products from India and the People's Republic of China: Final Results of Expedited Second Sunset Reviews of Antidumping Duty Orders,* 82 FR 51812 (November 8, 2017).

[7] *See Lined Paper School Supplies from China and India; Determinations,* 83 FR 5646 (February 8, 2018).

products commonly known as ''fine business paper,'' ''parchment paper,'' and ''letterhead''), whether or not containing a lined header or decorative lines;

• Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of these orders are the following trademarked products:

• Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to these orders is typically imported under headings 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the AD orders and the CVD order would likely lead to continuation or recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the AD orders on lined paper from India and China and the CVD order on lined paper from India.

U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: February 14, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–04501 Filed 3–5–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG022

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in April, May, and June of 2018. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use

bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2018 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held on April 5, May 3, and June 7, 2018. The Protected Species Safe Handling, Release, and Identification Workshops will be held on April 4, April 11, April 23, May 7, May 10, and May 21, 2018. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Norfolk, VA; Fort Lauderdale, FL; and Manahawkin, NJ. The Protected Species Safe Handling, Release, and Identification Workshops will be held in Manahawkin, NJ; Kitty Hawk, NC; Revere, MA; Kenner, LA; Charleston, SC; and Largo, FL. See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the internet at: *http://www.nmfs.noaa.gov/sfa/hms/compliance/workshops/index.html.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 142 free Atlantic Shark Identification Workshops have been conducted since January 2008.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. April 5, 2018, 12 p.m.–4 p.m., La Quinta Inn, 1387 North Military Trail, Norfolk, VA 23502.

2. May 3, 2018, 12 p.m.–4 p.m., La Quinta Inn, 999 West Cypress Creek Road, Fort Lauderdale, FL 33309.

3. June 7, 2018, 12 p.m.–4 p.m., Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *ericssharkguide@yahoo.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 274 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. April 4, 2018, 9 a.m.–5 p.m., Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.

2. April 11, 2018, 9 a.m.–5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.

3. April 23, 2018, 9 a.m.–5 p.m., Hampton Inn, 230 Lee Burbank Highway, Revere, MA 02151.

4. May 7, 2018, 9 a.m.–5 p.m., Hilton Hotel, 901 Airline Drive, Kenner, LA 70062.

5. May 10, 2018, 9 a.m.–5 p.m., Hampton Inn, 678 Citadel Haven Drive, Charleston, SC 29414.

6. May 21, 2018, 9 a.m.–5 p.m., Holiday Inn Express, 210 Seminole Boulevard, Largo, FL 33770.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish, and prohibited sharks. In an effort to improve reporting, the proper identification of protected species and prohibited sharks will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species and prohibited sharks, which may prevent additional regulations on these fisheries in the future.

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

Dated: March 1, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–04526 Filed 3–5–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF933

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seabird and Shorebird Research and Monitoring in Massachusetts

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the Eastern Massachusetts (MA) National Wildlife Refuge (NWR) Complex, U.S. Fish and Wildlife Service (USFWS), for authorization to take marine mammals incidental to conducting seabird and shorebird monitoring and research in the Eastern MA NWR Complex (Complex). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 5, 2018.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA

defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On December 5, 2017, NMFS received a request from the USFWS for an IHA to take marine mammals incidental to seabird and shorebird monitoring and research activities within the Complex. NMFS determined the application adequate and complete on December 18, 2017. The USFWS's request is for take of gray seals and harbor seals by Level B harassment only. Neither the USFWS nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to the USFWS for similar work (82 FR 12342, March 2, 2017). The USFWS complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Estimated Take section.

Description of Proposed Activity

Overview

The USFWS is proposing to conduct biological tasks for refuge purposes at Monomoy NWR, Nantucket NWR, and Nomans Land Island NWR in MA. These three refuges are managed through the Complex as part of the NWR System of the USFWS. Complex staff census and monitor the presence of breeding and migrating shorebirds using the beaches of Monomoy, Nantucket, and Nomans Land Island NWRs for nesting from April 1 to November 30, annually. Monitoring activities occur daily (on Monomoy and Nantucket) from April to August and is necessary to document the productivity (number of chicks fledged per pair) and population of protected shorebird and seabird species. Monomoy NWR also participates in several less frequent, but equally important, high priority conservation tasks to monitor for threatened and endangered species, including censusing northeastern beach tiger beetles (*Cicindela dorsalis*) and participating in a red knot (*Calidris canutus*) migration study during annual southward migration. Additionally, both Monomoy and Nantucket NWRs serve as vital staging grounds for migrating roseate terns (*Sterna dougallii*), where USFWS staff resight and stage counts.

Dates and Duration

The USFWS proposes to conduct the research activities at various times for each project from April 1 through November 30, 2018. Due to scheduling, time, tide constraints, and favorable weather/ocean conditions, the exact survey dates and durations are variable. The proposed IHA, if issued, would be effective from April 1, 2018 through March 31, 2019. More information on the scope of proposed activities can be found in the *Detailed Description of Activities* section.

Specific Geographic Region

The Complex is made up of eight refuges, including its three coastal refuges: Monomoy NWR, Nantucket NWR, and Nomans NWR. The three main activity sites are NWRs managed by the USFWS and are islands located off the coast of Cape Cod, MA. Although Monomoy NWR consists of three managed barrier islands, pinnipeds are only disturbed while carrying out biological activities on the Atlantic side of South Monomoy Island where gray seals primarily haul out. Therefore, activities mentioned at Monomoy NWR will only refer to South Monomoy Island. While biological tasks performed at these three refuges differ in some regard, all activities are necessary to carry out high priority conservation work for threatened and endangered species. Each activity location is described below.

1. *Monomoy NWR* (N 41.590348, W −69.987432): This site refers to the Atlantic side of South Monomoy Island at Monomoy NWR. Seals use most of the ocean-facing beach of this island as a haulout site. See Figure 1 of the USFWS's application.

2. *Nantucket NWR* (N 41.391754, W −70.050568): This site refers to Nantucket NWR located on the northeast tip of Nantucket Island. The point itself is the primary haulout site for this location. See Figure 2 of the USFWS's application.

3. *Nomans NWR* (N 41.264267, W −70.812228): This site refers to Nomans Land Island located off the coast of Martha's Vineyard. Seals here haul out on the northeast peninsula, and sporadically along the northern shoreline. The rocks around the island are sometimes utilized as well. See Figure 3 of the USFWS's application.

4. *Cape Cod National Seashore nearby beaches* (see Figure 4 of the USFWS's application):

A. Coast Guard Beach (N 41.842333, W −69.943834): This site refers to one of the beaches located at the Cape Cod National Seashore in Eastham, MA. The seals here haul out on the J-bars that form on the beach.

B. North Beach Island (N 41.669441, W −69.942765): This site refers to an island located at the Cape Cod National Seashore in Chatham, MA. The seals here haul out on the southwest end of the island.

C. High Head (N 42.066108, W −70.111318): This site refers to a beach located at the Cape Cod National Seashore in Truro, MA.

D. Jeremy Point (N 41.884300, W −70.069532): This site refers to Jeremy Point located on the Cape Cod bayside at the Cape Cod National Seashore in Wellfleet, MA. The seals here haul out on the sand flats in the waters around the point.

E. Provincetown Harbor (N 42.022342, W −70.178662): This site refers to the west end of the harbor in Provincetown. This is a new haulout as of fall 2015 and has only been observed a few times by the Provincetown Center for Coastal Studies (CCS) (L.Sette, CCS, personal communication 2016).

Detailed Description of Specific Activity

A description of each activity, based on location, is presented below. A summary of this information can also be found in Table 1.

1. Shorebird and Seabird Nest Monitoring and Research

Monomoy NWR

On January 10, 1986, the USFWS listed the Atlantic Coast population of piping plovers (*Charadrius melodus*) as threatened under the provisions of the U.S. Endangered Species Act (ESA) of 1973. Currently, Monomoy NWR serves as a nesting site for six percent of the breeding piping plover pairs in MA. Therefore, management and protection of the piping plover is one of the priority programs for the refuge. Many other avian species benefit from piping plover management, including the state listed species of concern least tern (*Sternula antillarum*) and American oystercatcher (*Haematopus palliates*). Monomoy NWR has a responsibility to follow the guidelines provided for management in the revised 1996 recovery plan for the species (USFWS 1996). The primary objective of the recovery program is to remove the Atlantic Coast piping plover population from the List of Endangered and Threatened Wildlife and Plants by: (1) Achieving well-disturbed increases in numbers and productivity of breeding pairs, and (2) providing for long-term protection of breeding and wintering plovers and their habitat. Actions needed to achieve these objectives include: (1) Manage breeding piping plovers and habitat to maximize survival and productivity, (2) monitor and manage wintering and migration areas to maximize survival and recruitment into the breeding population, (3) undertake scientific investigations that will facilitate recovery efforts, (4) develop and implement public information and education programs, and (5) review progress towards recovery annually and revise recovery efforts as appropriate (USFWS 1996).

The piping plover recovery efforts at the Complex correspond closely to management recommendations in the Piping Plover Recovery Plan. In order to monitor the productivity (number of chicks fledged per pair) of piping plovers at Monomoy NWR, it is necessary to identify suitable nesting habitat for the species. At Monomoy, piping plovers generally select areas that are sandy with some cobble on the beach face and occasionally nest in dense vegetation or behind primary dunes. The same can be said for least terns and American oystercatcher pairs which also nest on South Monomoy Island. These nesting areas are adjacent to known gray seal haulout sites.

Piping plovers begin returning to their Atlantic Coast nesting beaches in mid-March. The first nest is generally laid in mid-April and eggs will continue to be present on the beach until late July. During this time, nests are located by USFWS staff by looking for a number of signs: Continuous presence of adult birds, courtship and territorial behavior in a certain area, large concentrations of tracks, and scrapes (nests or nest attempts). Methods for finding nests include waiting for a disturbed bird to return to its nest or covering probable nesting areas by searching the ground for signs of scraps and zig-zagging the whole area to make sure the entire habitat is covered. Methods for finding nests can sometimes lead to seal disturbance. Nests are visited 4–5 times a week and confirmation of adult presence and incubation is confirmed at a distance when possible to prevent disturbance. Nests hatch after 28 days of incubation and chicks will remain with one or both parents until they fledge at 25–35 days of age. Depending on the date of hatching, flightless chicks may be present on refuge beaches from mid-May until late August. Chicks are monitored until they fledge and may move hundreds of yards from the nest site to feed. Feeding areas include intertidal areas along the ocean and sound sides of South Monomoy Island as well as washover areas.

Similar activities are performed when searching and monitoring American oystercatcher nests and broods. No American oystercatcher pairs nested near seal haulout sites in 2015, but have nested on the ocean side of South Monomoy Island in previous years. In 2001, the American oystercatcher warranted special attention from the U.S. Shorebird Conservation Plan after the population severely declined to under 11,000 individuals. Monomoy NWR has the largest concentration of nesting American oystercatchers on Cape Cod and nesting success at this site is important to the survival of the species. The nesting season occurs from the end of April until mid-August. Monomoy NWR also serves as an important staging site for resting migrants, and bands are often read and reported to the American Oystercatcher Working Group. Staging American oystercatcher will sometimes roost near seal haulout sites.

Least terns nest in small groups around South Monomoy Island. Productivity is not measured throughout the season, but nesting pairs are censused during a 2–3 day period in mid-June. Least terns are censused using the line-sweep method throughout the extent of the nesting colonies and checked by staff weekly to gauge productivity.

USFWS staff install symbolic fencing (sign posts with ''area closed'' and ''beach closed'' informational signs) around nest sites of piping plovers, American oystercatchers, and least terns to inform the public about the bird's presence and protect critical habitat from human disturbance. These areas are adjacent to known seal haulout sites and are regularly monitored throughout the season.

Nantucket NWR

Similar biological activities are carried out on Nantucket NWR as Monomoy NWR. Piping plover, least tern, and American oystercatcher are known species to use Nantucket NWR and nearby lands for nesting from the end of April until mid-August. Beach nesting birds are monitored following similar methods and protocols as Monomoy NWR and areas of nesting are posted with closed signs. Signs are placed at least 150 feet from known seal haulout areas on Nantucket NWR, which predominately occur at the north tip of the Refuge. These posts help protect those areas from public disturbance. Nesting beach birds generally do not nest within the closed area for seals, but instead nest adjacent to the haulouts. If need be, staff will briefly enter the closed area to check nests, but otherwise stay outside of the closed area, greater than 150 feet from seal haulouts. Seabirds and shorebirds do not nest on the Complex every year; in 2015, no beach birds nested on Nantucket NWR.

Nomans Land Island NWR

Nomans NWR is closed to the public and is only visited 1–3 times a year by USFWS staff. During these visits, the presence of shorebirds and seabirds are noted for record. Shorebirds and seabirds are inventoried by scoping suitable nesting and feeding habitat on the island. The greatest potential for marine mammal disturbance occurs in safe boat landing zones, because these areas often overlap with hauled out seals. Every precautionary measure is taken to reduce disturbance to seals on Nomans Land Island NWR, but staff will land a boat or walk within 50 yards (yd) of seal haulouts if safety reasons prevail. A 25-foot Parker is used to travel to and from Nomans NWR.

2. Roseate Tern Staging Counts and Resighting

Monomoy NWR

On November 2, 1987, the Service listed the northeastern breeding population of the roseate terns as Federally endangered. Monomoy NWR serves as an important nesting and

staging site for the species. Monomoy NWR has a responsibility to follow the guidelines provided for management in the Roseate Tern Recovery Plan for the Northeast population (USFWS 1998). The primary objective of the roseate tern recovery program is to promote an increase in breeding population size, distribution, and productivity so as to warrant reclassification to threatened status and eventual delisting. Actions needed to attain this objective include: (1) Oversee breeding roseate terns and their habitat to help increase survival and productivity including the physical maintenance, expansion, and enhancement of nesting habitat; (2) develop a management plan for monitoring wintering and migration areas; (3) secure unprotected sites through acquisition and easements; (4) develop outreach materials and implement education programs; (5) conduct scientific investigations that will facilitate recovery efforts; (6) review progress of recovery annually and revise recovery efforts as needed (USFWS 1998). While breeding roseate terns prefer nesting habitat far from seal haulout sites, migrating terns use areas adjacent to the beach edge. Cape Cod and the surrounding islands as a whole serves as an important staging ground for common terns (*Sterna hirundo*) and roseate terns. In fact, the entire northeast population of roseate terns stage in this area prior to migrating to Central and South America. The USFWS conduct staging tern counts to document the importance of Monomoy NWR relative to other sites and to record changes in use over time by gathering baseline data on the numbers of roseate terns staging on the Complex and adjacent beaches as well as the causes and duration of disturbances to staging terns. This is in compliance with the recovery plan to conduct scientific investigations that will facilitate recovery efforts (USFWS 1998).

In August, USFWS staff traverse areas of suitable staging habitat, including sand flats and open sand beaches, and make quick estimates of the number of staging terns. The terns are counted using binoculars and spotting scopes from a distance that does not disturb the birds. Color bands, field readable bands, and any tagged or banded birds are identified for reporting purposes. Observations on behavior and disturbance are also documented. Depending on the size of the flock, these surveys can last anywhere between one to three hours.

Nantucket NWR

Staging tern counts are carried out on Nantucket NWR following similar methods and protocols mentioned for Monomoy NWR.

Nomans Land Island NWR

Staging tern counts are not performed on Nomans NWR.

3. Red Knot Stopover Study

Monomoy NWR and Nearby Beaches in Chatham, Orleans, and Eastham

On December 11, 2014, the USFWS listed the rufa subspecies of the red knot as Federally threatened under the ESA. As noted in the State of the Birds 2014 report, the knot's status is representative of the steep declines represented in shorebirds that migrate long distances (NABCI 2014). Threats to shorebirds have become more diverse and widespread in recent decades, requiring coordinated conservation efforts across their vast ranges. Protection of breeding, migration, and wintering habitat is critical to this species' recovery (Niles *et al.,* 2008).

Southeastern MA, Monomoy NWR and surrounding beaches in Chatham, Orleans, and Eastham in particular, likely provide one of the most important areas for adult and juvenile red knots during their southward migration (Koch and Paton 2009; Harrington *et al.,* 2010a; Harrington *et al.,* 2010b). Research has shown that this region supports red knots bound for different winter destinations, including red knots wintering as far south as Patagonia (Harrington *et al.,* 2010b). Currently, there is little information on migration routes, and no information on wintering sites of juvenile red knots.

The red knot stopover study is not conducted on Nantucket NWR or Nomans NWR.

4. Northeastern Beach Tiger Beetle Census

In August of 1990, the USFWS listed the northeastern beach tiger beetle as threatened under the ESA. Currently northeastern beach tiger beetle can be found at only two sites in MA: One on the south shore of Martha's Vineyard and one on South Monomoy Island and Nauset/South Beach in Chatham, MA (USFWS 1994, USFWS 2015). Searches on Monomoy in the 1980s failed to locate the northeastern beach tiger beetle, but the structure of the habitat seemed favorable, making Monomoy the leading candidate as an introduction site. The first beetle larvae transplant occurred in May 2000. Since 2004, tiger beetle larvae have not been transferred to Monomoy (USFWS 2015). However, through continued adult tiger beetle monitoring, the annual presence of tiger beetles has been documented on the refuge. Annual monitoring confirms successful survival and production of tiger beetles through all stages of life, and gives a firm indication of a new self-sustaining population at Monomoy NWR.

Northeastern beach tiger beetle live their entire life on the beach, and prefer medium to medium-course sand. Adults occur on the beach from June through September and often congregate around the water's edge on warm days (USFWS 2011). On Monomoy NWR, the population occurs in habitat on the Atlantic side of South Monomoy Island on the water's edge and in the wrack line. Several index counts of the tiger beetle population are completed by USFWS staff during July and August each year. Counts are conducted by slowly walking the water's edge at a width of 2–3 people across and tallying adults seen on the surface of the beach until the extent of suitable habitat is covered.

Northeastern beach tiger beetle surveys are not conducted on Nantucket NWR or Nomans Land Island NWR.

5. Coastal Shoreline Change Survey

Since 2011, Monomoy has participated in a long-term coastal shoreline monitoring project in collaboration with Rutgers University and the National Park Service (NPS) protocol. The annual shoreline surveys are conducted twice a year to gain a finer understanding of the rate of shoreline change and to provide baseline information for sea level rise. Two 1-day surveys are conducted at most sites, one in the spring and one in the fall. Surveys are only conducted in the fall at Monomoy NWR, typically between September and November, consequent to the large number of seals using the area in the spring. To document accurate data on shoreline change, a handheld Trimble device is used to GPS the neap high tide swash line around the ocean-facing extent of South Monomoy Island by walking the beach at a normal pace. The survey takes approximately one day to complete.

Shoreline surveys are not conducted on Nantucket NWR or Nomans NWR.

TABLE 1—SITE LOCATION AND DURATION OF THE FIVE PROJECTS IN THE EASTERN MASSACHUSETTS NATIONAL WILDLIFE REFUGE

Site location and duration	Activity	Time of year		
		Monomoy NWR	Nantucket NWR	Nomans NWR
Shorebird and Seabird Monitoring and Research.	April–August	17 weeks, 2 days/week, 6–8 hours/day.	17 weeks*, 2 days/month, <1 hour/day.	1–3 days/year, ~1 hour/day.
Roseate Tern Staging Counts and Resighting.	Mid July–September	3 weeks, 1–2 days/week, 1–3 hours/day.	6–8 weeks, 2 days/month, 1–3 hours/day.	N/A.
Red Knot Stopover Study	August–October	Two trapping windows, 5–10 days in combination with Cape Cod beaches, 6–12 hours/day.	N/A	N/A.
Northeastern Beach Tiger Beetle Census.	July–September	1–3 days/year, 6–8 hours/day	N/A	N/A.
Coastal Shoreline Change Survey.	September–October	Once/year, 8 hours/day	N/A	N/A.

*Shorebird and Seabird Monitoring and Research on Nantucket is contingent on the presence of nesting beach birds. In 2015, no shorebirds or seabirds nested on Nantucket NWR.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'').

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *https://www.fisheries.noaa.gov/topic/population-assessments/marine-mammals*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence in the Complex and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. Until 2017, NMFS SARs relied on Canadian Department of Fisheries and Oceans (DFO) population models to determine the abundance of gray seals in Canada. The portion of gray seals in U.S. waters was not determined until the 2017 draft SARs (NMFS 2017). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 draft SARs (NMFS 2017). The 2017 draft SARs were published in the **Federal Register** on December 19, 2017. The 2017 draft SARs are still up for public comment at the time of this publication (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—GENERAL INFORMATION ON MARINE MAMMALS IN THE VICINITY OF EASTERN MASSACHUSETTS NATIONAL WILDLIFE REFUGE, MASSACHUSETTS

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal	*Halichoerus grypus atlantica*	Western North Atlantic	-,N	27,131 (N/A, 27,131, 2016)	1,554	5,207
Harbor seal	*Phoca vitulina concolor*	Western North Atlantic	-,N	75,834 (0.15, 66,884, 2012)	2,006	368

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/*. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

All species that could potentially occur in the proposed survey areas are included in Table 2. As described below, both species (with two managed stocks) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

Gray Seal

There are three major populations of gray seals found in the world; eastern Canada (western North Atlantic stock), northwestern Europe, and the Baltic Sea. The gray seals that occur in the project area belong to the western North Atlantic stock, which ranges from New Jersey to Labrador. Based on genetic analysis from the Canadian and U.S. populations, all individuals were placed into one population providing further evidence that this stock is one interbreeding population (Wood *et al.,* 2011). U.S. population abundance was estimated using minimum U.S. pup production (6,308 pups) fit to population models, yielding a U.S. stock abundance of 27,131 seals. U.S. pup production accounts for approximately six percent of the total pup production over the entire range of the stock (NMFS 2017). Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic Exclusive Economic Zone (Waring *et al.,* 2016). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2016). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Waring *et al.,* 2016). Gray seals are not listed under the ESA and the stock is not considered strategic or depleted under the MMPA.

Monomoy NWR is the largest haulout site for gray seals on the U.S. Atlantic seaboard, and one of only two consistent sites in Massachusetts (the other being Muskeget Island, west of Nantucket) where gray seals pup (USFWS 2015). Gray seals are known to use Monomoy NWR and Nantucket NWR land and water year round, with higher numbers accumulating during the winter and spring when pupping and molting occur. While gray seal pupping grounds are historically further north on Sable Island in Nova Scotia and in the Gulf of St. Lawrence in Canada, there has been a year-round breeding population on Cape Cod and the islands since the late 1990s (NOAA 2015a, USFWS 2015).

Gray seals start to group up in fall and pupping generally occurs from mid-December to early February (USFWS 2015). Gray seal pupping on Monomoy NWR was limited in the past but has been increasing rapidly in recent years. By early spring, upwards of 19,000 gray seals can be found hauled out on Monomoy NWR (B. Josephson, NOAA, personal communication). While many of these seals use Monomoy NWR for breeding, others make their way to the refuge to molt. By late spring, gray seal abundance continues to taper until the fall.

Gray seal pupping information for Nantucket NWR and Nomans Land Island NWR is limited, but evidence suggests that a small number of pups are born on the latter. Aerial images and evidence do not show that pups are born on Nantucket NWR, although speculations persist (S. Wood, NOAA, personal communication). Similar trends in distribution at Monomoy NWR occur at Nomans and Nantucket NWRs, but in significantly less numbers. Gray seals are most abundant at the activity sites from late fall until spring, and less frequent during the summer months when most activity is occurring. Raw counts of gray seal counts from 2015 are summarized in Table 3.

TABLE 3—RAW COUNT OF THE MAXIMUM NUMBER OF INDIVIDUAL GRAY SEALS USING MONOMOY NWR LANDS AND SURROUNDING WATERS IN 2015 BASED ON NOAA UNPUBLISHED DATA

[B. Josephson, NOAA, personal communication]

Gray seals	
Month	Raw count
January	4,435
February	6,047
March	16,764
April	18,098
May	19,166
June	8,764
July	978
August	1,206
September	658
October	1,113
November	2,379
December	(*)

* Not calculated.

Harbor Seal

Harbor seals found on the project area are included in the western North Atlantic stock, which ranges from Canadian Arctic to southern New England and New York, and occasionally to the Carolinas (Waring *et al.,* 2016). Based on available counts along the Maine coast in 2012, the minimum population estimate is 75,834 (Waring *et al.,* 2016). Harbor seals are not listed under the ESA and the stock is not considered strategic or depleted under the MMPA.

Harbor seals occur seasonally in the Complex, and generally arrive in early September and remain through May (Waring *et al.,* 2016). Numbers of these seals increase slowly through this time period and then quickly drop off in March as they make their northward movement from southern New England to Maine and eastern Canada, where they breed in mid-May (USFWS 2015). Gray seals seem to be displacing harbor seals to some extent, but the two species will haul out together, with gray seals occupying the upper beach and harbor seals staying closer to the water (D. Waring, personal communication). Pupping generally occurs between mid-May through June off the coast of Maine; however recent evidence suggests that some pupping may occur as far south as Manomet, MA, but does not occur in the project area.

The best current abundance estimate of harbor seals is 75,834 (CV = 0.15) which is from a 2012 survey (Waring *et al.,* 2015). The minimum population estimate is 66,884 based on corrected available counts along the Maine coast in 2012. It is unclear how many harbor seals use the Complex. Harbor seals are seen infrequently and only occur seasonally. USFWS staff estimate that of all the seals they observe in the Complex, approximately five percent are harbor seals.

Sound Sources and Sound Characteristics

NMFS does not expect acoustic stimuli to result from human presence, and will therefore not have the potential to harass marine mammals, incidental to the conduct of the proposed activities. One activity (cannon nets) may have an acoustic component, but we believe take from this activity can be avoided.

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this notice. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is the ratio of a measured sound pressure and a reference level. The commonly used reference pressure is 1 μPa for underwater, and the units for SPLs are dB re: 1 μPa. The commonly used reference pressure is 20 μPa for in air, and the units for SPLs are dB re: 20 μPa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square is the square root of the arithmetic average of the squared instantaneous pressure values. All references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take into account the duration of a sound.

Research Activities Sound Characteristics

Activities that may have an acoustic component (*e.g.,* cannon nets) are not expected to reach the thresholds for Level B harassment. Cannon nets could be an airborne source of noise, and have a measured SL of 128 dB at one meter (m) (estimated based on a measurement of 98.4 dB at 30 m; L. Niles, pers. comm., December 2016); however, the SPL is expected to be less than the thresholds for airborne pinniped disturbance (*e.g.,* 90 dB for harbor seals, and 100 dB for all other pinnipeds) at 80 meters from the source. The USFWS proposes to stay at least 100 meters from all pinnipeds if cannon nets are to be used for research purposes.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section considers the content of this section, the ''Estimated Take by Incidental Harassment'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Acoustic and visual stimuli generated by: (1) Vessel landings; (2) research activities (*e.g.,* cannon nets, sign installation); and (3) human presence may have the potential to cause behavioral disturbance of pinnipeds.

Vessel Presence and Noise

Researchers have demonstrated temporary threshold shifts (TTS) in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). In 2004, researchers measured auditory fatigue to airborne sound in harbor seals, California sea lions, and northern elephant seals after exposure to non-pulse noise for 25 minutes (Kastak *et al.,* 2004). In the study, the harbor seal experienced approximately six dB of TTS at 99 dB re: 20 µPa. The authors identified onset of TTS in the California sea lion at 122 dB re: 20 µPa. The northern elephant seal experienced TTS-onset at 121 dB re: 20 µPa (Kastak *et al.,* 2004).

Pinnipeds have the potential to be disturbed by underwater noise generated by the engine of the vessel (Born *et al.,* 1999; Richardson *et al.,* 1995). Data on underwater TTS-onset in pinnipeds exposed to pulses are limited to a single study which exposed two California sea lions to single underwater pulses from an arc-gap transducer and found no measureable TTS following exposures up to 183 dB re: 1 µPa (peak-to-peak) (Finneran *et al.,* 2003).

As a general statement from the available information, pinnipeds exposed to intense (approximately 110 to 120 dB re: 20 µPa) non-pulse sounds often leave haulout areas and seek refuge temporarily (minutes to a few hours) in the water (Southall *et al.,* 2007).

It is likely that the initial vessel approach would cause a subset, or all of the marine mammals hauled out to flush into the water. The physical presence of the vessel could also lead to non-auditory effects on marine mammals involving visual or other cues. Noise from the vessel would not be expected to cause direct physical effects but have the potential to affect behavior. The primary factor that may influence abrupt movements of animals is engine noise, specifically changes in engine noise. Responses by mammals could include hasty dives or turns, change in course, or flushing from a haul out site.

If pinnipeds are present on Nomans NWR when the vessel approaches, it is likely that the vessel would cause some number of the pinnipeds to flush; however, the USFWS staff would approach in a slow and controlled manner, as far away as possible from haulouts to prevent or minimize flushing. Staff would also avoid or proceed cautiously when operating boats in the direct path of swimming seals that may be present in the area as far from hauled out seals as possible.

Human Presence

The appearance of USFWS personnel may have the potential to cause Level B harassment of marine mammals hauled out on the beaches in the proposed action area. Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of the USFWS staff (*e.g.,* turning the head, assuming a more upright posture) to flushing from the haulout site into the water. NMFS does not consider the lesser reactions to constitute Level B (behavioral) harassment. However, if pinnipeds move greater than two body lengths or make longer retreats over the beach or if already moving, make a change of direction of greater than 90 degrees or flush into the water in response to the presence of surveyors, these are indicative of disruptions of behavioral patterns and thus are Level B harassment. NMFS uses a three-point scale (Table 4) to determine which disturbance reactions constitute take under the MMPA. Levels two and three (movement and flush) are considered take, whereas Level one (alert) is not.

TABLE 4—DISTURBANCE SCALE OF PINNIPED RESPONSES TO IN-AIR SOURCES TO DETERMINE TAKE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only Levels 2 and 3 are considered take, whereas Level 1 is not.

Reactions to human presence, if any, depends on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Southall *et al.,* 2007; Weilgart 2007). These behavioral reactions from marine mammals are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior, avoidance of areas; and/or flight responses (*e.g.,* pinnipeds flushing into the water from haulouts or rookeries). If a marine mammal does react briefly to human presence by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if visual stimuli from human presence displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007).

Disturbances resulting from human activity can impact short- and long-term pinniped haulout behavior (Renouf *et al.,* 1981; Schneider and Payne 1983; Terhune and Almon 1983; Allen *et al.,* 1984; Stewart 1984; Suryan and Harvey 1999; and Kucey and Trites 2006). Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.,* 1984; Calambokidis *et al.,* 1991; and Suryan and Harvey 1999) or lead Hawaiian monk seals (*Neomonachus schauinslandi*) to avoid beaches (Kenyon 1972). In one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon 1962).

In cases where vessels actively approached marine mammals (*e.g.,* whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Acevedo 1991; Trites and Bain 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Richter *et al.,* 2003), disruption of normal social behaviors (Lusseau 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004).

In 1997, Henry and Hammil (2001) conducted a study to measure the impacts of small boats (*i.e.,* kayaks, canoes, motorboats, and sailboats) on harbor seal haulout behavior in Metis Bay, Quebec, Canada. During that study, the authors noted that the most frequent disturbances (n=73) were caused by lower speed, lingering kayaks, and canoes (33.3 percent) as opposed to motorboats (27.8 percent) conducting high-speed passes. The seal's flight reactions could be linked to a surprise factor by kayaks and canoes, which approach slowly, quietly, and low on the water making them look like predators. However, the authors note that once the animals were disturbed, there did not appear to be any significant lingering effect on the recovery of numbers to their pre-disturbance levels. In conclusion, the study showed that boat traffic at current levels has only a temporary effect on the haulout behavior of harbor seals in the Metis Bay area.

In 2004, Acevedo-Gutierrez and Johnson (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haulout sites on Yellow Island, Washington. The authors estimated the minimum distance between the vessels and the haulout sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the seven-weekend study, the authors recorded 14 human-related disturbances which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m) respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that on average, the seals quickly recovered from the disturbances and returned to the haulout site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Acevedo-Gutierrez and Johnson 2007). As a general statement from the available information, pinnipeds exposed to intense (approximately 110 to 120 decibels re: 20 µPa) non-pulsed sounds often leave haulout areas and seek refuge temporarily (minutes to a few hours) in the water (Southall *et al.,* 2007).

Stampede

There are other ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. They are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. These situations are: (1) Falling when entering the water at high-relief locations; (2) extended separation of mothers and pups; and (3) crushing of pups by large males during a stampede. However, NMFS does not expect any of these scenarios to occur from the USFWS's research activities. There is the risk of injury if animals stampede towards shorelines with precipitous relief (*e.g.,* cliffs). However, there are no cliffs on any of the haulout locations in the Complex. If disturbed, the small number of hauled out adult animals may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area. Moreover, seals may flush into the water, but would not have the potential to crush other seals like sea lions do during a stampede. They may bump into each other, but this is not expected to have lethal consequences. Thus, in this case, NMFS considers the risk of injury, serious injury, or death to hauled-out animals as very low.

Anticipated Effects on Marine Mammal Habitat

The only habitat modification associated with the proposed activity is installation of signs on beaches where haulouts are located. Thus, NMFS does not expect that the proposed activity would have any effects on marine mammal habitat and NMFS expects that there will be no long- or short-term physical impacts to pinniped habitat in the Complex.

The proposed activities are not expected to result in any permanent impact on habitats used by marine mammals, including prey species and foraging habitat. The main impact associated with the proposed activity will be direct effects on marine mammals from human presence at haulouts (*i.e.,* the potential for temporary abandonment of the site), previously discussed in this notice.

NMFS does not anticipate that the proposed research and monitoring activities would result in any permanent effects on the habitats used by the

marine mammals in the proposed area, including the food sources they use (*i.e.,* fish and invertebrates). Based on the preceding discussion, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to USFWS research and monitoring surveys. NMFS expects that the presence of the USFWS personnel could disturb animals hauled out on beaches near research activities and that the animals may alter their behavior or attempt to move away from the USFWS personnel. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Gray Seal—Little information is known about gray seal age and sex distribution at the Complex. Gray seals may use Complex sites for pupping but research and monitoring activities are not performed during the breeding season, so no newborn pups will be disturbed. Group composition of individuals present at activity sites are likely to be of mixed age and sex classes.

The greatest disturbance to gray seals is expected to occur during the beach nesting bird breeding season from April to August. During April and May, when seals are hauled out in very large numbers on the refuge, they may be present at beaches of varying widths, between 30 m and 300 m. In narrower areas, all of the seals may be disturbed; in mid-width areas, some of the younger and smaller seals may flush, but large males may remain on the beach; and in the widest area, USFWS activities may have no impact on the hauled out seals. USFWS staff conduct research and monitoring work outside of the season of highest gray seal numbers.

Harbor Seal—Peak pupping for harbor seals is in June and occurs elsewhere, mainly on the coasts of Maine and maritime Canada. Prior to a 2001 study, it was thought that the majority of migrating harbor seals moving into New England waters were sub-adults and juveniles. The study revealed that adult seals also migrate to waters around Cape Cod (NOAA 2015b). However, data on harbor seal sex and age distribution is still insufficient to report. Harbor seals are only noted in gray seal haulouts if they are spotted by USFWS staff or researchers. USFWS staff estimate that gray seal haulouts are comprised of five percent or less harbor seals based on field observations, as harbor seals are not always seen mixed in with every gray seal haulout. Harbor seal numbers taper during the summer time when the highest level of seal disturbance occurs.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

As discussed earlier, NMFS assumes that pinnipeds that move greater than two body lengths or make longer retreats over the beach, or if already moving, make a change of direction of greater than 90 degrees or flush into the water in response to the presence of surveyors, are behaviorally harassed, and thus subject to Level B taking. Take estimation is based on the number of seals observed in past research years that have been flushed during research activities.

TABLE 5—ESTIMATED NUMBER OF GRAY SEAL TAKES PER ACTIVITY AT MONOMOY, NANTUCKET, AND NOMANS LAND ISLAND NWRS

Gray seal			
Age: all		Sex: Male and female	
	# takes/event	# events/activity	Total takes
Shorebird and Seabird Monitoring and Research	1000 (Monomoy)	34 (Monomoy)	34,430
	50 (Nantucket)	8 (Nantucket)	
	10 (Nomans)	3 (Nomans)	
Roseate Tern Staging Counts and Resighting	10 (Monomoy)	6 (Monomoy)	100
	10 (Nantucket)	4 (Nantucket)	
Red Knot Stopover Study	250 (Monomoy)	5 (Monomoy)	2,000
	150 (Cape Cod)	5 (Cape Cod)	
Northeastern Beach Tiger Beetle Census	750 (Monomoy)	3 (Monomoy)	2,250
Coastal Shoreline Change Survey	500 (Monomoy)	1 (Monomoy)	500
Total			39,280

Take estimates were based on NOAA unpublished data (Table 3) and USFWS field observations. While the average number of gray seals present (in regards to Monomoy) from April until August is greater than what is reflected in Table 5, not every hauled out seal on the beach is impacted from each activity, and not all seals are impacted from every activity event. This is especially true for Monomoy NWR because the seal haulout stretches across 4+ miles of beach, whereas the haulouts on Nomans NWR and Nantucket NWR are more compact at a central location.

For shorebird and seabird monitoring and research on Monomoy, an average 1,000 gray seals was estimated based on Table 3 unpublished data and field observations of staff working on the island. Seals on South Monomoy Island will haul out in groups along the Atlantic shoreline. Although gray seals will haul out daily on South Monomoy, they will not always be present in the same location every day, and will haul out during different times of the day in accordance with the tide. USFWS staff face the greatest difficulty avoiding seals along the narrow shoreline sections of the island at the south end of South Monomoy Island. Seal haulouts can be readily avoided given the width of the beach and availability of preferred nesting beach bird habitat located closer to the dunes. While the average number of gray seals hauled out on South Monomoy between April and August is 9,000, an average of 1,000 individuals (at any given time) better describes the number of seals staff come into contact with (Table 5). USFWS staff monitor beach birds along the 4+ mile Atlantic shoreline of South Monomoy 5–6 days a week (Table 1). It is important to note that the entire extent of the shoreline is not monitored every day. Staff monitor as many areas as time allows, although there are some days when the north or south end of the island are not visited. Disturbance does not always occur when seal haulout areas are visited. During the 17 week nesting season, USFWS estimates that seals are disturbed during shorebird and seabird monitoring twice a week. This equates to 34 events of disturbance. The same ideology and number of events was applied to Nantucket for this activity (Table 5). Nomans Land NWR is only visited twice a year during the spring and summer, and the number of takes per event is based on observations of staff visiting the island.

The number of gray seal takes per roseate tern staging count and resighting event was estimated based on staff observations from previous surveys. Seals are rarely disturbed during this activity, as roseate terns generally prefer to roost on flats or open sand, while seals prefer to haul out on the shoreline of South Monomoy and Nantucket. However, disturbance is possible if roseate terns roost adjacent to the northern end of the haulout area on South Monomoy Island or the haulout on Nantucket. The number of resighting events is based on previous year's survey efforts.

The number of gray seal takes provided for the red knot study were derived from previous year's efforts and staff observation. Trapping does not always occur on South Monomoy Island, and in fact did not occur there in 2017. Trapping locations are chosen based on reconnaissance efforts conducted to locate red knot roosts. When trapping is conducted on South Monomoy Island, the cannon nets are set in one location along the Atlantic shoreline and are not moved for the remainder of the trapping effort. Therefore, only the haulouts closest to the trapping site may be affected, which the USFWS estimates to be around 250 seals (Table 5). Gray seal numbers for Cape Cod were provided from seal surveys conducted by the Provincetown Center for Coastal Studies. The number of events per red knot trapping activity reflects previous year's efforts. Trapping does not occur if a seal haulout is located within 100 m of a red knot roost.

The number of gray seal takes estimated for Northeastern beach tiger beetle census is based on USFWS staff observation. This activity usually takes two to three days to conduct and results in some seal disturbance. The number of takes provided for the coastal shoreline change survey is based on unpublished data from NOAA for the month of October (Table 3). Monomoy no longer conducts shoreline surveys in the spring when seal haulouts are at their highest numbers; only one survey is conducted in the fall.

It is unclear exactly how many harbor seals occur at the Complex, therefore it is difficult to determine how many takes occur since harbor seals are mainly present during the off season when research and monitoring is limited. Harbor seals are not present at all gray seal haulouts but at haulouts where both species are present, USFWS staff estimate that gray seal haulouts during the summer are comprised of 5 percent or less harbor seals. Due to the lack of available data on presence, harbor seal takes are not broken down by activity or site. Rather, the number of harbor seal Level B takes requested was calculated by taking 5 percent of the total gray seal take estimate. USFWS is requesting 1,964 Level B takes of harbor seals incidental to research and monitoring activities.

These incidental harassment take numbers represent less than three percent of the affected stocks of harbor seals. Under the 2017 draft SARs, the take number of gray seals exceeds the stock abundance estimate in U.S. waters (Table 6). However, actual take may be slightly less if animals decide to haul out at a different location for the day or if animals are foraging at the time of the survey activities. The number of individual seals taken is also assumed to be less than the take estimate since these species show high philopatry (Waring *et al.,* 2016; Wood *et al.,* 2011). We expect the take numbers to represent the number of exposures, but assume that the same seals may be behaviorally harassed over multiple days, and the likely number of individual seals that may be harassed would be less. In addition, this project occurs in a small portion of the overall range of the Northwest Atlantic population of gray seals. While there is evidence of haulout site philopatry, resights of tagged and branded animals and satellite tracks of tagged animals show movement of individuals between the U.S. and Canada (Puryear *et al.,* 2016). The percentage of time that individuals are resident in U.S. waters is unknown (NMFS 2017). Genetic evidence provides a high degree of certainty that the Western North Atlantic stock of gray seals is a single stock (Boskovic *et al.,* 1996; Wood *et al.,* 2011). Thus, although the U.S. stock estimate is only 27,131, the overall stock abundance is 451,131. The gray seal take estimate for this project represents less than nine percent of the overall Western North Atlantic stock abundance in U.S. and Canadian waters (Table 6).

TABLE 6—PERCENTAGE OF STOCK AFFECTED BY THE NUMBER OF TAKES PER SPECIES

Species	Level B	Stock abundance [1]	% Population
Gray seal	39,280	[2] 27,131 (451,131)	144.8 (8.71)
Harbor seal	1,964	75,834	2.59

[1] NMFS 2017.
[2] Overall Western North Atlantic stock abundance.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking'' for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

Time and Frequency—The USFWS would conduct research activities throughout the course of the year between April 1 and November 30, 2018, outside of the seasons of highest seal abundance and pupping at the Complex.

Vessel Approach and Timing Techniques—The USFWS would ensure that its vessel approaches to beaches with pinniped haulouts would be conducted so as to not disturb marine mammals as most practicable. To the extent possible, the vessel would approach the beaches in a slow and controlled approach, as far away as possibly from haulouts to prevent or minimize flushing. Staff would also avoid or proceed cautiously when operating boats in the direct path of swimming seals that may be present in the area.

Avoidance of Acoustic Impacts from Cannon Nets—Cannon nets have a measured SL of 128 dB at one meter (m) (estimated based on a measurement of 98.4 dB at 30 m; L. Niles, pers. comm., December 2016); however, the SPL is expected to be less than the thresholds for airborne pinniped disturbance (*e.g.,* 90 dB for harbor seals, and 100 dB for all other pinnipeds) at 80 yards from the source. The USFWS proposes to stay at least 100 meters from all pinnipeds if cannon nets are to be used for research purposes.

Avoidance of Visual and Acoustic Contact with People—The USFWS would instruct its members and research staff to avoid making unnecessary noise and not expose themselves visually to pinnipeds whenever practicable. USFWS staff would stay at least 50 yards from hauled out pinnipeds, unless it is absolutely necessary to approach seals closer, or potentially flush a seal, in order to continue conducting endangered species conservation work. When disturbance is unavoidable, staff will work quickly and efficiently to minimize the length of disturbance. Researchers and staff will do so by proceeding in a slow and controlled manner, which allows for the seals to slowly flush into the water. Staff will also maintain a quiet working atmosphere, avoiding loud noises, and using hushed voices in the presence of hauled out pinnipeds. Pathways of approach to the desired study or nesting site will be chosen to minimize seal disturbance if an activity event may result in the disturbance of seals. USFWS staff will scan the surrounding waters near the haulouts, and if predators (*i.e.,* sharks) are seen, seals will not be flushed by USFWS staff.

Researchers, USFWS staff, and volunteers will be properly informed about the MMPA take prohibitions, and will educate the public on the importance of not disturbing marine mammals, when applicable. Staff at Nantucket NWR will remain present on the beaches utilized by pinnipeds to prevent anthropogenic disturbance during times of high public use (late spring to early fall). Staff at Monomoy NWR will also be present on beaches utilized by seals during the same time of year, and will inform the public to keep a distance from haulouts if an issue is noticed. Similar to the USFWS, the NPS also takes precautionary mitigation to help prevent seal take by the public. In August and on the weekends in September, staff and volunteers are present on the National Seashore beaches to share with the public the importance of preventing disturbance to seals by keeping people at a proper viewing distance of at least 50 yards.

The presence/proximity of seal haulouts and the loud sound created by the firing of cannon nets are taken into consideration when selecting trapping sites for the Red Knot Stopover Study. Trapping sites are decided based on the presence of red knots, the number of juveniles located within roosts, and the observation of birds with attached geolocators and flags. Sites are not trapped on if there is a strong possibility of disturbing seals (*i.e.,* closer than 100 meters). The Red Knot Stopover Study occurs during the time of year (July to September) when the least number of seals are present at the activity sites.

The proposed mitigation measures are designed to minimize the potential for behavioral harassment of pinnipeds hauled out near the survey sites. The proposed surveys occur outside of the period of highest seal abundance at the Complex. While the survey timing overlaps with harbor seal pupping season, pupping is not known to occur at the Complex. Gray seal pupping has been documented at the Complex but generally occurs between December and February, when USFWS staff will not be conducting surveys. We believe the proposed mitigation measures are practicable for the applicant to implement.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

Monitoring

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of

accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

As part of its IHA application, the USFWS proposes to conduct marine mammal monitoring, in order to implement the mitigation measures that require real-time monitoring, and satisfy the monitoring requirements of the proposed IHA. These include:

Monitoring seals as project activities are being conducted. Proposed monitoring requirements in relation to the USFWS's proposed activities would include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the research activities, including location, date, and time of the event. In addition, the USFWS would record observations regarding the number and species of any marine mammals either observed in the water or hauled out. Behavior of seals will be recorded on a three point scale: 1= alert reaction, not considered harassment; 2= moving at least two body lengths, or change in direction greater than 90 degrees; 3= flushing (Table 4). USFWS staff would also record and report all observations of sick, injured, or entangled marine mammals on Monomoy NWR to the International Fund for Animal Welfare (IFAW) marine mammal rescue team, and will report to NOAA if injured seals are found at Nantucket NWR and Nomans NWR. Tagged or marked marine mammals will also be recorded and reported to the appropriate research organization or Federal agency, as well as any rare or unusual species of marine mammal. Photographs will be taken when possible. This information will be incorporated into a report for NMFS at the end of the season. The USFWS will also coordinate with any university, state, or Federal researchers to attain additional data or observations that may be useful for monitoring marine mammal usage at the activity sites.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of other marine mammal occurs, and such action may be a result of the USFWS's activities, the USFWS would suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Reporting

The USFWS would submit a draft report to NMFS Office of Protected Resources no later than 90 days after the conclusion of research and monitoring activities in the 2018 season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the proposed IHA. The USFWS will submit a final report to NMFS within 30 days after receiving comments from NMFS on the draft report. If the USFWS receives no comments from NMFS on the draft report, NMFS will consider the draft report to be the final report.

The report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities;

2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities;

3. An estimate of the number (by species) of marine mammals exposed to human presence associated with the USFWS's activities; and

4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.,* stampede), USFWS personnel shall immediately cease the specified activities and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northeast Regional Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

The USFWS shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. We will work with the USFWS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The USFWS may not resume their activities until notified by us via letter, email, or telephone.

In the event that the USFWS discovers an injured or dead marine mammal, and the marine mammal observer determines that the cause of injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as we describe in the next paragraph), the USFWS will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northeast Regional Stranding Coordinator. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the

circumstances of the incident. NMFS would work with the USFWS to determine whether modifications in the activities are appropriate.

In the event that the USFWS discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the USFWS will report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northeast Regional Stranding Coordinator within 24 hours of the discovery. The USFWS personnel will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. The USFWS can continue their survey activities while NMFS reviews the circumstances of the incident.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Although the USFWS's survey activities may disturb a small number of marine mammals hauled out on beaches in the Complex, NMFS expects those impacts to occur to a localized group of animals. Marine mammals would likely become alert or, at most, flush into the water in reaction to the presence of the USFWS personnel during the proposed activities. Much of the disturbance will be limited to a short duration, allowing marine mammals to reoccupy haulouts within a short amount of time. Thus, the proposed action is unlikely to result in long-term impacts such as permanent abandonment of the area because of the availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research activities.

The USFWS's activities would occur during the least sensitive time (*e.g.,* April through November, outside of the pupping season) for hauled out pinnipeds in the Complex. Thus, pups or breeding adults would not be present during the proposed activity days.

Moreover, the USFWS's mitigation measures regarding vessel approaches and procedures that attempt to minimize the potential to harass the seals would minimize the potential for flushing and large-scale movements. Thus, the potential for large-scale movements and flushing leading to injury, serious injury, or mortality is low.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No injury (Level A harassment) or serious injury is anticipated or authorized;
- No mortality is anticipated or authorized;
- Impacts will occur to a localized group of animals;
- Disturbance will be limited to a short duration, allowing marine mammals to reoccupy haulouts within a short amount of time;
- Activities will occur during the least sensitive time (*e.g.,* April through November, outside of pupping season) for pinnipeds hauled out in the Complex, therefore no pups or breeding adults would be present during the proposed activity days; and
- The USFWS's mitigation measures regarding visual and acoustic disturbance to hauled out pinnipeds would minimize the potential for flushing and large-scale movements, therefore the potential for large-scale movements and flushing leading to injury, serious injury, or mortality is low;

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS estimates that the USFWS's proposed activities could potentially take, by Level B harassment only, two species of marine mammal under our jurisdiction. For each species, these estimates are small numbers (less than three percent of the affected stock of harbor seals and less than eight percent of the stock of gray seals) relative to the population size (Table 6). As stated before, the number of individual seals taken is also assumed to be less than the take estimate (number of exposures) since we assume that the same seals may be behaviorally harassed over multiple days.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on

the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the USFWS for conducting research activities at the Eastern MA NWR locations, from April 1, 2018 through November 30, 2018, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

Proposed Authorization Language

The United States Fish and Wildlife Service, Eastern Massachusetts National Wildlife Refuge Complex (USFWS) is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to harass marine mammals incidental to conducting research activities in the Eastern Massachusetts National Wildlife Refuge Complex (Complex), when adhering to the following terms and conditions.

1. This Incidental Harassment Authorization (IHA) is valid from April 1, 2018 through March 31, 2019.

2. This IHA is valid only for activities associated with the research activities and human presence in the Complex.

3. General Conditions.

(a) A copy of this IHA must be in the possession of the USFWS, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are the gray seal (*Halichoerus grypus atlantica*) and the harbor seal (*Phoca vitulina concolor*).

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). The authorized take numbers are shown below:

(i) 2,147 harbor seals.

(ii) 39,680 gray seals.

(d) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The USFWS shall conduct briefings between survey crews, marine mammal monitoring team, and Complex staff prior to the start of all research and monitoring activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(f) The USFWS may not conduct activities between the dates of December 1, 2018 and March 31, 2019.

4. Mitigation Measures.

The holder of this Authorization is required to implement the following mitigation measures:

(a) Research activities shall be conducted only between April 1, 2018 and November 30, 2018.

(b) Ensure that vessel approaches to Nomans NWR shall be such that the techniques are least disturbing to marine mammals. The vessel must conduct a slow and controlled approach to the island as far away as possible from haulouts. USFWS staff shall avoid operating boats in the direct path of swimming seals that may be present in the area unless seals are in the only safe path to the beach.

(c) Provide instructions to USFWS staff and team members on appropriate conduct in the vicinity of hauled out marine mammals. The USFWS research teams shall maintain a quiet working atmosphere by avoiding making unnecessary noise and by using hushed voices while near hauled out seals; shall remain at least 50 yards (yd) from seals unless absolutely necessary to conduct endangered species conservation work; and shall choose pathways to study sites that will minimize disturbance to seals.

(d) Ensure cannon nets will not be used closer than 100 m from seals.

(e) Ensure that the waters surrounding the haulouts are free of predators (*e.g.,* sharks) before USFWS staff flush seals from the haulouts.

5. Monitoring.

The holder of this Authorization is required to conduct marine mammal monitoring during seabird and shorebird research. Monitoring and reporting shall be conducted in accordance with the Monitoring Plan. The holder of this IHA is required to:

(a) Monitor seals when research activities are conducted in the presence of marine mammals.

(b) Record the date, time, and location (or closest point of ingress) of each of the research activities in the presence of marine mammals.

(c) Collect the following information for each visit:

(i) Information on the numbers (by species) of marine mammals observed during the activities, by age and sex, if possible;

(ii) The estimated number of marine mammals (by species) that may have been harassed during the activities based on the 3-point disturbance scale;

(iii) Any behavioral responses or modifications of behaviors that may be attributed to the specific activities (*e.g.,* flushing into water, becoming alert and moving, rafting);

(iv) The date, location, and start and end times of the event;

(v) Information on the weather, including the tidal state and horizontal visibility; and

(vi) Observations of sick, injured, or entangled marine mammals, and any tagged or marked marine mammals. Photographs will be taken when possible.

6. Reporting.

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within 90 calendar days of the completion of seabird and shorebird research and monitoring activities. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see attached), and shall also include:

(i) A summary of the dates, times, and weather during all research activities;

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities;

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to visual and acoustic stimuli associated with the research activities; and

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

(b) Reporting injured or dead marine mammals:

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, the USFWS shall immediately cease the specified activities and report the incident to the Office of Protected Resources (301–427–8461), NMFS, and the Greater Atlantic Regional Stranding Coordinator (978–282–8478), NMFS. The report must include the following information:

1. Time and date of the incident;

2. Description of the incident;

3. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

4. Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;

5. Species identification or description of the animal(s) involved;

6. Fate of the animal(s); and

7. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the USFWS to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The USFWS may not resume their activities until notified by NMFS.

(ii) In the event that the USFWS discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), the USFWS shall immediately report the incident to the Office of Protected Resources, NMFS, and the Greater Atlantic Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the USFWS to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that the USFWS discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the USFWS shall report the incident to the Office of Protected Resources, NMFS, and the Greater Atlantic Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. The USFWS shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed research and monitoring project. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a second one-year IHA without additional notice when 1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or 2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.;
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements;

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: February 28, 2018.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 170831846–8105–02]

RIN 0648–BH21

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Testing and Training Activities Conducted in the Eglin Gulf Test and Training Range in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notice is hereby given that a Letter of Authorization (LOA) has been issued to the United States Air Force (USAF) 96th Civil Engineer Group/Environmental Planning Office (96 CEG/CEIEA) at Eglin Air Force Base (AFB) to take marine mammals incidental to testing and training activities in the Eglin Gulf Test and Training Range (EGTTR) in the Gulf of Mexico over the course of five years. These activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act of 2004 (NDAA).

DATES: This LOA is valid from February 13, 2018 through February 12, 2023.

ADDRESSES: The LOA and supporting documents may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/military.htm.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals. NMFS

has been delegated the authority to issue regulations and Letters of Authorizations allowing the take of marine mammals incidental to specified activities.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): ''(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).''

An authorization for incidental taking shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant); and, if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Regulations governing the taking of individuals of two species of marine mammals, by Level A and Level B harassment, incidental to Eglin AFB testing and training activities in the EGTTR are valid from February 13, 2018 through February 12, 2023 and are codified at 50 CFR part 218, subpart G. The regulations include mitigation, monitoring, and reporting requirements. Pursuant to those regulations, NMFS issued a five-year LOA on February 8, 2018. For detailed information on this action, please refer to the February 8, 2018 **Federal Register** notice (83 FR 5545) and 50 CFR part 218, subpart G.

Summary of Request

On April 15, 2017, NMFS received a request for regulations from Eglin AFB for the taking of marine mammals incidental to testing and training activities in the EGTTR (defined as the area and airspace over the Gulf of Mexico controlled by Eglin AFB, beginning at a point three nautical miles (NM) off the coast of Florida) for a period of five years. On August 24, 2017, we published a notice of receipt of Eglin AFB's application in the **Federal Register** (82 FR 40141), requesting comments and information for thirty days related to Eglin AFB's request. We subsequently published a notice of proposed rulemaking in the **Federal Register** on December 27, 2017 (82 FR 61372), again requesting public comments. To support issuance of the LOA, NMFS adopted the USAF's 2015 *Eglin Gulf Test and Training Range Environmental Assessment* and issued a Finding of No Significant Impact (FONSI) on February 2, 2018. The final rule (83 FR 5545, February 8, 2018) and Eglin AFB's EA include a complete description of the specified training activities incidental to which NMFS is authorizing take of marine mammals. Air-to-surface exercises involving surface and subsurface live munition detonations are the stressors most likely to result in impacts on marine mammals that could rise to the level of harassment.

Authorization

We have issued a LOA to Eglin AFB authorizing the take of marine mammals, by harassment, incidental to testing and training activities on the EGTTR. The level and type of take authorized by the LOA is the same as the level and type of take analyzed in and covered by the final rule (83 FR 5545, February 8, 2018). Take by mortality or serious injury is not anticipated or authorized. Take of marine mammals will be minimized through implementation of mitigation and monitoring measures, including: Mission delay during live ordnance mission activities if protected species, large schools of fish, or large flocks of birds are observed feeding at the surface within the zone of influence; mission delay if daytime weather and/or sea conditions preclude adequate monitoring for detecting marine mammals and other marine life; aborting activities for remainder of day if one or more sperm or baleen whales are detected during pre-mission monitoring activities; and ramp-up procedures will be implemented for gunnery operations. Eglin AFB is required to also comply with monitoring and reporting measures under 50 CFR 218.65 which includes use of vessel-based monitoring, aerial-based monitoring and video-based monitoring via live high-definition video feed; employment of marine mammal monitors who have completed Eglin's Marine Species Observer Training; and submission of monitoring reports that will record all occurrences of marine mammals and any behavior or behavioral reactions observed, any observed incidents of injury or behavioral harassment, and any required mission delays. Additionally, the rule and LOA include an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. For full details on the mitigation, monitoring, and reporting requirements, please refer to the final rule (83 FR 5545; February 8, 2018).

Issuance of the LOA is based on findings, described in the preamble to the final rule, that the total taking of marine mammals incidental to the testing and training activities in the EGTTR will have a negligible impact on the affected marine mammal species or stocks and will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

The LOA will remain valid through February 12, 2023, provided Eglin AFB remains in conformance with the conditions of the regulations and the LOA, including the mitigation, monitoring, and reporting requirements described in 50 CFR part 218, subpart G and the LOA.

Dated: February 28, 2018.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–04472 Filed 3–5–18; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Community Bank Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Consumer Financial Protection Bureau (Bureau or CFPB). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, March 22, 2018, 9:00 a.m. to 12:00 p.m.; 1:15 p.m. to 3:30 p.m. eastern daylight time. The CBAC Card, Payment, and Deposits Markets Subcommittee, CBAC Consumer Lending Subcommittee, and

CBAC Mortgages and Small Business Lending Markets Subcommittee will take place on Thursday, March 22, 2018, 1:15 p.m. to 2:15 p.m. eastern daylight time.

ADDRESSES: The meeting location is the Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Crystal Dully, Outreach and Engagement Associate, 202–435–9588, *CFPB_CABandCouncilsEvents@cfpb.gov,* Consumer Advisory Board and Councils Office, External Affairs, 1700 G Street NW, Washington, DC 20552. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CBAC Charter provides: Pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Community Bank Advisory Council under agency authority.

Section 3 of the CBAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less''

II. Agenda

The Community Bank Advisory Council will discuss a call for evidence, regulatory updates, and the Home Mortgage Disclosure Act (HMDA).

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. CFPB will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CBAC members for consideration. Individuals who wish to attend the Community Bank Advisory Council meeting must RSVP to *cfpb_cabandcouncilsevents@cfpb.gov* by noon, Wednesday, March 21, 2018. Members of the public must RSVP by the due date and must include ''CBAC'' in the subject line of the RSVP.

III. Availability

The Council's agenda will be made available to the public on Wednesday March 7, 2018, via *consumerfinance.gov*. Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the CFPB's website *consumerfinance.gov*.

Dated: February 28, 2018.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2018–04438 Filed 3–5–18; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2 018–0006]

Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is seeking comments and information from interested parties to assist the Bureau in assessing potential changes that can be implemented to the Bureau's public reporting practices of consumer complaint information, consistent with law, to consider whether any changes to the practices would be appropriate.

DATES: Comments must be received by June 4, 2018.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2018–0006, by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2018–0006 in the subject line of the message.
- *Mail:* Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics). Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

All submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Darian Dorsey, Deputy Assistant Director, Office of Consumer Response, at 202–435–7268. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: An important aspect of the Bureau's mission is hearing directly from the American public about their experiences in the consumer financial marketplace. Pursuant to 12 U.S.C. 5511(c)(2), ''collecting, investigating, and responding to consumer complaints'' is one of the six statutory ''primary functions'' of the Bureau. Since it began collecting complaints in July 2011, the Bureau has published a variety of reports analyzing complaints and responses. Some of these reports are specifically required by the Act.[1] Others are intended to meet the Bureau's objective of ensuring ''markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.'' [2]

Reports Required by the Act

The Act requires the Bureau to provide certain information to Congress

[1] 12 U.S.C. 5493(b)(3)(C), 5496(c)(4).

[2] 12 U.S.C. 5511(b)(5).

about complaints and responses. In particular, 12 U.S.C. 5493(b)(3)(C) requires the Bureau to report annually to Congress information and analysis about complaint numbers, types, and, where applicable, resolution. 12 U.S.C. 5496(c)(4) requires the Bureau to submit semi-annual reports to the President and certain congressional committees covering a range of topics, including ''an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year.'' [3] To meet its statutory obligations, the Bureau publishes these reports, highlighting aggregated complaint information, including complaint volume over time, company closure categories, and product and issue breakdowns. Reports also include qualitative analyses of common issues and trends in complaints for consumer financial products and services.

Monthly Complaint Reports

In July 2015, the Bureau began publishing a series of monthly complaint reports to highlight trends from consumer complaints submitted to the Bureau. Monthly complaint reports include complaint data on complaint volume, most-complained-about companies, state and local information, and product trends. Each report highlights a particular product and geographic location and provides insight into the consumer complaints handled by the Bureau. The report uses three-month rolling averages, comparing the current average to the same period in the prior year, where appropriate, to account for monthly and seasonal fluctuations. In some cases, month-to-month comparisons are used to highlight more immediate trends.

Special Edition Complaint Reports

In May 2017, the Bureau began publishing special edition monthly complaint reports that highlight complaint information not routinely covered by statutorily-required and monthly complaint reports. These reports include, for example, complaint information aggregated for all 50 States, complaint information aggregated by specific population groups (*e.g.,* servicemembers), and consumer feedback aggregated by product category. Special edition complaint reports sometime include additional information about a subset of complaints that may be of interest to readers (*e.g.,* a report on servicemembers included a breakdown on the branch of military service).

Consumer Complaint Database

After requesting public comment on a proposed policy statement, in June 2012 the Bureau issued a final policy statement and began publishing consumers' credit card complaints in a public web-based database.[4] The Bureau subsequently sought public comment on expansions of the database to include complaints about additional consumer financial products and services and consumer narratives.[5] The purpose of the public Consumer Complaint Database is to provide timely and understandable information and to improve the functioning of the market, in line with the Bureau's objectives.[6] Complaints are listed in the database when the company responds to the complaint confirming a relationship with the consumer or after the company has had the complaint for 15 calendar days, whichever comes first. Complaints are not published if they do not meet all of the publication criteria described in the final policy statements.[7] Complaints submitted by unauthorized third parties, complaints that are the result of fraud, scams, or business identity theft, and complaints referred to other regulators, such as complaints about depository institutions with less than $10 billion in assets, are not published in the Consumer Complaint Database.

Overview of This Request for Information

The Bureau is using this request for information (RFI) to seek public input regarding potential changes that can be implemented to the Bureau's public reporting practices of consumer complaint information, consistent with law, to consider whether any changes to the practices would be appropriate. The Bureau encourages comments from all interested members of the public. The Bureau anticipates that the responding public may include financial industry participants, government agencies, consumer advocacy and financial education groups, trade associations, academic and research organizations, and consumers.

The Bureau will issue a subsequent RFI seeking public input regarding consumer inquiries and related process activities. The purpose of this RFI is to seek feedback on all aspects of its consumer complaint reporting and publication practices; the Bureau is not seeking comment in this RFI on consumer inquiries and related process activities.

Suggested Topics for Commenters

To allow the Bureau to more effectively evaluate suggestions, the Bureau requests that, where possible, comments include:

- The usefulness of complaint reporting and analysis to external stakeholders, including but not limited to financial industry participants, government agencies, consumer advocacy and financial education groups, trade associations, academic and research organizations, and consumers; and
- Specific suggestions or best practices for complaint reporting and publication given the Bureau's statutory objectives, including the Bureau's objective to ensure that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.[8]

The following represents a preliminary attempt by the Bureau to identify elements of Bureau complaint reporting and publication practices on which it should immediately focus. This non-exhaustive list is meant to assist in the formulation of comments and is not intended to restrict the issues that may be addressed. In addressing these issues and questions, the Bureau requests that commenters identify with specificity the consumer complaint reporting and publication practices at issue, providing legal citations where appropriate and available.

The Bureau is seeking feedback on all aspects of its consumer complaint reporting and publication practices, including:

1. Specific, statutorily-permissible suggestions regarding the frequency of the Bureau's reporting on consumer complaints;

2. Specific, statutorily-permissible suggestions on the content of the Bureau's reporting on consumer complaints, including:

[3] In addition, 12 U.S.C. 5535(d)(1) directs the Private Education Loan Ombudsman—whose functions include reviewing and analyzing private education loan complaints—to ''prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.''

[4] Disclosure of Certain Credit Card Complaint Data, 76 FR 76628 (December 8, 2011); Disclosure of Certain Credit Card Complaint Data, 77 FR 37558 (June 22, 2012).

[5] Disclosure of Consumer Complaint Data, 77 FR 37616 (June 22, 2012); Disclosure of Consumer Complaint Data, 78 FR 21218 (April 10, 2013); Disclosure of Consumer Complaint Narrative Data, 79 FR 45183 (August 4, 2014); Disclosure of Consumer Complaint Narrative Data, 80 FR 15572 (March 24, 2015).

[6] 12 U.S.C. 5511(b)(1), (5).

[7] For additional information, see ''Consumer Complaint Database,'' *https://www.consumerfinance.gov/data-research/consumer-complaints/* (last visited Feb. 27, 2018).

[8] 12 U.S.C. 5511(b)(5).

a. Whether the Bureau should include more, less, or the same amount of reporting on State and local complaint trends;

b. Whether it is net beneficial or net harmful to the transparent and efficient operation of markets for consumer financial products and services for the Bureau to publish the names of the most-complained-about companies;

c. Whether the Bureau should provide more, less, or the same data fields in the Consumer Complaint Database;

d. Whether the Bureau should provide more, less, or the same amount of context for complaint information, particularly with regard to product or service market size and company share;

e. Whether the Bureau should supplement observations from consumer complaints with observations of company responses to complaints;

f. Whether the Bureau should share more, less, or the same amount of information on month-to-month trends; and

g. Whether the Bureau should share more, less, or the same amount of information on particular products and services;

3. Specific suggestions on the reporting methodology, including:

a. Should the Bureau continue to analyze data for seasonal fluctuations? If so, how?; and

b. Should the Bureau provide more, less, or the same amount of context for complaint information, particularly with regard to product and service market size and company share, including what data set(s) or data source(s) the Bureau should use;

4. Specific, statutorily-permissible suggestions for the publication process of consumer complaint information, including:

a. Whether the Bureau should provide the public with a publication schedule;

b. Whether the Bureau should notify the most-complained-about companies of their inclusion in a Bureau report prior to publication and invite company comment;

c. Whether the Bureau should devote resources to building tools to enable users to analyze complaint information; and

d. Whether the Bureau should expand, limit, or maintain the same level of access to complaint information available to external stakeholders such as financial institutions and the public.

Authority: 12 U.S.C. 5511(c).

Dated: March 1, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2018–04544 Filed 3–5–18; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Early Engagement Opportunity: Implementation of National Defense Authorization Act for Fiscal Year 2018

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: DoD announces an early engagement opportunity regarding implementation of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 within the acquisition regulations.

DATES: Early inputs should be submitted in writing via the Defense Acquisition Regulations System (DARS) website shown below. The website will be updated when early inputs will no longer be accepted.

ADDRESSES: Submit early inputs via the DARS website at *http://www.acq.osd.mil/dpap/dars/index.html.*

FOR FURTHER INFORMATION CONTACT: Send inquiries via email to *osd.dfars@mail.mil* and reference ''Early Engagement Opportunity: Implementation of NDAA for FY 2018'' in the subject line.

SUPPLEMENTARY INFORMATION: DoD is providing an opportunity for the public to provide early inputs on implementation of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 within the acquisition regulations. The public is invited to submit early inputs on sections of the NDAA for FY 2018 via the DARS website at *http://www.acq.osd.mil/dpap/dars/index.html.* The website will be updated when early inputs will no longer be accepted. Please note, this venue does not replace or circumvent the rulemaking process; DARS will engage in formal rulemaking, in accordance with 41 U.S.C. 1303, when it has been determined that rulemaking is required to implement a section of the NDAA for FY 2018 within the acquisition regulations.

Jennifer L. Hawes,

Regulatory Control Officer Defense Acquisition Regulations System.

[FR Doc. 2018–04511 Filed 3–5–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2018–0009; OMB Control Number 0704–0479]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Earned Value Management System

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through September 30, 2018. DoD proposes that OMB extend its approval for three additional years.

DATES: DoD will consider all comments received by May 7, 2018.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0479, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0479 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (A&S) DPAP (DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 571–372–6099. The information collection requirements addressed in this notice are available electronically on the internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm.* Paper copies are available from Mr. Mark Gomersall, OUSD (A&S) DPAP (DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Business Systems-Definition and Administration; DFARS 234, Earned Value Management System, OMB Control Number 0704–0479.

Needs and Uses: DFARS clause 252.242–7005 requires contractors to respond to written determinations of significant deficiencies in the contractor's business systems as defined in the clause. The information contractors are required to submit in response to findings of significant deficiencies in their accounting system, estimating system, material management and accounting system and purchasing system has previously been approved by the Office of Management and Budget. This request specifically addresses information required by DFARS clause 252.234–7002, Earned Value Management System, for contractors to respond to determinations of significant deficiencies in a contractor's Earned Value Management System (EVMS). The requirements apply to entities that are contractually required to maintain an EVMS. DoD needs this information to document actions to correct significant deficiencies in contractor business systems. DoD contracting officers use the information to mitigate the risk of unallowable and unreasonable costs being charged on government contracts.

Affected Public: Businesses and other for-profit entities.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Revision of a currently approved collection.

Reporting Frequency: On occasion.

Number of Respondents: 10.

Responses per Respondent: 1.

Annual Responses: 10.

Average Burden per Response: 676 hours.

Annual Response Burden Hours: 6,760.

Summary of Information Collection

DFARS clause 252.234–7002, Earned Value Management System, requires contractors to respond in writing to initial and final determinations of significant deficiencies in the contractor's business systems as defined in the clause.

Jennifer L. Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2018–04538 Filed 3–5–18; 8:45 am]

BILLING CODE 5006–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Amendment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Amendment of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is amending the charter for the Defense Business Board (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board's charter is being amended 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). Pursuant to statutory changes that took effect on February 1, 2018, the DoD disestablished the Office of the Deputy Chief Management Officer and established the Office of the Chief Management Officer (CMO). The DoD is amending the charter for the Board previously announced in the **Federal Register** on June 10, 2016 (81 FR 37587) to reflect a change in the committee's sponsor and a change in total membership. The CMO will be the sponsor for the Board. The amended charter and contact information for the Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/.*

Dated: March 1, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–04515 Filed 3–5–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration (Demo) Project Program

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of amendment.

SUMMARY: On December 2, 2008, DoD published a **Federal Register** notice (73 FR 73248–73252, later amended by 76 FR 67154), to record amendments to the Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Project Plans and to provide a basic process to adopt flexibilities, make minor changes, and/or request **Federal Register** notices. USD(R&E) will publish the processes for adoptions, minor modifications to demonstration project flexibilities, and **Federal Register** notices in a DoD issuance.

DATES: This notice may be implemented beginning on March 6, 2018.

FOR FURTHER INFORMATION CONTACT: Dr. Jagadeesh Pamulapati, Director, DoD Laboratories Office, 4800 Mark Center Drive, Alexandria, VA 22350, (571) 372–6372, *jagadeesh.pamulapati.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: Section 211 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 specified the ''Discharge of Certain Authorities to Conduct Personnel Demonstration Projects'' be carried out through the Under Secretary of Defense for Research and Engineering (ASD(R&E)), which makes the current processes for adoptions, minor changes and **Federal Register** notices obsolete. USD(R&E) will publish the processes for adoptions, minor modifications to demonstration project flexibilities, and **Federal Register** notices in a DoD issuance. This notice applies to all STRLs authorized by section 1105 of the NDAA for FY 2010, Public Law 111–84, as amended, as well as any newly-designated STRLs authorized by the Secretary of Defense (SECDEF) or future legislation.

Modifications

In the notice published on December 2, 2008, 73 FR 73248–73252:

1. On page 73249, in the first column, at the end of the sentence under **DATES**: remove ''Under Secretary for Defense of Personnel and Readiness'' and replace

with ''Under Secretary of Defense for Research and Engineering.''

2. On page 73250, in the second column, add the following at the end of the last sentence under Overview: ''subject to section 4703 of Title 5 United States Code, as applicable.''

3. On page 73251, in the third column, add the following sentence after the first sentence in section D. ''Section 211 of the NDAA for FY 2017 specified the ''Discharge of Certain Authorities to Conduct Personnel Demonstration Projects'' be carried out through the Under Secretary of Defense for Research and Engineering (who shall place an emphasis in the exercise of such authorities on enhancing efficient operations of the laboratory and who may, in exercising such authorities, request administrative support from science and technology reinvention laboratories to review, research, and adjudicate personnel demonstration project proposals).''

4. On page 73251, in the third column, add the following at the end of the third sentence in section D ''will be documented, in accordance with section 4703 of Title 5 United States Code, as applicable, in a DoD issuance.''

5. On page 73251, in the third column delete the forth sentence in section D.

6. On page 73251, in the third column delete the first, second and third bullet in section D.

Dated: February 28, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–04453 Filed 3–5–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Amendment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Amendment of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is amending the charter for the Vietnam War Commemoration Advisory Committee (''the Committee'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Committee's charter is being amended 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). Pursuant to statutory changes that took effect on February 1, 2018, the DoD disestablished the Office of the Deputy Chief Management Officer and established the Office of the Chief Management Officer (CMO). The DoD is amending the charter for the Committee previously announced in the **Federal Register** on October 3, 2016 (81 FR 67999) to reflect that the CMO will be the new sponsor for the Committee. The amended charter and contact information for the Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/.*

Dated: March 1, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–04516 Filed 3–5–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2018–OS–0007]

Proposed Collection; Comment Request

AGENCY: Office of the Undersecretary of Defense for Personnel and Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Manpower Data Center (DMDC) Defense Human Resources Activity (DHRA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 7, 2018.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Deputy Director, Defense Travel Management Office, 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350–6000 or call 571.372.1300 or email *philip.g.benjamin.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Travel System (DTS); OMB Control Number 0704–XXXX.

Needs and Uses: Information is collected for the purpose of official travel. The information is used to satisfy reporting requirements and detect fraud and abuse. Non-DoD personnel whose information is in DTS includes dependents of DoD Military and Civilian personnel and guests of the DoD such as foreign nationals.

Affected Public: Individuals or Households.

Annual Burden Hours: 250.

Number of Respondents: 1,500.

Responses per Respondent: 1.

Annual Responses: 1,500.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

Respondents provide personal information to facilitate reserving travel and distribution of payment for travel such as financial routing and account number, US Passport number and home mailing address. To collect the personal information for DTS, users login and authenticate to the electronic DTS

application. The users create a profile upon their initial access to the system, and they can modify the profile electronically as needed. The primary respondents of DTS are DoD civilians and military personnel. The secondary respondents (less than 1%) are members of the public, specifically dependents of DoD personnel and, in very rare cases, travel guests of DoD such as Academy students or foreign nationals.

Dated: March 1, 2018.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–04542 Filed 3–5–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER18–459–000, ER18–460–000]

PJM Interconnection, L.L.C., Ohio Valley Electric Corporation; Notice Establishing Answer Period to Motion To Defer Effective Date

On February 26, 2018, PJM Interconnection, L.L.C. and Ohio Valley Electric Corporation (collectively, the Parties) filed a motion to defer the present March 1, 2018 effective date for the modifications to the Revised Tariff Sheets (Motion), accepted by the Commission on February 13, 2018, in this proceeding.[1] Also included in the filing was a request to shorten the answer period for the Motion to one day.

By this notice, the Parties' request to shorten the date for filing answers to the Motion to one day is denied. Answers to the Motion shall be filed on or before March 5, 2018.

Dated: February 27, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04457 Filed 3–5–18; 8:45 am]

BILLING CODE 6717–01–P

[1] *PJM Interconnection, L.L.C. and Ohio Valley Electric Corp.,* 162 FERC ¶ 61,098 (2018).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2216–084]

New York Power Authority; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for recreation plan amendment.

b. *Project No.:* 2216–084.

c. *Dates Filed:* July 12 and November 22, 2017.

d. *Applicant:* New York Power Authority.

e. *Name of Project:* Niagara Power Project.

f. *Location:* The project is located on the Niagara River in Niagara County, New York. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Stephen M. Schoenwiesner, Licensing Manager, New York Power Authority, 123 Main Street, White Plains, NY 10601, (914) 681–6200.

i. *FERC Contact:* Ms. Mary Karwoski, (678) 245–3027, *mary.karwoski@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission (March 28, 2018).

All documents may be filed electronically via the internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2216–084) on any comments, motions, or recommendations filed.

k. *Description of Request:* New York Power Authority (licensee) requests Commission approval for an amendment to its current recreation plan to remove a two mile section, of which 1.4 miles is inside the project boundary, of the four-lane Niagara Scenic Parkway (formerly known as the Robert Moses Parkway) between Main Street and Findlay Drive; restore the landscape reclaimed along the Niagara Gorge rim; construct a pedestrian/bicycle trial network along the Niagara Gorge rim; and reconfigure the Upper Whirlpool Overlook recreation site to enhance its scenic and recreational value and integrate the existing recreation site into the network of trails.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or

intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 18 CFR 385.2010.

Dated: February 27, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04460 Filed 3–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–26–000; Docket No. AD18–8–000]

EDF Renewable Energy, Inc. v. Reform of Affected System Coordination in the Generator Interconnection Process, v. Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc., and PJM Interconnection, L.L.C.; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on February 2, 2018, the Federal Energy Regulatory Commission (Commission) will convene a staff-led technical conference in the above-referenced proceeding on Tuesday and Wednesday, April 3–4, 2018 from 9:30 a.m. to 4:30 p.m. (ET). The conference will be held in the Commission Meeting Room at Commission headquarters, 888 First Street NE, Washington, DC 20426. Commissioners may attend and participate. The purpose of this conference is to discuss issues related to the coordination of affected systems that have been raised in the complaint filed by EDF Renewable Energy, Inc. against Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc., and PJM Interconnection, L.L.C. in Docket No. EL18–26–000 and in the Commission's Notice of Proposed Rulemaking (Generator Interconnection NOPR) on the interconnection process in Docket No. RM17–8–000. The first day of the conference will focus on questions specific to issues raised in the complaint filed in Docket No. EL18–26–000, while the second day of the conference will focus on the broader affected systems issues raised in the Generator Interconnection NOPR in Docket No. RM17–8–000.

Attached to this Supplemental Notice is a preliminary agenda for the technical conference. Additional information regarding the final conference program and speakers will be provided in a subsequent supplemental notice of technical conference.

Those interested in speaking at the technical conference should notify the Commission by March 2, 2018 by completing the online form at the following web page: *http://www.ferc.gov/whats-new/registration/04-03-18-speaker-form.asp*. At this web page, please describe the topic(s) you wish to address and provide biographical information. Due to time constraints, we may not be able to accommodate all those interested in speaking. We will notify selected speakers as soon as possible.

The conference will be open for the public to attend. Information on the technical conference will also be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov,* prior to the event. Advance registration is not required but is encouraged. Attendees may register at the following web page: *http://www.ferc.gov/whats-new/registration/04-03-18-form.asp*.

This event will be webcast and transcribed. Anyone with internet access can navigate to the ''FERC Calendar'' at *www.ferc.gov* and locate the technical conference in the Calendar of Events. Opening the technical conference in the Calendar of Events will reveal a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.capitolconnection.org* or call 703–993–3100. The webcast will be available on the Calendar of Events at *www.ferc.gov* for three months after the conference. Transcripts of the conference will be immediately available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *Sarah.Mckinley@ferc.gov*.

Myra Sinnott (Technical Information), Office of Energy Policy and Innovation, (202) 502–6033, *Myra.Sinnott@ferc.gov*.

Kathleen Ratcliff (Technical Information), Office of Energy Market Regulation, (202) 502–8018, *Kathleen.Ratcliff@ferc.gov*.

Lina Naik (Legal Information), Office of the General Counsel, (202) 502–8882 *Lina.Naik@ferc.gov*.

Dated: February 27, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04462 Filed 3–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR18–32–000.

Applicants: Bay Gas Storage Company, Ltd.

Description: Tariff filing per 284.123(b),(e)/: Annual Adjustment to Company Use Percentage to be effective 3/1/2018.

Filed Date: 2/23/18.

Accession Number: 201802235048.

Comments/Protests Due: 5 p.m. ET 3/16/18.

Docket Number: PR18–34–000.

Applicants: Duke Energy Ohio, Inc.

Description: Tariff filing per 284.123(b),(e)/: Informational Filing in Support of Existing State Rate Election to be effective 3/1/2018.

Filed Date: 2/26/18.

Accession Number: 201802265137.

Comments/Protests Due: 5 p.m. ET 3/19/18.

Docket Numbers: RP18–472–000.

Applicants: Dominion Energy Carolina Gas Transmission.

Description: § 4(d) Rate Filing: DECG—February 27, 2018 Negotiated Rate Agreements to be effective 3/1/2018.

Filed Date: 2/27/18.

Accession Number: 20180227–5027.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–473–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Compliance filing Tariff Waiver—ROFR Posting.

Filed Date: 2/27/18.

Accession Number: 20180227–5032.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–474–000.

Applicants: Golden Pass Pipeline LLC.

Description: Compliance filing Golden Pass Pipeline 2018 Annual Retainage Report to be effective 4/1/2018.

Filed Date: 2/27/18.

Accession Number: 20180227–5141.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–475–000.

Applicants: Golden Pass Pipeline LLC.

Description: Compliance filing Golden Pass Pipeline Annual Operational Purchases and Sales Report.

Filed Date: 2/27/18.

Accession Number: 20180227–5159.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–476–000.

Applicants: High Island Offshore System, L.L.C.

Description: 2018 Annual Fuel Filing.

Filed Date: 2/27/18.

Accession Number: 20180227–5188.

Comments Due: 5 p.m. ET 3/12/18.

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 date(s). 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: February 28, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04490 Filed 3–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–920–000]

Marco DM Holdings, L.L.C.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Marco DM Holdings, L.L.C.'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 March 20, 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: February 28, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04491 Filed 3–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2698–100]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for a temporary variance from elevation requirements.

b. *Project No.:* 2698–100.

c. *Date Filed:* February 22, 2018.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* East Fork Hydroelectric Project.

f. *Location:* The project is located on the East Fork of the Tuckasegee River in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jeff Lineberger, Duke Energy Carolinas, LLC, 526 S Church Street, Mail Stop EC 12Y, Charlotte, NC 28202, (704) 382–5942.

i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 27, 2018.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end

of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2698–100.

k. *Description of Request:* Duke Energy Carolinas, LLC requests approval for a temporary variance from normal reservoir elevations to perform maintenance work at the Tennessee Creek, Bear Creek, and Cedar Cliff developments of the project. Duke Energy Carolinas, LLC had proposed on October 27, 2017 to begin drawdowns and refills between February and August 2018. However, based on additional consultation with local stakeholders, Duke Energy Carolinas, LLC decided to defer these drawdowns until after the primary recreation season. Duke Energy Carolinas, LLC proposes to begin the drawdowns starting at Bear Creek Lake, then Cedar Cliff Lake, and then Tanasee Creek and Wolf Creek Lakes, respectively. Drawdowns and refills would now begin from September 3, 2018, and continue through December 2018, therefore this is a revised public notice for the temporary variance. Duke Energy Carolinas, LLC will need to close some of its recreation areas during the drawdown to include Bear Creek Access Area, Cedar Cliff Access Area, and Wolf Creek Access Area due to the lower water levels which render the boat ramps unusable.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: February 27, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04461 Filed 3–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–476–000]

Gulf South Pipeline Company, LP; Notice of Availability of the Environmental Assessment for the Proposed Westlake Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Westlake Expansion Project, proposed by Gulf South Pipeline Company, LP (Gulf South) in the above-referenced docket. Gulf South requests authorization to construct and operate one new compressor station, two new meter and regulator (M&R) stations, and about 0.3 mile of 16-inch-diameter natural gas pipeline in Calcasieu Parish, Louisiana.

The EA assesses the potential environmental effects of the construction and operation of the Westlake Expansion Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Westlake Expansion Project includes the following facilities:

- One new 10,000 horsepower compressor station (Westlake Compressor Station);
- 0.3 mile of 16-inch-diameter natural gas pipeline;
- one new delivery M&R station (Entergy Lake Charles M&R Station); and
- one new receipt M&R station (Varibus M&R Station).

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners and other interested individuals and groups, including commenters; and newspapers and libraries in the project area. In addition, the EA is available for public viewing on the FERC's website (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE, Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments

should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before March 27, 2018.

For your convenience, there are three methods you can use to file your comments with the Commission. In all instances please reference the project docket number (CP17–476–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at 202–502–8258 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP17–476). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: February 27, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04456 Filed 3–5–18; 8:45 am]

BILLING CODE 6717–01–P

[1] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR18–14–000]

Targa NGL Pipeline Company LLC; Notice of Request for Temporary Waiver

Take notice that on February 21, 2018, pursuant to Rule 204 of the Federal Energy Regulatory Commission's (''Commission'') Rules of Practice and Procedure, 18 CFR 385.204, Targa NGL Pipeline Company LLC (Targa or Petitioner) filed a petition for temporary waiver of the tariff filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Commission's regulations with respect to service on certain natural gas liquids pipeline facilities owned and operated by Targa within the state of Texas, as well as between points in Texas and Louisiana, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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.

Comment Date: 5:00 p.m. Eastern time on March 19, 2018.

Dated: February 27, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04459 Filed 3–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR18–13–000]

Medallion Delaware Express, LLC, Medallion Pipeline Company, LLC; Notice of Petition for Declaratory Order

Take notice that on February 20, 2018, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2017), Medallion Delaware Express, LLC and Medallion Pipeline Company, LLC, filed a petition for a declaratory order seeking approval of the overall tariff rate structure and terms of service, open

season procedures, and proposed joint tariff service, for a new, integrated joint crude-oil transportation project commencing from origin points on Delaware Express, a new pipeline system in west Texas, to destination points on an expanded Medallion crude oil pipeline system (the Joint Project), all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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.

Comment Date: 5:00 p.m. Eastern time on March 20, 2018.

Dated: February 27, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04458 Filed 3–5–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–63–000.

Applicants: Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, CottonWood Energy Company LP, Louisiana Generating LLC, NRG Sterlington Power LLC, NRG Cottonwood Tenant LLC, NRG Power Marketing LLC, Cleco Energy LLC, Cleco Corporate Holdings LLC, Cleco Group LLC, Cleco Partners L.P.

Description: Joint Application for Order Authorizing Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act of the Cleco Applicants and NRG Applicants.

Filed Date: 2/27/18.

Accession Number: 20180227–5186.

Comments Due: 5 p.m. ET 3/20/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1873–008; ER10–2124–018; ER10–2125–019; ER10–2127–017; ER10–2128–018; ER10–2129–013 ER10–2130–018; ER10–2131–020; ER10–2132–018 ER10–2133–019; ER10–2134–012; ER10–2135–013 ER10–2136–013; ER10–2137–020; ER10–2138–020 ER10–2139–020; ER10–2140–020; ER10–2141–020 ER10–2764–018; ER11–3872–020; ER11–4044–019 ER11–4046–018; ER12–164–017; ER14–2187–014 ER14–2798–012; ER14–2799–012; ER15–103–008 ER15–1041–008; ER15–1873–008; ER15–2205–008 ER16–1720–005; ER17–2336–003; ER17–2337–003 ER18–140–003; ER18–471–002; ER18–472–002.

Applicants: Buckeye Wind Energy LLC, Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC, States Edge Wind I LLC, States Edge Wind I Holdings LLC, Invenergy Energy Management LLC, Beech Ridge Energy LLC, Beech Ridge Energy II LLC, Beech Ridge Energy Storage LLC, Forward Energy LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy V LLC, Grand Ridge Energy Storage LLC, Grays Harbor Energy LLC, Hardee Power Partners Limited, Invenergy Nelson LLC, Invenergy TN LLC, Lackawanna Energy Center LLC, Sheldon Energy LLC, Shoreham Solar Commons Holdings LLC, Spindle Hill Energy LLC, Stony Creek Energy LLC, Spring Canyon Energy LLC, Shoreham Solar Commons LLC, Judith Gap Energy LLC, Invenergy Cannon Falls LLC, Grand Ridge Energy IV LLC, Bishop Hill Energy III LLC, Vantage Wind Energy LLC, Willow Creek Energy, LLC, Wolverine Creek Energy LLC.

Description: Notice of Change in Facts under Market-Based Rate Authority of Buckeye Wind Energy LLC, et al.

Filed Date: 2/27/18.

Accession Number: 20180227–5143.

Comments Due: 5 p.m. ET 3/20/18.

Docket Numbers: ER17–2323–001.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: Tariff Amendment: 2018–02–28 Deficiency Response re revisions to Ameren Att O Rate Template to be effective 6/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5069.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–541–001.

Applicants: Rausch Creek Generation, LLC.

Description: Tariff Amendment: Reactive Tariff to be effective 2/28/2018.

Filed Date: 2/27/18.

Accession Number: 20180227–5142.

Comments Due: 5 p.m. ET 3/20/18.

Docket Numbers: ER18–920–000.

Applicants: Marco DM Holdings, L.L.C.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 4/30/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5019.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–921–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 4948; Queue No. AD1–053 to be effective 2/15/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5030.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–923–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Mar 2018 Membership Filing to be effective 2/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5086.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–924–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 224—ATS Participation Agreement to be effective 5/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5089.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–925–000.

Applicants: Michigan Electric Transmission Company.

Description: § 205(d) Rate Filing: Filing of A&R License Agreement w LBWL to be effective 4/30/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5090.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–926–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: GIA & DSA & Notice of Cancellation LA Stanton Energy Reliability Center Project to be effective 2/8/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5095.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–927–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of First Revised ISA, SA No. 3638; Queue No. AA1–101 to be effective 2/13/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5135.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–928–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, SA No. 4951; PJM Queue No. AD1–054 to be effective 2/20/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5139.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–929–000.

Applicants: Penn Oak Services, LLC.

Description: Baseline eTariff Filing: Penn Oak Services, LLC MBR Application to be effective 3/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5144.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–930–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of ISA, SA No. 3413; Queue No. V2–028 to be effective 4/10/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5162.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–931–000.

Applicants: Central Hudson Gas & Electric Corporation.

Description: § 205(d) Rate Filing: Revisions to FERC Rate Schedule 202 to be effective 2/15/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5165.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–932–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OATT and OA RE: FTR Case Performance to be effective 5/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5172.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–933–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 152, ANPP Westwing Switchyard Interconnection Agreement to be effective 5/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5173.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–934–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Rev to OATT and OA RE: FTR Modeling Enhancements Future Transmission Upgrades to be effective 5/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5174.

Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–935–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: SP Butler Solar LGIA Amendment Filing to be effective 2/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5201.

Comments Due: 5 p.m. ET 3/21/18.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF18–645–000.

Applicants: DTE Marietta, LLC.

Description: Form 556 of DTE Marietta, LLC.

Filed Date: 2/21/18.

Accession Number: 20180221–5168.

Comments Due: None Applicable.

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: February 28, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04489 Filed 3–5–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9975–06–OA]

Notice of Meeting of the EPA Children's Health Protection Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held April 19 and 20, 2018, at Holiday Inn Washington-Capitol 550 C Street SW, Washington, DC 20024.

The CHPAC advises the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: April 19, 2018, from 10 a.m. to 6 p.m. and April 20, 2018, from 9 a.m. to 1 p.m..

ADDRESSES: 550 C Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Angela Hackel, Office of Children's Health Protection, U.S. EPA, MC 1107T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2977 or *hackel.angela@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. An agenda will be posted to *epa.gov/children.*

ACCESS AND ACCOMMODATIONS: For information on access or services for individuals with disabilities, please contact Angela Hackel at 202–566–2977 or *hackel.angela@epa.gov.*

Dated: February 21, 2018.

Angela Hackel,

Designated Federal Official.

[FR Doc. 2018–04525 Filed 3–5–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0008; FRL–9973–25]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before April 5, 2018.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID)

Number and the File Symbol of interest as shown in the body of this document, 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: Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *EPA Registration Numbers:* 100–739 and 100–740. *Docket ID number:* EPA–HQ–OPP–2017–0733. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Difenoconazole. *Product type:* Fungicide. *Proposed Use:* Rapeseed crop subgroup 20A seed treatment. *Contact:* RD.

2. *EPA Registration Number:* 100–936, 100–1291. *Docket ID number:* EPA–HQ–OPP–2017–0234. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Thiamethoxam. *Product type:* Insecticide. *Proposed Use:* Sugarcane. *Contact:* RD.

3. *EPA Registration Numbers:* 100–1120, 100–1220 and 100–1308. *Docket ID number:* EPA–HQ–OPP–2017–0744. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Azoxystrobin. *Product type:* Fungicide. *Proposed use:* Post-harvest on sugar beet. *Contact:* RD.

4. *EPA Registration Numbers:* 10163–295; 10163–322. *Docket ID number:* EPA–HQ–OPP–2017–0673. *Applicant:* Gowan Company, LLC, P.O. Box 556 Yuma, AZ 85364. *Active ingredient:* Fenazaquin. *Product type:* Insecticide. *Proposed uses:* Alfalfa; Avocado; Caneberry, subgroup 13–07A; Bushberry, subgroup 13–07B; Fruit, citrus group 10–10; Corn, field; Corn, sweet; Cotton; Vegetables, cucurbit group 9; Vegetables, fruiting group 8–10; Fruit, small fruit vine climbing, except fuzzy kiwifruit subgroup 13–07F; Grapes; Vegetables, legumes, edible-podded subgroup 6A; Vegetables, legumes, succulent shelled pea and bean subgroup 6B; Vegetables, legumes, dried shelled pea and bean (except soybean) subgroup 6C; Mint; Fruit, pome group 11–10; Fruit, stone group 12–12; Fruit, low growing berry subgroup 13–07G. *Contact:* RD

5. *EPA Registration Number:* 60063–1. *Docket ID number:* EPA–HQ–OPP–2017–0719. *Applicant:* Sipcam Agro USA, 2525 Meridian Parkway, Suite 350, Durham, NC 27713. *Active ingredient:* Chlorothalonil. *Product type:* Fungicide. *Proposed use:* Sugarbeet. *Contact:* RD.

6. *EPA Registration Number:* 60063–5. *Docket ID number:* EPA–HQ–OPP–2017–0719. *Applicant:* Sipcam Agro USA, 2525 Meridian Parkway, Suite 350, Durham, NC 27713. *Active ingredient:* Chlorothalonil. *Product type:* Fungicide. *Proposed use:* Sugarbeet. *Contact:* RD.

7. *EPA File Symbol:* 100–RAEA. *Docket ID number:* EPA–HQ–OPP–2017–0742. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Pinoxaden. *Product type:* Herbicide. *Proposed use:* Turf. *Contact:* RD

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 29, 2018.

Hamaad Syed,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–04523 Filed 3–5–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–9974–09]

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 pesticide 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 April 5, 2018.

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 and 2 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 ingredient
100–774	100	Exceed Herbicide	Primisulfuron-methyl & Prosulfuron.
100–907	100	Discover Herbicide	Clodinafop-propargyl (CAS Reg. No.105512–06–9).
264–1144	264	Serenade Biofungicide Wettable Powder.	QST 713 strain of *bacillus subtilis*.
264–1148	264	Serenade	QST 713 strain of *bacillus subtilis*.
264–1149	264	Serenade AS	QST 713 strain of *bacillus subtilis*.
264–1150	264	Rhapsody AS	QST 713 strain of *bacillus subtilis*.
432–960	432	Derringer F Herbicide	Glufosinate.
432–1559	432	DuPont Tranxit Herbicide	Rimsulfuron.
432–1562	432	Cimarron X-Tra Herbicide	Chlorsulfuron & Metsulfuron.
1448–353	1448	Slimacide V–10	Acetic acid, bromo-, 2-butene-1,4-diyl ester.
1448–374	1448	BBAB	Acetic acid, bromo-, 2-butene-1,4-diyl ester.
2217–881	2217	Gordon's Wasp & Hornet Spray	Piperonyl butoxide; Permethrin & Tetramethrin.
2596–156	2596	Hartz Reference #124	Pyriproxyfen & Phenothrin.
2596–159	2596	Hartz Reference #127	Pyriproxyfen; S-Methoprene & Phenothrin.
2915–26	2915	Scented Moth Block	Paradichlorobenzene.
5185–421	5185	Spa Brom Tablets	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
5185–433	5185	Spa Brom Veriflo	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
5185–452	5185	BCDMH99N–M	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
5185–454	5185	BCDMH97NC–M	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
5185–456	5185	BCDMH96NCR–M	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Active ingredient
5185–457	5185	BCDMH94NCR–M	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
5185–469	5185	Home Care Drop In	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
5185–480	5185	Polaris Precis Spa Floater Cartridge.	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
5185–490	5185	Biolab BCDMH Granular	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
6836–109	6836	Glychlor Powder	1,3-Dichloro-5,5-dimethylhydantoin.
6836–110	6836	Bromchlor Powder	1,3-Dibromo-5,5-dimethylhydantoin & 2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
6836–118	6836	Dantobrom P	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–120	6836	Glybrom RW–90	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl- & 1,3-Dibromo-5,5-dimethylhydantoin.
6836–121	6836	Glybrom RW–92.5	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl- & 1,3-Dibromo-5,5-dimethylhydantoin.
6836–122	6836	Glybrom RW–93.5	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl- & 1,3-Dibromo-5,5-dimethylhydantoin.
6836–196	6836	Bio Guard Bromo Brix Spa Brominating Briquettes.	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–197	6836	Bioguard Brombrix Pool Brominating Briquettes.	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–242	6836	Kem Tek Spa Kem Brominating Tablets.	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–243	6836	Kem Tek Spa Kem Bromi-Buoy	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–265	6836	Dantobrom TBS–2.5	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–272	6836	Dantobrom TBS–4A	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–273	6836	Dantobrom TBS–5A	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–282	6836	Dantobrom PG Briquettes	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–291	6836	Dantochlor TBS–6	1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–299	6836	Dantobrom TBS–7	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–300	6836	Dantobrom TBS–6	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–312	6836	Glybrom PG–100 Powder	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl- & 1,3-Dibromo-5,5-dimethylhydantoin.
6836–319	6836	Glychlor PG–100 Powder	1,3-Dichloro-5,5-dimethylhydantoin.
7124–102	7124	Maxibrom Slow Dissolving Brominating Tablets for Swimming Pools & Spas.	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
7124–103	7124	Maxibrom Slow Dissolving Brominating Tablets for Spas & Hot Tubs.	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
7124–104	7124	Hydrobrom 3 oz. Slow Dissolving Brominating Tablets for Swimming Pools.	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
7401–319	7401	Ferti-Lome Quik-Kill Home & Garden Insect Spray.	Piperonyl butoxide & Pyrethrins.
7401–388	7401	Hi-Yield Whitefly and Mealybug Killer.	Piperonyl butoxide & Pyrethrins.
9688–288	9688	Chemsico Aerosol LEG	o-Phenylphenol (No inert use).
10163–345	10163	T&O Fertilizer—Contains Gallery Plus Team.	Trifluralin; Benfluralin & Isoxaben.
10163–353	10163	Turf Fertilizer—Contains Gallery Plus Team Pro.	Benfluralin; Trifluralin & Isoxaben.
10163–364	10163	Showcase	Oxyfluorfen; Isoxaben & Trifluralin.
33595–9	33595	Envicide II	Isopropyl alcohol; Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) & Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14}).

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Active ingredient
62719–713	62719	MON 89034 X TC1507 X MON 87411 X DAS–59122–7 Insect-Protected, Herbicide-Tolerant Corn.	dsRNA transcript comprising a DvSnf7 inverted repeat sequence derived from western corn rootworm (*Diabrotica virgifera*) and the genetic material necessary for its production MON 87411 corn; *Bacillus thuringiensis* Cry1A.105 protein and genetic material necessary (vector PV–ZMIR245) for its production in corn; *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary (vector PV–ZMIR245) for its production in corn; *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn; *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its procuction (vector PV -ZMIR10871) in corn event MON 87411 & *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn.
66330–41	66330	Endorse Wettable Powder Fungicide.	Polyoxin D zinc salt.
66330–412	66330	ARY 0411–0485 Tank Mix Herbicide.	Clethodim & Sodium bentazon.
66397–1	66397	Aqua Basics Brominating Tablets	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl- & 1,3-Dibromo-5,5-dimethylhydantoin.
66397–2	66397	Aqua Basics 3oz.-2″ Brominating Tablets.	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl- & 1,3-Dibromo-5,5-dimethylhydantoin.
67360–7	67360	Intercide ABF–2 RF501	10,10′-Oxybisphenoxarsine.
67360–9	67360	Intercide ABF–5 DIDP	10,10′-Oxybisphenoxarsine.
83979–7	83979	Rotam Paraquat Concentrate	Paraquat dichloride.
87931–13	87931	Raymat Pyriproxyfen Technical	Pyriproxyfen.
91640–1	91640	2,4–D Technical	2,4–D.
AZ–070009	10163	Nexter	Pyridaben.
CA–100006	19713	Drexel Captan 4L Fungicide	Captan.
CA–110006	100	Touchdown Total	Glyphosate.
CA–870029	10163	Treflan TR–10	Trifluralin.
CA–870071	60244	Orthene 75 S Soluble Powder	Acephate.
CA–930008	60217	Sprout NIP Emulsifiable Concentrate.	Chlorpropham.
CO–090007	5481	Orthene Turf, Tree & Ornamental 97 Spray.	Acephate.
DE–140004	81880	Sandea Herbicide	Halosulfuron-methyl.
FL–140003	81880	Sandea Herbicide	Halosulfuron-methyl.
GA–140001	81880	Sandea Herbicide	Halosulfuron-methyl.
IN–140001	81880	Sandea Herbicide	Halosulfuron-methyl.
LA–120010	100	Gramoxone SL 2.0	Paraquat dichloride.
MD–140001	81880	Sandea Herbicide	Halosulfuron-methyl.
MI–120003	81880	Sandea Herbicide	Halosulfuron-methyl.
NC–140001	81880	Sandea Herbicide	Halosulfuron-methyl.
ND–050010	10163	Sonalan 10G	Ethalfluralin.
ND–090004	10163	Sonalan 10G	Ethalfluralin.
NV–130001	10163	Onager 1E	Hexythiazox.
VA–140001	81880	Sandea Herbicide	Halosulfuron-methyl.
WA–010009	34704	Saber Herbicide	2,4–D, dimethylamine salt.
WA–040027	5481	Discipline 2EC	Bifenthrin.
WA–040030	34704	Atrazine 4L	Atrazine.
WA–040034	66222	Diazinon AG500	Diazinon.
WA–050005	5481	Discipline 2EC	Bifenthrin.
WA–090013	34704	Curbit EC Herbicide	Ethalfluralin.
WA–900040	34704	Clean Crop Simazine 4L Flowable Herbicide.	Simazine.
WA–980025	34704	Clean Crop Supreme Oil	Mineral oil—includes paraffin oil from 063503.
WI–140002	81880	Sandea Herbicide	Halosulfuron-methyl.
WY–070008	10163	Onager Miticide	Hexythiazox.

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
100–969	100	Scholar Fungicide	Fludioxonil	Pre-harvest uses and associated pre-harvest label language for the following crops: Melons and the post-harvest uses for citrus, pineapple, pome, tuberous and corm vegetable subgroup 1C, stone fruit, sweet potatoes, tomato, tropical fruit, and true yam without prejudice.

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT—Continued

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
100–1131	100	Callisto Herbicide	Mesotrione	Tolerances for Grass, Seed screenings and grass, straw.
1839–18	1839	BTC 776 Concentrated Germicide.	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) & Dialkyl* methyl benzyl ammonium chloride *(60% C_{14}, 30% C_{16}, 5% C_{18}, 5% C_{12}).	Turfs/Lawns.
1839–19	1839	BTC 8249	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}).	Turfs/Lawns.
1839–23	1839	BTC 824	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}).	Turfs/Lawns.
1839–33	1839	BTC 8248	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}).	Turfs/Lawns.
1839–46	1839	BTC 2125M	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) & Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14}).	Turfs/Lawns.
1839–54	1839	BTC 2125M–80%	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) & Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14}).	Turfs/Lawns.
1839–55	1839	BTC 2125 M–P 40	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) & Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14}).	Turfs/Lawns.
1839–65	1839	BTC 65	Alkyl* dimethyl benzyl ammonium chloride *(67%C_{12}, 25%C_{14}, 7%C_{16}, 1%C_8, C_{10}, and C_{18}).	Turfs/Lawns.
1839–68	1839	BTC 8358	Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16}).	Turfs/Lawns.
1839–207	1839	BTC 5814–80%	Alkyl* dimethyl benzyl ammonium chloride *(58%C_{14}, 28%C_{16}, 14%C_{12}).	Turfs/Lawns.
1839–228	1839	BTC 451 P/S	Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16}).	Turfs/Lawns.
53883–310	53883	Quali-Pro Chlorothalonil 720 SFT.	Chlorothalonil	Apricot, cherry (sweet), cherry (tart), nectarine, peach, plum and prune.
53883–313	53883	Quali-Pro Chlorothalonil DF.	Chlorothalonil	Apricot, cherry (sweet), cherry (tart), nectarine, peach, plum and prune.
62097–15	62097	Uniconazole-P Technical.	Uniconazole P	Outdoor shade house and lath house.
62097–18	62097	Concise	Uniconazole P	Outdoor shade house and lath house.
65217–1	65217	Biobor JF	1,3,2-Dioxaborinane, 2,2′-((1-methyl-1,3-propanediyl)bis(oxy))bis(4-methyl- & 1,3,2-Dioxaborinane, 2,2′oxybis(4,4,6-trimethyl-.	Wood preservative.
75499–19	75499	Vitagib 40% Soluble Powder Plant Growth Regulator.	Gibberellic acid	Silage.

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
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
264	Bayer CropScience, LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
432	Bayer Environmental Science, A Division of Bayer CropScience, LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
1448	Buckman Laboratories, Inc., 1256 North McLean Blvd., Memphis, TN 38108.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS—Continued

EPA company No.	Company name and address
1839	Stepan Company, 22 W. Frontage Rd., Northfield, IL 60093.
2217	PBI-Gordon Corporation, 1217 West 12th Street, P.O. Box 014090, Kansas City, MI 64101–0090.
2596	The Hartz Mountain Corporation, 400 Plaza Drive, Secaucus, NJ 07094.
2915	The Fuller Brush Company, 860 Kaiser Road, Suite D, Napa, CA 94558.
5185	Bio-Lab, Inc., P.O. Box 300002, Lawrenceville, GA 30049–1002.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
6836	Lonza, Inc., 90 Boroline Road, Allendale, NJ 07401.
7124	Alden Leeds, Inc., 55 Jacobus Ave., South Kearny, NJ 07032.
7401	Voluntary Purchasing Groups, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332.
9688	Chemsico, A Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
19713	Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113–0327.
33595	Plaze, Inc., 1000 Integram Drive, Pacific, MO 63069.
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
53883	Control Solutions, Inc., 5903 Genoa Red Bluff Road, Pasadena, TX 77507.
60217	Easter Lily Research Foundation (of the) Pacific Bulb Growers Assc., P.O. Box 907, Brookings, OR 97415.
60244	Seminis Vegetable Seeds, 37437 State Highway 16, Woodland, CA 95695.
62097	Fine Agrochemicals, Ltd., Agent Name: SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192.
62719	Dow AgrosSciences, LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
65217	Hammonds Fuel Additives, Inc., Agent Name: Delta Analytical Corp., 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904.
66222	Makhteshim Agan of North America, Inc., d/b/a ADAMA, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
66330	Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
66397	Mid-Continent Packaging, Inc., 1200 N 54th Street, Enid, OK 73701.
67360	Polymer Additives, Inc., d/b/a Valtris Specialty Chemicals, Agent Name: Technology Sciences Group, Inc., 1150 18th St. NW, Suite 1000, Washington, DC 20036.
75499	Plant Synergists, Inc., 4730 Kingussie Drive, Houston, TX 77084.
81880	Canyon Group, LLC, c/o Gowan Company, 370 S. Main Street, Yuma, AZ 85364.
83979	Rotam North America, Inc., Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.
87931	Raymat Materials, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332.
91640	Genmerica NA, LLC, Agent Name: GHB Consulting, 1660 3rd Ave. SW, Le Mars, IA 51031.

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 requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-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 action, the effective date of cancellation and all other provisions of any earlier cancellation 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.

A. For Product 100–907

The registrant has requested to the Agency via letter dated November 10, 2017, a 12-month period (until November 30, 2018), to sell, distribute or use existing stocks of the subject product.

For all other 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: February 20, 2018.

Hamaad Syed,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–04531 Filed 3–5–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0007; FRL–9973–26]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before April 5, 2018.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol of interest as shown in the body of this document, 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: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *EPA:* 100–RAGL. *Docket ID Number:* EPA–HQ–OPP–2017–0653. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Product name:* Vayantis Seed Treatment. *Active Ingredient:* Fungicide-Picarbutrazox at 36%. *Proposed Uses:* Corn and soybean. *Contact:* RD.

2. *EPA:* 8033–RGA. *Docket ID Number:* EPA–HQ–OPP–2017–0653. *Applicant:* Nippon Soda Co., Ltd c/o Nisso America Inc., 88 Pine Street, 14th Floor, New York, NY 10005. *Product name:* Picarbutrazox 10 SC. *Active Ingredient:* Fungicide-Picarbutrazox at 9.5%. *Proposed Uses:* Cucurbit vegetables (Crop Group 9) and leafy greens (Crop Sub-group 4–16A). *Contact:* RD.

3. *EPA:* 8033–RGI. *Docket ID Number:* EPA–HQ–OPP–2017–0653. *Applicant:* Nippon Soda Co., Ltd c/o Nisso America Inc., 88 Pine Street, 14th Floor, New York, NY 10005. *Product name:* Picarbutrazox 20 WG. *Active Ingredient:* Fungicide-Picarbutrazox at 20%. *Proposed Uses:* Turf. *Contact:* RD.

4. *EPA:* 8033–RGT. *Docket ID Number:* EPA–HQ–OPP–2017–0653. *Applicant:* Nippon Soda Co., Ltd c/o Nisso America Inc., 88 Pine Street, 14th Floor, New York, NY 10005. *Product name:* Picarbutrazox Technical. *Active Ingredient:* Fungicide-Picarbutrazox at 97.5%. *Proposed Uses:* Cucurbit vegetables (Crop Group 9), leafy greens

(Crop Sub-group 4–16A), turf, corn, and soybean. *Contact:* RD.

File Symbols: 279–GAGR and 279–GAGN. *Docket ID number:* EPA–HQ–OPP–2017–0417. *Applicant:* FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. *Product names:* Valifenalate Technical and F9177–2 WG. *Active ingredient:* Fungicide and Valifenalate at 98.4% (Valifenalate Technical) and 10% (F9177–2 WG). *Proposed Uses:* Classification/Use Bulb vegetable crop group 3–07, cucurbit vegetable crop group 9, fruiting vegetable crop group 8–10, celery, tomato-wet peel, and potatoes. *Contact:* RD.

File Symbol: 67986–I. *Docket ID number:* EPA–HQ–OPP–2017–0707. *Applicant:* OmniLytics, Inc., 9100 South 500 West, Sandy, UT 84070. *Product name:* AgriPhage-Fire Blight. *Active ingredient:* Bactericide—Bacteriophage active against Erwinia amylovora at 0.0001%. *Proposed use:* To be used on apples and pears for the control of fire blight caused by the bacterium *Erwinia amylovora. Contact:* BPPD.

File Symbol: 89017–A. *Docket ID number:* EPA–HQ–OPP–2017–0725. *Applicant:* Adjuvants Plus, Inc., 1755 Division Rd. North, Kingsville, Ontario N9Y 2Y8, Canada (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616). *Product name: Clonostachys rosea* strain 88–710 TGAI. *Active ingredient:* Fungicide—*Clonostachys rosea* strain 88–710 at 100%. *Proposed use:* For manufacturing of pesticide products containing *Clonostachys rosea* strain 88–170. *Contact:* BPPD.

File Symbol: 89017–G. *Docket ID number:* EPA–HQ–OPP–2017–0724. *Applicant:* Adjuvants Plus, Inc., 1755 Division Rd. North, Kingsville, Ontario N9Y 2Y8, Canada (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616). *Product name:* API EP#4. Active ingredient: Fungicide—*Clonostachys rosea* strain ACM941 at 95.00%. *Proposed use:* Seed treatment. *Contact:* BPPD.

File Symbol: 89017–I. *Docket ID number:* EPA–HQ–OPP–2017–0725. *Applicant:* Adjuvants Plus, Inc., 1755 Division Rd. North, Kingsville, Ontario N9Y 2Y8, Canada (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616). *Product name:* API EP#2. *Active ingredient:* Fungicide—*Clonostachys rosea* strain 88–710 at 95.00%. *Proposed use:* Field, greenhouse, turf/lawn, forestry, and residential. *Contact:* BPPD.

File Symbol: 89017–O. *Docket ID number:* EPA–HQ–OPP–2017–0724. *Applicant:* Adjuvants Plus, Inc., 1755 Division Rd. North, Kingsville, Ontario N9Y 2Y8, Canada (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616). *Product name:* API EP#5. *Active ingredient:* Fungicide—*Clonostachys rosea* strain ACM941 at 95.00%. *Proposed use:* Field, greenhouse, turf/lawn, forestry, and residential. *Contact:* BPPD.

File Symbol: 89017–R. *Docket ID number:* EPA–HQ–OPP–2017–0724. *Applicant:* Adjuvants Plus, Inc., 1755 Division Rd. North, Kingsville, Ontario N9Y 2Y8, Canada (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616). *Product name: Clonostachys rosea* strain ACM941 TGAI. *Active ingredient:* Fungicide—*Clonostachys rosea* strain ACM941 at 100%. *Proposed use:* For manufacturing of pesticide products containing *Clonostachys rosea* strain ACM941. *Contact:* BPPD.

File Symbol: 89017–RN. *Docket ID numbers:* EPA–HQ–OPP–2017–0724 and EPA–HQ–OPP–2017–0725. *Applicant:* Adjuvants Plus, Inc., 1755 Division Rd. North, Kingsville, Ontario N9Y 2Y8, Canada (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616). *Product name:* API EP#7. *Active ingredients:* Fungicide—*Clonostachys rosea* strain 88–710 and *Clonostachys rosea* strain ACM941 at 47.50% and 47.50%, respectively. *Proposed use:* Field, greenhouse, turf/lawn, forestry, and residential. *Contact:* BPPD.

File Symbol: 89017–T. *Docket ID number:* EPA–HQ–OPP–2017–0725. *Applicant:* Adjuvants Plus, Inc., 1755 Division Rd. North, Kingsville, Ontario N9Y 2Y8, Canada (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616). *Product name:* API EP#1. *Active ingredient:* Fungicide—*Clonostachys rosea* strain 88–710 at 95.00%. *Proposed use:* Seed treatment. *Contact:* BPPD.

File Symbol: 89017–U. *Docket ID numbers:* EPA–HQ–OPP–2017–0724 and EPA–HQ–OPP–2017–0725. *Applicant:* Adjuvants Plus, Inc., 1755 Division Rd. North, Kingsville, Ontario N9Y 2Y8, Canada (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616). *Product name:* API EP#6. *Active ingredients:* Fungicide—*Clonostachys rosea* strain 88–710 and *Clonostachys rosea* strain ACM941 at 47.50% and 47.50%, respectively. *Proposed use:* Seed treatment. *Contact:* BPPD.

File Symbol: 89635–U. *Docket ID number:* EPA–HQ–OPP–2017–0706. *Applicant:* Koppert Biological Systems, Inc., 1502 Old US 23, Howell, MI 48843. *Product name:* KM1110 WDG. *Active ingredient:* Fungicide—*Metschnikowia fructicola* strain NRRL Y–27328 at 58.5%. *Proposed use:* Fungicide to prevent post-harvest decay in small fruit vine climbing plants, low growing berries, and stone fruits. *Contact:* BPPD.

File Symbol: 91279–E. *Docket ID number:* EPA–HQ–OPP–2017–0749. *Applicant:* toXcel, LLC, 7140 Heritage Village Plaza, Gainesville, VA 20155 (on behalf of Green Ravenna, Via Matteotti, 16–48121, Ravenna, Italy). *Product name:* Proradix MUP. *Active ingredient:* Fungicide—*Pseudomonas* sp. strain DSMZ 13134 at 5.4%. *Proposed use:* For formulation of fungicides to reduce soilborne diseases. *Contact:* BPPD.

File Symbol: 91279–R. *Docket ID number:* EPA–HQ–OPP–2017–0749. *Applicant:* toXcel, LLC, 7140 Heritage Village Plaza, Gainesville, VA 20155 (on behalf of Green Ravenna, Via Matteotti, 16–48121, Ravenna, Italy). *Product name:* Proradix. *Active ingredient:* Fungicide—*Pseudomonas* sp. strain DSMZ 13134 at 0.8%. *Proposed use:* To reduce soilborne diseases on potato, onion, garlic, tomato, eggplant, pepper, squash, melon, watermelon, cucumber and strawberry. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 29, 2018.

Hamaad Syed,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–04524 Filed 3–5–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2018–N–2]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, (Privacy Act), the Federal Housing Finance Agency (FHFA) is making a revision to an existing system of records entitled ''Suspended Counterparty System'' (FHFA–23). The Suspended Counterparty System contains information that FHFA uses to implement the Suspended Counterparty Program by which the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the eleven Federal Home Loan Banks (Banks) are required to submit reports to FHFA when they become aware that an individual or institutions and any

affiliates thereof, who are currently or have been engaged in a covered transaction with a regulated entity within three years of when the regulated entity becomes aware of covered misconduct, have engaged in fraud or other financial misconduct.

DATES: To be assured of consideration, comments must be received on or before April 5, 2018. The revisions to the existing system will become effective on April 5, 2018 without further notice unless comments necessitate otherwise. FHFA will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received.

ADDRESSES: Submit comments to FHFA, identified by ''2018–N–2,'' using any one of the following methods:

- *Agency website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include ''Comments/No. 2018–N–2'' in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/No. 2018–N–2, Federal Housing Finance Agency, 400 7th Street SW, Eighth Floor, Washington, DC 20219. The package should be delivered to the 7th Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/No. 2018–N–2, Federal Housing Finance Agency, 400 7th Street SW, Eighth Floor, Washington, DC 20219. *Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.*

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: Tasha Cooper, Associate General Counsel, *Tasha.Cooper@fhfa.gov* or (202) 649–3091; Stacy Easter, Privacy Act Officer, *privacy@fhfa.gov* or (202) 649–3803; or David A. Lee, Senior Agency Official for Privacy, *privacy@fhfa.gov* or (202) 649–3803 (not toll-free numbers), Federal Housing Finance Agency, Eighth Floor, 400 7th Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA seeks public comments on the revision to the system of records and will take all comments into consideration. *See* 5 U.S.C. 552a(e)(4) and (11). In addition to referencing ''Comments/No. 2018–N–2,'' please reference the ''Suspended Counterparty System'' (FHFA–23).

All comments received will be posted without change on the FHFA website at *http://www.fhfa.gov,* and will include any personal information provided, such as name, address (mailing and email), telephone numbers, and any other information you provide. In addition, copies of all comments received will be available for public inspection on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, 400 7th Street SW, Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

II. Introduction

This notice informs the public of FHFA's proposed revisions to an existing system of records. This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition or change to an agency's system of records. Congress has recognized that application of all requirements of the Privacy Act to certain categories of records may have an undesirable and often unacceptable effect upon agencies in the conduct of necessary public business. Consequently, Congress established general exemptions and specific exemptions that could be used to exempt records from provisions of the Privacy Act. Congress also required that exempting records from provisions of the Privacy Act would require the head of an agency to publish a determination to exempt a record from the Privacy Act as a rule in accordance with the Administrative Procedure Act. The Director of FHFA has determined that records and information in this system of records are not exempt from the requirements of the Privacy Act.

As required by the Privacy Act, 5 U.S.C. 552a(r), and pursuant to section 7 of OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016 (81 FR 94424 (Dec. 23, 2016)), prior to publication of this notice, FHFA submitted a report describing the revisions to the system of records covered by this notice to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

III. Revised System of Records

The ''Suspended Counterparty System'' (FHFA–23) system of records is being revised to change the name to ''Suspended Counterparty Program System,'' expand the purpose of the system, and to add three new routine uses. The name change is to more accurately reflect the system and program. The current purpose of the system is to receive reports from the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the eleven Federal Home Loan Banks (FHLBanks) when they become aware that an individual or institutions and any affiliates thereof, who are currently or have been engaged in a covered transaction with a regulated entity within three years of when the regulated entity becomes aware of the covered misconduct, have engaged in fraud or other financial misconduct. FHFA is proposing to expand the purpose of the system to include collecting information from other organizations and entities, besides Fannie Mae, Freddie Mac and the FHLBanks, that voluntarily submit reports to FHFA about counterparties that have engaged in covered misconduct as defined in the Suspended Counterparty Regulation at 12 CFR 1227.2.

The three new routine uses will permit FHFA to share information in the Suspended Counterparty System with Fannie Mae, Freddie Mac and the FHLBanks (hereinafter ''regulated entities); with state and federal housing or financial regulators; and state or federal professional licensing agencies.

The revisions to the system of records notice is described in detail below. All other aspects of the system of records notice, other than the changes described below, remain unchanged.

SYSTEM NAME AND NUMBER:

Suspended Counterparty Program System FHFA–23.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219, and any alternate work site utilized by employees of the Federal Housing Finance Agency (FHFA) or by individuals assisting such employees.

SYSTEM MANAGER(S):

Office of General Counsel, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219.

PURPOSE(S) OF THE SYSTEM:

The purpose of the System is expanded to include collecting information from other organizations and entities that voluntarily submit reports to FHFA about counterparties that have engaged in covered misconduct as defined in the Suspended Counterparty Regulation at 12 CFR 1227.2.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(13) To an FHFA regulated entity.

(14) To state and federal housing or financial regulators.

(15) To state or federal professional licensing agencies.

HISTORY:

The FHFA Suspended Counterparty System (FHFA–23) system of records was last published in the **Federal Register** on November 25, 2014 (79 FR 70181).

Dated: February 28, 2018.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2018–04527 Filed 3–5–18; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP18–001, Targeting Treatment Gaps: Describing When, How Quickly, And Why Persons with Epilepsy Are Referred For Specialty Care.

Date: April 25, 2018.

Time: 11:00 a.m.–4:00 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–04479 Filed 3–5–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis Meeting (ACET)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Council for the Elimination of Tuberculosis Meeting (ACET). This meeting is open to the public, limited only by 100 room seating and 100 ports for audio phone lines. Time will be available for public comment. The public is welcome to submit written comments in advance of the meeting. Comments should be submitted in writing by email to the contact person listed below. The deadline for receipt is Monday, April 9, 2018. Persons who desire to make an oral statement, may request it at the time of the public comment period on April 17, 2018 at 3:20 p.m. EDT. This meeting is accessible by web conference: 1–877–927–1433 and participant passcode: 12016435 and *https://adobeconnect.cdc.gov/r5p8l2tytpq/.*

DATES: The meeting will be held on April 17, 2018, 8:30 a.m. to 3:30 p.m., EDT.

ADDRESSES: 8 Corporate Blvd., Building 8, Conference Rooms 1A and 1B, Atlanta, Georgia, 30329 and web conference.

FOR FURTHER INFORMATION CONTACT: Margie Scott-Cseh, Committee Management Specialist, CDC, 1600 Clifton Road NE, Mailstop: E–07, Atlanta, Georgia, 30329, telephone (404) 639–8317; *zkr7@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Purpose: This Council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Considered: The agenda will include: (1) Update on Report of Verified Case of Tuberculosis (RVCT) revision; (2) Overview of Division of Global Migration and Quarantine (DGMQ) TB Technical Instructions; (3) Update on healthcare workers screening guidelines; and (4) Updates from ACET workgroups. Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–04477 Filed 3–5–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Clinical Laboratory Improvement Advisory Committee (CLIAC). This meeting is open to the public, limited only by the space available. The meeting room accommodates approximately 100 people. The public is also welcome to view the meeting by webcast. Check the CLIAC website on the day of the meeting for the webcast link *https://wwwn.cdc.gov/cliac/.* Please see information regarding attending the meeting in the summary section below.

DATES: The meeting will be held on April 10, 2018, 8:30 a.m. to 5:30 p.m., EDT and April 11, 2018, 8:30 a.m. to 1:00 p.m., EDT.

ADDRESSES: Food and Drug Administration (FDA) White Oak Campus, 10903 New Hampshire Avenue, Building 31, Great Room, Silver Spring, MD 20993.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson, MMSc, MT(ASCP), Senior Advisor for Clinical Laboratories, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop F–11, Atlanta, Georgia 30329–4027 telephone (404) 498–2741; *NAnderson@cdc.gov.*

SUPPLEMENTARY INFORMATION: All people attending the CLIAC meeting in-person are required to register for the meeting online at least 5 business days in advance for U.S. citizens and at least 10 business days in advance for international registrants. Register at: *https://wwwn.cdc.gov/cliac/.* Register by scrolling down and clicking the ''Register for this Meeting'' button and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than April 2, 2018 for U.S. registrants and March 26, 2018 for international registrants.

It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments on agenda items. Public comment periods for each agenda item are scheduled immediately prior to the Committee discussion period for that item. In general, each individual or group requesting to make oral comments will be limited to a total time of five minutes (unless otherwise indicated). To assure adequate time is scheduled for public comments, speakers should notify the contact person below at least 5 business days prior to the meeting date. For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least 5 business days prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person at the mailing or email address below, and will be included in the meeting's Summary Report. The CLIAC meeting materials will be made available to the Committee and the public in electronic format (PDF) on the internet instead of by printed copy. Check the CLIAC website on the day of the meeting for materials: *https://wwwn.cdc.gov/cliac/.*

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare and Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine practice and specific questions related to possible revision of the Clinical Laboratory Improvement Amendment (CLIA) standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods, the electronic transmission of laboratory information, and mechanisms to improve the integration of public health and clinical laboratory practices.

Matters to be Considered: The agenda will include agency updates from CDC, CMS, and FDA. Presentations and discussions will focus on the clinical laboratory workforce; implementation of next generation sequencing in clinical laboratories; laboratory interoperability; and using clinical laboratory data to improve quality and laboratory medicine practices. Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–04475 Filed 3–5–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH). This meeting is open to the public, limited only by the space available. The meeting space accommodates approximately 150 people. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number at 1–866–659–0537; the pass code is 9933701. The conference line has 150 ports for callers. The Web conference by which the public can view presentations

as they are presented is *https://webconf.cdc.gov/zab6/yzdq02pl?sl=1.*

DATES: The meeting will be held on April 11, 2018 from 9:00 a.m. to 5:30 p.m. EDT. A public comment session will follow at 5:30 p.m. and conclude at 6:30 p.m. or following the final call for public comment, whichever comes first.

ADDRESSES: Doubletree by Hilton Hotel Oak Ridge—Knoxville, 215 S. Illinois Avenue, Oak Ridge, TN 37830; Phone: (865) 481–2468, Fax: (865) 481–2474. Audio conference call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701. Web conference by Skype: meeting CONNECTION: *https://webconf.cdc.gov/zab6/yzdq02pl?sl=1.*

FOR FURTHER INFORMATION CONTACT: Theodore Katz, MPA, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email *ocas@cdc.gov.* .

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on March 22, 2016 pursuant to Executive Order 13708, and will expire on March 22, 2018.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Considered: The agenda will include discussions on: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC Petitions Update; possible discussions of Site Profile reviews for Weldon Spring Plant (Weldon Spring, Missouri), Pacific Proving Grounds (Marshall Islands), and Feed Materials Production Center (Fernald, Ohio); Dose and Dose-Rate Effectiveness Factors for Low-LET Radiation; Honoring Dr. Melius; and Board Work Sessions. Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–04476 Filed 3–5–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)-PAR15–353, Centers for Agricultural Safety and Health (Ag Ctr).

Date: April 17, 2018.

Time: 1:00 p.m.–6:00 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Michael Goldcamp, Ph.D., Scientific Review Officer/CDC, 1095 Willowdale Road, Mailstop H1808, Morgantown, West Virginia, 26505, (304) 285–5951; *mgoldcamp@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–04478 Filed 3–5–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Faculty Loan Repayment Program; OMB No. 0915–0150—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than May 7, 2018.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA

Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference, in compliance with Section 3506(c)(2)(A), the Paperwork Reduction Act of 1995.

Information Collection Request Title: Faculty Loan Repayment Program; OMB No. 0915–0150—Extension.

Abstract: HRSA administers the Faculty Loan Repayment Program (FLRP). FLRP provides degree-trained health professionals from disadvantaged backgrounds based on environmental and/or economic factors the opportunity to enter into a contract with HHS in exchange for the repayment of qualifying educational loans for a minimum of 2 years of service as a full-time or part-time faculty member at eligible health professions schools.

Need and Proposed Use of the Information: The information collected will be used to evaluate applicants' eligibility to participate in FLRP and to monitor FLRP-related activities.

Likely Respondents: FLRP applicants and institutions providing employment to the applicants.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Eligible Applications	111	1	111	1	111
Institution/Loan Repayment Employment Form	*111	*1	111	1	111
Authorization to Release Information Form	111	1	111	.25	27.75
Total	222				249.75

* Respondent for this form is the institution for the applicant.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Amy McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–04481 Filed 3–5–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition on the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the table) set forth at 42 CFR 100.3. This table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested outside the time periods

specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on January 1, 2018, through January 31, 2018. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: February 28, 2018.

George Sigounas,

Administrator.

List of Petitions Filed

1. Marilyn Datte, Midland, Michigan, Court of Federal Claims No: 18–0002V
2. Neena Hartshorn, Grandview, Missouri, Court of Federal Claims No: 18–0007V
3. Ronnie Duesterheft, Lockhart, Texas, Court of Federal Claims No: 18–0008V
4. Ana Severino, Boston, Massachusetts, Court of Federal Claims No: 18–0009V
5. Maureen Pascual, San Jose, California, Court of Federal Claims No: 18–0010V
6. Joshua Yeargin and Sheri Yeargin on behalf of W. Y., Washington, District of Columbia, Court of Federal Claims No: 18–0011V
7. Joshua Yeargin and Sheri Yeargin on behalf of A. Y., Washington, District of Columbia, Court of Federal Claims No: 18–0012V
8. Susan Grossman, Kinnelon, New Jersey, Court of Federal Claims No: 18–0013V
9. Sharmora Phillips on behalf of P. N. H., Deceased, New York, New York, Court of Federal Claims No: 18–0015V
10. Ingrid M. Larish, Alden, New York, Court of Federal Claims No: 18–0020V
11. Suzanne Mulrenin on behalf of R. M., Phoenix, Arizona, Court of Federal Claims No: 18–0022V
12. Nathania Stephens, Mankato, Minnesota, Court of Federal Claims No: 18–0023V
13. Alton Redfern, Sr., Greensboro, North Carolina, Court of Federal Claims No: 18–0026V
14. Melissa Bishop, Kingsport, Tennessee, Court of Federal Claims No: 18–0027V
15. Matthew Gotch, Aurora, Colorado, Court of Federal Claims No: 18–0028V
16. Carolyn Gurney on behalf of Donald K. Gurney, American Fork, Utah, Court of Federal Claims No: 18–0029V
17. Lorinda L. Schneider on behalf of M. A. M., Salem, Indiana, Court of Federal Claims No: 18–0030V
18. Prescilla Laurilla, Chicago, Illinois, Court of Federal Claims No: 18–0031V
19. Velva C. Sloan, Huntington, West Virginia, Court of Federal Claims No: 18–0032V
20. Leah Cromer, Orangeburg, South Carolina, Court of Federal Claims No: 18–0033V
21. Kim Mailangkay, Patton, California, Court of Federal Claims No: 18–0036V
22. Richard Stroessner, Ash Flat, Arkansas, Court of Federal Claims No: 18–0037V
23. Dean Leslie, Louisville, Kentucky, Court of Federal Claims No: 18–0039V
24. Donna Gordon on behalf of Ray A. Gordon, Deceased, Boston, Massachusetts, Court of Federal Claims No: 18–0040V
25. Donald A. Barrett, Rochester, New York, Court of Federal Claims No: 18–0041V
26. Jonathan G. Adams, Green Brook, New Jersey, Court of Federal Claims No: 18–0042V
27. Dorothy Smith, Odessa, Texas, Court of Federal Claims No: 18–0043V
28. Lori Carre, Norristown, Pennsylvania, Court of Federal Claims No: 18–0044V
29. Jessica Ott, Waterloo, Iowa, Court of Federal Claims No: 18–0050V
30. Lonn Rickstrom, Washington, District of Columbia, Court of Federal Claims No: 18–0053V
31. Karin Martindale, Jacksonville, Florida, Court of Federal Claims No: 18–0054V
32. Donna Callaway, Charlotte, North Carolina, Court of Federal Claims No: 18–0055V
33. Hayley Stricker, Phoenix, Arizona, Court of Federal Claims No: 18–0056V
34. Becky Layne, Palmer, Tennessee, Court of Federal Claims No: 18–0057V
35. Robbie Hartley, Rome, Georgia, Court of Federal Claims No: 18–0058V
36. Walter White, Laguna Beach, California, Court of Federal Claims No: 18–0059V
37. Dennis Allen, Jr., Allegan, Michigan, Court of Federal Claims No: 18–0060V
38. Donald Nearing, Vista, California, Court of Federal Claims No: 18–0066V
39. Terrance Monk on behalf of Child Daughter, Nanuet, New York, Court of Federal Claims No: 18–0068V
40. Cheryl Welch, Boston, Massachusetts, Court of Federal Claims No: 18–0074V
41. Sherri Cayton, Highpoint, North Carolina, Court of Federal Claims No: 18–0075V
42. Lisa McGonigal, Akron, Ohio, Court of Federal Claims No: 18–0077V
43. Yoshida Tate, Waupun, Wisconsin, Court of Federal Claims No: 18–0081V
44. L. C. Hogan, Waupun, Wisconsin, Court of Federal Claims No: 18–0082V
45. Sara Bokobza, San Diego, California, Court of Federal Claims No: 18–0083V
46. Robert Cramer, Rochester, Minnesota, Court of Federal Claims No: 18–0085V
47. Wanda Witherspoon, Baltimore, Maryland, Court of Federal Claims No: 18–0087V
48. Jennifer Robinson, Sherman, Texas, Court of Federal Claims No: 18–0088V
49. Mehmet Ozgur, Burbank, California, Court of Federal Claims No: 18–0089V
50. Michael Kuhn, Springfield, Illinois, Court of Federal Claims No: 18–0091V
51. Robert C. Lott, Butler, Pennsylvania, Court of Federal Claims No: 18–0095V
52. Marissa Nicole Como, Providence, Rhode Island, Court of Federal Claims No: 18–0099V
53. Cynthia Price Taylor, Boston, Massachusetts, Court of Federal Claims No: 18–0100V
54. Tonya Bohatch, Grindstone, Pennsylvania, Court of Federal Claims No: 18–0101V
55. Michael Allison, Tacoma, Washington, Court of Federal Claims No: 18–0103V
56. Richard Van Dycke, Chicago, Illinois, Court of Federal Claims No: 18–0106V
57. Herbert E. Bowling, Jr. on behalf of Evelyn L. Bowling, Deceased, Geneva, Ohio, Court of Federal Claims No: 18–0109V
58. Gianluca Saccone, Decatur, Georgia, Court of Federal Claims No: 18–0113V
59. Joe H. Castillo, Washington, District of Columbia, Court of Federal Claims No:

18–0115V
60. Claudie Lee Southern, Irving, Texas, Court of Federal Claims No: 18–0116V
61. Daniel Boits, Portage, Indiana, Court of Federal Claims No: 18–0119V
62. Kathy Lynn Gipple, Johnston, Iowa, Court of Federal Claims No: 18–0120V
63. Heather Snyder, Lancaster, Pennsylvania, Court of Federal Claims No: 18–0122V
64. Wyatt Bell, Kuna, Idaho, Court of Federal Claims No: 18–0125V
65. Linda Skadra, Latham, New York, Court of Federal Claims No: 18–0126V
66. Jennifer Brown, Washington, District of Columbia, Court of Federal Claims No: 18–0127V
67. Fred Bove, San Francisco, California, Court of Federal Claims No: 18–0128V
68. Kenneth Capra, Lakewood, Colorado, Court of Federal Claims No: 18–0129V
69. Marilee Boerger, Sheboygan, Wisconsin, Court of Federal Claims No: 18–0130V
70. Linda Kuznitz, Washington, District of Columbia, Court of Federal Claims No: 18–0131V
71. Taylor E. Porter and Kelvin D. Woods on behalf of A. W., Deceased, Linwood, New Jersey, Court of Federal Claims No: 18–0132V
72. Melissa Norred, Phoenix, Arizona, Court of Federal Claims No: 18–0133V
73. Carl Browning, Palestine, Texas, Court of Federal Claims No: 18–0135V
74. Ricardo Hernandez, Dallas, Texas, Court of Federal Claims No: 18–0137V
75. Steven Streeter, Piermont, New York, Court of Federal Claims No: 18–0138V
76. Leslie Mintzer, New York, New York, Court of Federal Claims No: 18–0139V
77. Cynthia Nute, Wentzville, Missouri, Court of Federal Claims No: 18–0140V
78. Wanda J. Payne, Taylorsville, North Carolina, Court of Federal Claims No: 18–0145V
79. Daphne Dodson, Columbus, Ohio, Court of Federal Claims No: 18–0150V
80. Archana Chander on behalf of L. M., Phoenix, Arizona, Court of Federal Claims No: 18–0151V
81. Edward McCall, Phoenix, Arizona, Court of Federal Claims No: 18–0152V
82. Elaine H. Lander, Wellesley Hills, Massachusetts, Court of Federal Claims No: 18–0153V
83. Michael Cericola, Bristol, Virginia, Court of Federal Claims No: 18–0155V
84. John Huff, Covington, Kentucky, Court of Federal Claims No: 18–0156V
85. Monica Gomez, San Diego, California, Court of Federal Claims No: 18–0157V
86. Margery Hebden, Myrtle Beach, South Carolina, Court of Federal Claims No: 18–0158V
87. Ami Neil, Walker, Michigan, Court of Federal Claims No: 18–0159V
88. Nga Hong Jones, Clackamas, Oregon, Court of Federal Claims No: 18–0160V

[FR Doc. 2018–04506 Filed 3–5–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Federal Tort Claims Act (FTCA) Program Deeming Application for Health Centers, OMB No. 0906–XXXX—NEW

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than April 5, 2018.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Federal Tort Claims Act (FTCA) Program Deeming Application for Health Centers, OMB No. 0906–XXXX—NEW.

Abstract: Section 224(g)–(n) of the Public Health Service (PHS) Act (42 U.S.C. 233(g)–(n)), as amended, authorizes the ''deeming'' of entities receiving funds under section 330 of the PHS Act as PHS employees for the purposes of receiving Federal Tort Claims Act (FTCA) coverage. The Health Center Program is administered by HRSA. Health centers submit deeming applications to HRSA in the prescribed form and manner in order to obtain deemed PHS employee status, with the associated FTCA coverage.

Need and Proposed Use of the Information: Deeming applications must address certain specified criteria required by law in order for deeming determinations to be issued, and FTCA application forms are critical to HRSA's deeming determination process. These forms provide HRSA with the information essential for application evaluation and a deeming determination for the purposes of FTCA coverage. The application information is also used to determine whether a site visit is appropriate to assess issues relating to the health center's quality of care and to determine technical assistance needs.

Likely Respondents: Respondents include Health Center Program funds recipients seeking deemed PHS employee status for purposes of FTCA coverage.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
FTCA Health Center Program Initial Application	35	1	35	2.5	87.5
FTCA Health Center Program Redeeming Application	1125	1	1125	2.5	2812.5
Total	1160		1160		2900

Amy McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–04482 Filed 3–5–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcing Project Period Extensions With Funding for Health Center Program Award Recipients in Puerto Rico; Health Center Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Announcing project period extensions with Funding for Health Center Program Award recipients in Puerto Rico.

SUMMARY: HRSA provided additional grant funds to 4 award recipients in Puerto Rico with project periods ending in fiscal year 2018 to extend their current project periods by 12 months to prevent interruptions in the provision of critical health care services while they recover from Hurricane Maria.

SUPPLEMENTARY INFORMATION:

Recipients of the Award: Four Health Center Program award recipients in Puerto Rico vulnerable to a lapse in service provision in their service areas due to the impact of Hurricane Maria on the operational resources available for competitive application preparation for fiscal year 2018, as listed in Table 1.

Amount of Non-Competitive Awards: Four awards for $17,482,070.

Period of Supplemental Funding: Fiscal year 2018.

CFDA Number: 93.224.

Authority: Section 330 of the Public Health Service Act, as amended (42 U.S.C. 254b, as amended).

Justification: In September 2017, HHS declared a hurricane-related public health emergency in Puerto Rico. Health centers in Puerto Rico and the patients they serve continue to face significant challenges associated with recovery from Hurricane Maria. For these four award recipients, the funding permits them to continue to operate in the current fiscal year before submitting competitive applications by the end of the 12-month extension period. Extending the project period and providing flexibility for competing applications for these four award recipients aligns with the Office of Management and Budget's memorandum to provide short-term relief to affected award recipients, ''Administrative Relief for Grantees Impacted by Hurricanes Harvey, Irma, and Maria,'' signed on October 26, 2017.

HRSA awarded approximately $17 million to the four existing Health Center Program award recipients noted in Table 1.

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	State	Award amount
H80CS00382	Morovis Community Health Center, Inc	PR	$2,561,918
H80CS00695	HPM Foundation, Inc	PR	4,938,854
H80CS00598	Salud Integral en la Montana, Inc	PR	7,720,986
H80CS22687	Corporacion de Salud Asegurada por Nuestra Organizacin Solidaria, Inc. (S.A.N.O.S.)	PR	2,260,312

FOR FURTHER INFORMATION CONTACT: Olivia Shockey, Expansion Division Director, Office of Policy and Program Development, Bureau of Primary Health Care, Health Resources and Services Administration, at *oshockey@hrsa.gov* or 301–594–4300.

Dated: February 27, 2018.

George Sigounas,

Administrator.

[FR Doc. 2018–04507 Filed 3–5–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Pathogenic Eukaryotes.

Date: March 13, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tera Bounds, Ph.D., DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301 435–2306, *boundst@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Center for Scientific Review Special Emphasis Panel—Health Informatics SBIR/STTR Applications.

Date: March 26–27, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Baltimore, 2 North Charles Street, Baltimore, MD 21201.

Contact Person: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1504, *sudha.veeraraghavan@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Mobile and Connected Health Interventions to Improve HIV Care.

Date: March 27, 2018.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shalanda A. Bynum, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, *bynumsa@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Exploration of Antimicrobial Therapeutics and Resistance.

Date: March 28–29, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin St. Francis San Francisco on Union Square, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr. Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Respiratory Sciences.

Date: March 28, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory Neuroscience.

Date: March 28, 2018.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal Rehabilitation Sciences.

Date: March 28, 2018.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Toxicology and Digestive, Kidney and Urological Systems AREA Review.

Date: March 28, 2018.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Academic Research Enhancement Award.

Date: March 28, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–5902, *caojn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Research.

Date: March 28, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: C.L. Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 28, 2018.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04465 Filed 3–5–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; U01–U24: Translational Research for Liver Cancer Detection.

Date: March 15–16, 2018.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W554, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Christopher L. Hatch, Ph.D., Scientific Review Officer, Program Coordination & Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W554, Bethesda, MD 20892–9750. 240–276–6454, *ch29v@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 28, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04466 Filed 3–5–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–17–015: Metabolomics Core for the Undiagnosed Diseases Network (UDN) Phase II.

Date: March 6, 2018.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 28, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04464 Filed 3–5–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Socioeconomic Disparities in Aging.

Date: March 2, 2018.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carmen, Moten, Ph.D., MPH, Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 28, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04467 Filed 3–5–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID SEP for Patient Oriented Research Career Development Award (K23).

Date: March 26, 2018.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3E72A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892–9823, (240) 669–5023, *fdesilva@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: March 29, 2018.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Geetanjali Bansal, Ph.D., Scientific Reviewer Officer, Scientific Review Program, Division of Extramural Activities, Room 3G49, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5073, *geetanjali.bansal@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 28, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04468 Filed 3–5–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Physical Activity and Weight Control Interventions Among Cancer Survivors: Biomarkers.

Date: March 15, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Physical Activity and Weight Control Interventions Among Cancer Survivors: Biomarkers.

Date: March 15, 2018.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stacey FitzSimmons, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, 301–451–9956, *fitzsimmonss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Abuse Dissertation Research.

Date: March 26, 2018.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Social Epigenomics Research Focused on Minority Health and Health Disparities.

Date: March 27, 2018.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Social Epigenomics Research Focused on Minority Health and Health Disparities.

Date: March 27, 2018.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *steeleln@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project Review (PAR–16–393): Pharmacology of Drugs of Abuse During Pregnancy.

Date: March 27, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Toxicology.

Date: March 27, 2018,

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jonathan K Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: VH Member Special Emphasis Panel.

Date: March 27, 2018.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 28, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04463 Filed 3–5–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920)

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA

(formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare,* 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Charles LoDico,

Chemist.

[FR Doc. 2018–04444 Filed 3–5–18; 8:45 am]

BILLING CODE 4160–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2018–0005]

Area Maritime Security Committee; Charleston, SC Committee Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for membership.

SUMMARY: This notice requests individuals interested in serving on the Area Maritime Security Committee (AMSC), Charleston, SC, submit their resume to the Federal Maritime Security Coordinator (FMSC), Charleston, SC. The Committee assists the FMSC, Charleston, SC, in developing, reviewing, and updating the Area Maritime Security Plan for their area of responsibility.

DATES: Requests for membership should reach the FMSC, Charleston, SC, by April 5, 2018.

ADDRESSES: Resumes should be submitted to the following address: Coast Guard Sector Charleston, Attention: Mr. Dennis Bradford, 1050 Register St., North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application, or about the AMSC in general, contact, Mr. Dennis Bradford at *dennis.f.bradford@uscg.mil*

SUPPLEMENTARY INFORMATION:

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to Title 46 of the U.S. Code, and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees for any port area of the United States. (See 33 U.S.C. 1226; 46 U.S.C. chapter 701; 50 U.S.C. 191, 192; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). Under 46 U.S.C. 70112(g)(1)(B), the Federal Advisory Committee Act (FACA) does not apply to AMSCs.

The AMSCs shall assist the FMSC in the development, review, update, and exercising of the Area Maritime Security Plan for their area of responsibility. Such matters may include, but are not limited to: Identifying critical port infrastructure and operations; identifying risks (threats, vulnerabilities, and consequences); determining mitigation strategies and implementation methods; developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and providing advice to, and assisting the FMSC in developing and maintaining the Area Maritime Security Plan.

AMSC Membership

Members of the AMSC should have at least five years of expertise related to maritime or port security operations.

Applicants may be required to pass an appropriate security background check prior to appointment to the Committee. Applicants must register with and remain active as Coast Guard HOMEPORT users if appointed. Members' terms of office will be for five years; however, a member is eligible to serve additional terms of office. Members will not receive any salary or other compensation for their service on an AMSC. In accordance with 33 CFR 103.305, members may be selected from the Federal, Territorial, or Tribal governments; the State government and political subdivisions of the State; local public safety, crisis management, and emergency response agencies; law enforcement and security organizations; maritime industry, including labor; other port stakeholders having a special competence in maritime security; and port stakeholders affected by security practices and policies.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Format of Applications

Those seeking membership should submit their resume to *dennis.f.bradford@uscg.mil,* highlighting experience in the maritime and security industries.

Dated: March 1, 2018.

J.W. Reed,

Captain, U.S. Coast Guard Federal Maritime Security Coordinator, Charleston, SC.

[FR Doc. 2018–04496 Filed 3–5–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Homeland Security Acquisition Regulation (HSAR); Various Homeland Security Acquisitions Regulations Forms; DHS–2018–0010

AGENCY: Office of the Chief Procurement Officer, Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; extension of a currently approved collection, 1600–0002.

SUMMARY: The DHS Office of the Chief Procurement Officer will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of the information collected is to ensure proper closing of physically complete contracts. The information will be used by DHS contracting officers to ensure compliance with terms and conditions of DHS contracts and to complete reports required by other Federal agencies such as the General Services Administration (GSA) and the Department of Labor (DOL). If this information is not collected, DHS could inadvertently violate statutory or regulatory requirements and DHS's interests concerning inventions and contractors' claims would not be protected.

DATES: Comments are encouraged and will be accepted until May 7, 2018. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number DHS–2018–0010, at:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number DHS–2018–0010. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Nancy Harvey, (202) 447–0956, *Nancy.Harvey@hq.dhs.gov*.

SUPPLEMENTARY INFORMATION: This information collection is associated with the forms listed below and is necessary to implement applicable parts of the HSAR (48 CFR Chapter 30). There are four forms under this collection of information request that are used by offerors, contractors, and the general public to comply with requirements in contracts awarded by DHS. The information collected is used by contracting officers to ensure compliance with terms and conditions of DHS contracts.

The forms are as follows:

1. DHS Form 0700–01, Cumulative Claim and Reconciliation Statement (see (HSAR) 48 CFR 3004.804–507(a)(3)
2. DHS Form 0700–02, Contractor's Assignment of Refund, Rebates, Credits and Other Amounts (see (HSAR) 48 CFR 3004.804–570(a)(2)
3. DHS Form 0700–03, Contractor's Release (see (HSAR) 48 CFR 3004.804–570(a)(1)
4. DHS Form 0700–04, Employee Claim for Wage Restitution (see (HSAR) 48 CFR 3022.406–9

These forms will be prepared by individuals, contractors or contract employees during contract

administration. The information collected includes the following:

• DHS Forms 0700–01, 0700–02 and 0700–03: Prepared by individuals, contractors or contract employees prior to contract closure to determine whether there are excess funds that are available for deobligation versus remaining (payable) funds on contracts; assignment or transfer of rights, title, and interest to the Government; and release from liability. The contracting officer obtains the forms from the contractor for closeout, as applicable. Forms 0700–01 and 02 are mainly used for calculating costs related to the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts; and, Form 0700–03 is mainly used for calculating costs related to the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts but can be used for all contract types.

• DHS Form 0700–04 is prepared by contractor employees making claims for unpaid wages. Contracting officers must obtain this form from employees seeking restitution under contracts to provide to the Comptroller General. This form is applicable to all contract types, both opened and closed.

The purpose of the information collected is to ensure proper closing of physically complete contracts. The information will be used by DHS contracting officers to ensure compliance with terms and conditions of DHS contracts and to complete reports required by other Federal agencies such as the General Services Administration (GSA) and DOL. If this information is not collected, DHS could inadvertently violate statutory or regulatory requirements and DHS's interests concerning inventions and contractors' claims would not be protected.

The four DHS forms are available on the DHS Homepage (*https://www.dhs.gov/sites/default/files/publications/CPO_HSAR_1_0.pdf*). These forms can be filled in electronically and can be submitted via email or facsimile to the specified Government point of contact. Since the responses must meet specific timeframes, a centralized mailbox or website would not be an expeditious or practical method of submission. The use of email or facsimile is the best solution and is most commonly used in the Government. The information requested by these forms is required by the HSAR. The forms are prescribed for use in the closeout of applicable contracts and during contract administration.

There are FAR and HSAR clauses that require protection of rights in data and proprietary information if requested and designated by an offeror or contractor. Additionally, disclosure or non-disclosure of information is handled in accordance with the Freedom of Information Act. There is no assurance of confidentiality provided to the respondents. No PIA is required as the information is collected from DHS personnel (contractors only). Although, the DHS/ALL/PIA–006 General Contacts lists PIA does provided basic coverage. And technically, because this information is not retrieved by personal identifier, no system of records notice is required. However, DHS/ALL–021 DHS Contractors and Consultants provides coverage for the collection of records on DHS contractors and consultants, to include resume and qualifying employment information.

The burden estimates provided are based upon contracts reported by DHS and its Components to the Federal Procurement Data System (FPDS) for Fiscal Year 2016. No program changes occurred and there were no changes to the information being collected. However, the burden was adjusted to reflect an agency adjustment increase of 46,701 in the number of respondents within DHS for Fiscal Year 2016, as well as an increase in the average hourly wage rate.

This is an Extension of a Currently Approved Collection, 1600–0002. OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of the Chief Procurement Officer, DHS.

Title: Agency Information Collection Activities: Homeland Security Acquisition Regulation (HSAR) Various Homeland Security Acquisitions Regulations Forms.

OMB Number: 1600–0002.

Frequency: On Occasion.

Affected Public: Individuals or Households.

Number of Respondents: 56,238.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 56,238.

Dated: February 22, 2018.

Melissa Bruce,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2018–04455 Filed 3–5–18; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7002–N–01]

60-Day Notice of Proposed Information Collection: Self-Help Homeownership Opportunity Program (SHOP): Correction

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice; Correction.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment. This notice corrects the due date on previous published notice on February 28, 2018.

DATES: *Comments Due Date:* May 7, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4176, Washington, DC 20410–4500; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Thann Young, SHOP Program Manager, Office of Rural Housing and Economic Development, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7240,

Washington, DC 20410–4500; telephone 202–402–4464 (this is not a toll-free number) or by email at *thann.young@hud.gov*

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Self-Help Homeownership Opportunity Program (SHOP).

OMB Approval Number: 2506–0157.

Type of Request: Extension of currently approved collection.

Form Number: HUD–424CB, HUD–2880, HUD–2993, HUD–2995, HUD–96011.

Description of the need for the information and proposed use: This is a proposed information collection for submission requirements under the SHOP Notice of Funding Availability (NOFA). HUD requires information in order to ensure the eligibility of SHOP applicants and the compliance of SHOP proposals, to rate and rank SHOP applications, and to select applicants for grant awards. Information is collected on an annual basis from each applicant that responds to the SHOP NOFA. The SHOP NOFA requires applicants to submit specific forms and narrative responses.

Respondents: National and regional non-profit self-help housing organizations (including consortia) that apply for funds in response to the SHOP NOFA.

Frequency of Submission: Annually in response to the issuance of a SHOP NOFA.

Estimation of the Total Number of Hours Needed To Prepare the Information Collection Including Number of Respondents, Hours per Response, Frequency of Response, and Total Hours of Response for All Respondents

The estimates of the average hours needed to prepare the information collection are based on information provided by previous applicants. Actual hours will vary depending on the proposed scope of the applicant's program, the applicant's geographic service area and the number of affiliate organizations. The information burden is generally greater for national organizations with numerous affiliates.

Paperwork requirement	Number of respondents	Annual response	Total responses	Burden per response	Total annual hours	Hourly rate	Burden cost per instrument
SF–424	10	1	10	1	10	25.00	250.00
HUD–424CB	10	1	10	10	10	25.00	250.00
HUD–424 CBW	10	1	10	30	300	25.00	7,500.00
SF–LLL	10	1	10	.5	5	25.00	125.00
HUD–2880	10	1	10	.5	5	25.00	125.00
HUD–2993	10	1	10	.5	5	25.00	125.00
HUD–2995	10	1		.5	5	25.00	125.00
HUD–96011	10	1	10	.5	5	25.00	125.00
Applicant Eligibility	10	1	10	10	100	25.00	2,500.00
SHOP Program Design and Scope of Work	10	1	10	30	300	25.00	7,500.00
Rating Factor 1	10	1	10	25	250	25.00	6,250.00
Rating Factor 2	10	1	10	25	250	25.00	6,250.00
Rating Factor 3	10	1	10	55	550	25.00	13,750.00
Rating Factor 4	10	1	10	30	300	25.00	7,500.00
Rating Factor 5	10	1	10	25	250	25.00	6,250.00
Total Annual Hour Burden	140		140		2,345	25.00	58,625.00

B. Solicitation of Public Comments

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 28, 2018.

Lori Michalski,

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2018–04530 Filed 3–5–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6089–N–01]

Notice of HUD Vacant Loan Sales (HVLS 2018–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sales of reverse mortgage loans.

SUMMARY: This notice announces HUD's intention to competitively offer multiple residential reverse mortgage pools

consisting of approximately 650 reverse mortgage notes secured by properties with a loan balance of approximately $136 million. The sale will consist of due and payable Secretary-held reverse mortgage loans. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse.

This notice also generally describes the bidding process for the sale and certain persons who are ineligible to bid. This is the third sale offering of its type and the sale will be held on April 11, 2018.

DATES: For this sale action, the Bidder's Information Package (BIP) is expected to be made available to qualified bidders on or about March 7, 2018. Bids for the HVLS 2018–1 sale will be accepted on the Bid Date of April 11, 2018 (Bid Date). HUD anticipates that award(s) will be made on or about April 13, 2018 (the Award Date).

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents are available via the HUD website at: *http://www.hud.gov/sfloansales* or via: *http://www.verdiassetsales.com.* Please mail and fax executed documents to Verdi Consulting, Inc.: Verdi Consulting, Inc., 8400 Westpark Drive, 4th Floor, McLean, VA 22102, Attention: HUD SFLS Loan Sale Coordinator, Fax: 1–703–584–7790.

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in HVLS 2018–1 due and payable Secretary-held reverse mortgage loans. The loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse.

A listing of the mortgage loans is included in the due diligence materials made available to qualified bidders. The mortgage loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the mortgage loans. The loans are expected to be offered in regional pools.

The Bidding Process

The BIP describes in detail the procedure for bidding in HVLS 2018–1. The BIP also includes a standardized non-negotiable Conveyance, Assignment and Assumption Agreement for HVLS 2018–1 (CAA). Qualified bidders will be required to submit a deposit with their bid. Deposits are calculated based upon each qualified bidder's aggregate bid price.

HUD will evaluate the bids submitted and determine the successful bid, in terms of the best value to HUD, in its sole and absolute discretion. If a qualified bidder is successful, the qualified bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders.

This notice provides some of the basic terms of sale. The CAA, which is included in the BIP, provides comprehensive contractual terms and conditions. To ensure a competitive bidding process, the terms of the bidding process and the CAA are not subject to negotiation.

Due Diligence Review

The BIP describes how qualified bidders may access the due diligence materials remotely via a high-speed internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove mortgage loans from HVLS 2018–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, and include any reverse mortgage loans in a later sale. Deliveries of mortgage loans will occur in conjunction with settlement and servicing transfer, approximately 30 to 45 days after the Award Date.

The HVLS 2018–1 reverse mortgage loans were insured by and were assigned to HUD pursuant to section 255 of the National Housing Act, as amended. The sale of the reverse mortgage loans is pursuant to section 204(g) of the National Housing Act.

Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the mortgage loans for this specific sale transaction. For HVLS 2018–1, HUD has determined that this method of sale optimizes HUD's return on the sale of these loans, affords the greatest opportunity for all qualified bidders to bid on the mortgage loans, and provides the quickest and most efficient vehicle for HUD to dispose of the mortgage loans.

Bidder Ineligibility

In order to bid in HVLS 2018–1 as a qualified bidder, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. In the Qualification Statement, the prospective bidder must provide certain representations and warranties regarding the prospective bidder, including but not limited to (i) the prospective bidder's board of directors, (ii) the prospective bidder's direct parent, (iii) the prospective bidder's subsidiaries, (iv) any related entity with which the prospective bidder shares a common officer, director, subcontractor or sub-contractor who has access to Confidential Information as defined in the Confidentiality Agreement or is involved in the formation of a bid transaction (collectively the ''Related Entities''), and (v) the prospective bidder's repurchase lenders. The prospective bidder is ineligible to bid on any of the reverse mortgage loans included in HVLS 2018–1 if the prospective bidder, its Related Entities or its repurchase lenders, is any of the following, unless other exceptions apply as provided for in the Qualification Statement.

1. An individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at 2 CFR parts 180 and 2424;

2. An individual or entity that is currently suspended, debarred or otherwise restricted by any department or agency of the federal government or of a state government from doing business with such department or agency;

3. An individual or entity that is currently debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state or local government agency, division or department;

4. An entity that has had its right to act as a Government National Mortgage Association (''Ginnie Mae'') issuer terminated and its interest in mortgages backing Ginnie Mae mortgage-backed securities extinguished by Ginnie Mae;

5. An individual or entity that is in violation of its neighborhood stabilizing outcome obligations or post-sale reporting requirements under a Conveyance, Assignment and Assumption Agreement executed for

any previous mortgage loan sale of HUD;

6. An employee of HUD's Office of Housing, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse;

7. A contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, or principal of any of the foregoing) who performed services for or on behalf of HUD in connection with the sale;

8. An individual or entity that knowingly acquired or will acquire prior to the sale date material non-public information, other than that information which is made available to Bidder by HUD pursuant to the terms of this Qualification Statement, about mortgage loans offered in the sale;

9. An individual or entity that knowingly uses the services, directly or indirectly, of any person or entity ineligible under 1 through 10 to assist in preparing any of its bids on the mortgage loans;

10. An individual or entity which knowingly employs or uses the services of an employee of HUD's Office of Housing (other than in such employee's official capacity); or

The Qualification Statement has additional representations and warranties which the prospective bidder must make, including but not limited to the representation and warranty that the prospective bidder or its Related Entities are not and will not knowingly use the services, directly or indirectly, of any person or entity that is, any of the following (and to the extent that any such individual or entity would prevent the prospective bidder from making the following representations, such individual or entity has been removed from participation in all activities related to this sale and has no ability to influence or control individuals involved in formation of a bid for this sale):

(1) An entity or individual is ineligible to bid on any included reverse mortgage loan or on the pool containing such reverse mortgage loan because it is an entity or individual that:

(a) Serviced or held such reverse mortgage loan at any time during the six-month period prior to the bid; or

(b) is any principal of any entity or individual described in the preceding sentence;

(c) any employee or subcontractor of such entity or individual during that six-month period; or

(d) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such reverse mortgage loan.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding HVLS 2018–1, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to SFLS 2018–1, HUD will disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to HVLS 2018–1 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: February 23, 2018.

Dana T. Wade,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2018–04528 Filed 3–5–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G]

Updates to Bureau of Indian Affairs Categorical Exclusions Under the National Environmental Policy Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed action and request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend its categorical exclusions (CATEXs) under the National Environmental Policy Act of 1969 (NEPA) for certain BIA actions and is seeking comment. The BIA is requesting comment on whether to revise or delete any current CATEXs or add any new CATEXs.

DATES: Comments and related material must be postmarked no later than May 7, 2018.

ADDRESSES: Please submit your comments by only one of the following means: (1) By mail to: Dr. BJ Howerton, MBA, Branch Chief Environmental and Cultural Resource Management C/O Department of the Interior, 12220 Sunrise Valley Drive, Reston, VA 20192; or (2) by email to: *bj.howerton@bia.gov.* Please put ''CATEX'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Dr. BJ Howerton, (703) 390–6524, email: *bj.howerton@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NEPA requires Federal agencies to consider the potential environmental consequences of their decisions before deciding whether and how to proceed. The Council on Environmental Quality (CEQ) encourages Federal agencies to use CATEXs to protect the environment more efficiently by: (a) Reducing the resources spent analyzing proposals which generally do not have potentially significant environmental impacts, and (b) focusing resources on proposals that may have significant environmental impacts. The appropriate use of CATEXs allow the NEPA review to be concluded without preparing either an environmental assessment (EA) or an environmental impact statement (EIS) (40 CFR 1500.4(p) and § 1508.4).

The CEQ regulations implementing NEPA define CATEXs as a category of actions that do not individually or cumulatively have a significant effect on the human environment, and for which, therefore, neither an EA nor an EIS is required. (40 CFR 1508.4). The CEQ regulations encourage the use of CATEXs to reduce unnecessary paperwork and delays. A CATEX is a form of NEPA compliance; it is not an exemption from NEPA, but an exemption from requirements to prepare an EIS. Agency procedures must consider ''extraordinary circumstances,'' in which case a normally excluded action may have a significant effect and require preparation of an EA or EIS.

The Department of the Interior (Interior) has established CATEXs at 43 CFR 46.210. In addition, BIA has bureau-specific CATEXs. The most recent CATEXs BIA established were three based on CATEXs currently used by the United States Forest Service (FS), as described in FS regulations 36 CFR 220, and by the Bureau of Land Management (BLM), as described the Departmental Manual, 516 DM 11. The BIA relied on the experience of the FS and BLM and applied its expertise to

benchmark these CATEXs and determined these are appropriate to establish as BIA CATEXs. Because these CATEXs have important implications for actions occurring on Indian lands, the BIA initiated consultation and requested comments from all federally recognized Tribes. This consultation period began on July 23, 2014, and concluded on September 21, 2014. A notice published in the **Federal Register** on November 14, 2014 (79 FR 68287) solicited public comments for that CATEX and ultimately, BIA adopted the forestry CATEXs. *See* 80 FR 8098 (Feb. 13, 2015).

This notice provides information on current BIA CATEXs and requests comment.

II. Current BIA CATEXs

Most of the current BIA CATEXs reside in the Departmental Manual in Part 516 Chapter 10: Managing the NEPA Process—Bureau of Indian Affairs. The majority of those exclusions in section 10.5 have an effective date of May 27, 2004. In addition, a CATEX for single family homesites at section 10.5(M)(7), became effective August 10, 2012. *See* 77 FR 47862. Most recently, CATEXs for forestry activities at Sections 10.5(H)(11), (12), and (13), became effective February 13, 2015. *See* 80 FR 8098. All of these CATEXs currently in effect are listed below:

10.5 Categorical Exclusions.

A. Operation, Maintenance, and Replacement of Existing Facilities. Examples are normal renovation of buildings, road maintenance and limited rehabilitation of irrigation structures.

B. Transfer of Existing Federal Facilities to Other Entities. Transfer of existing operation and maintenance activities of Federal facilities to tribal groups, water user organizations, or other entities where the anticipated operation and maintenance activities are in a signed contract, follow BIA policy, and no change in operations or maintenance is anticipated.

C. Human Resources Programs. Examples are social services, education services, employment assistance, tribal operations, law enforcement and credit and financing activities not related to development.

D. Administrative Actions and Other Activities Relating to Trust Resources. Examples are: Management of trust funds (collection and distribution), budget, finance, estate planning, wills and appraisals.

E. Self-Determination and Self-Governance.

(1) Self-Determination Act contracts and grants for BIA programs listed as categorical exclusions, or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.

(2) Self-Governance compacts for BIA programs which are listed as categorical exclusions or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.

F. Rights-of-Way.

(1) Rights-of-Way inside another right-of-way, or amendments to rights-of-way where no deviations from or additions to the original right-of-way are involved and where there is an existing NEPA analysis covering the same or similar impacts in the right-of-way area.

(2) Service line agreements to an individual residence, building or well from an existing facility where installation will involve no clearance of vegetation from the right-of-way other than for placement of poles, signs (including highway signs), or buried power/cable lines.

(3) Renewals, assignments and conversions of existing rights-of-way where there would be essentially no change in use and continuation would not lead to environmental degradation.

G. Minerals.

(1) Approval of permits for geologic mapping, inventory, reconnaissance and surface sample collecting.

(2) Approval of unitization agreements, pooling or communitization agreements.

(3) Approval of mineral lease adjustments and transfers, including assignments and subleases.

(4) Approval of royalty determinations such as royalty rate adjustments of an existing lease or contract agreement.

H. Forestry.

(1) Approval of free-use cutting, without permit, to Indian owners for on-reservation personal use of forest products, not to exceed 2,500 feet board measure when cutting will not adversely affect associated resources such as riparian zones, areas of special significance, etc.

(2) Approval and issuance of cutting permits for forest products not to exceed $5,000 in value.

(3) Approval and issuance of paid timber cutting permits or contracts for products valued at less than $25,000 when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(4) Approval of annual logging plans when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(5) Approval of Fire Management Planning Analysis detailing emergency fire suppression activities.

(6) Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres and not including approval of salvage sales of damaged timber.

(7) Approval of forest stand improvement projects of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(8) Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(9) Approval of prescribed burning plans of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(10) Approval of forestation projects with native species and associated protection and site preparation activities on less than 2000 acres when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(11) Harvesting live trees not to exceed 70 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) Shall not include even-aged regeneration harvests or vegetation type conversions.

(b) May include incidental removal of trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or Tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

Examples include, but are not limited to:

(a) Removing individual trees for sawlogs, specialty products, or fuelwood.

(b) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(12) Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(b) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or Tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(c) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

(d) For this CE, a dying tree is defined as a standing tree that has been severely damaged by forces such as fire, wind, ice, insects, or disease, such that in the judgment of an experienced forest professional or someone technically trained for the work, the tree is likely to die within a few years.

Examples include, but are not limited to:

(a) Harvesting a portion of a stand damaged by a wind or ice event.

(b) Harvesting fire damaged trees.

(13) Commercial and noncommercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 0.5 miles of temporary road construction. Such activities:

(a) May include removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease and

(b) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

Examples include, but are not limited to:

(a) Felling and harvesting trees infested with mountain pine beetles and immediately adjacent uninfested trees to control expanding spot infestations (a buffer) and

(b) Removing or destroying trees infested or infected with a new exotic insect or disease, such as emerald ash borer, Asian longhorned beetle, or sudden oak death pathogen.

I. Land Conveyance and Other Transfers. Approvals or grants of conveyances and other transfers of interests in land where no change in land use is planned.

J. Reservation Proclamations. Lands established as or added to a reservation pursuant to 25 U.S.C. 467, where no change in land use is planned.

K. Waste Management.

(1) Closure operations for solid waste facilities when done in compliance with other federal laws and regulations and where cover material is taken from locations which have been approved for use by earlier NEPA analysis.

(2) Activities involving remediation of hazardous waste sites if done in compliance with applicable federal laws such as the Resource Conservation and Recovery Act (Pub. L. 94–580), Comprehensive Environmental Response, Compensation, and Liability Act (Pub. L. 96–516) or Toxic Substances Control Act (Pub. L. 94–469).

L. Roads and Transportation.

(1) Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.

(2) Construction of bicycle and pedestrian lanes and paths adjacent to existing highways and within the existing rights-of-way.

(3) Activities included in a ''highway safety plan'' under 23 CFR 402.

(4) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(5) Emergency repairs under 23 U.S.C. 125.

(6) Acquisition of scenic easements.

(7) Alterations to facilities to make them accessible for the elderly or handicapped.

(8) Resurfacing a highway without adding to the existing width.

(9) Rehabilitation, reconstruction or replacement of an existing bridge structure on essentially the same alignment or location (*e.g.,* widening, adding shoulders or safety lanes, walkways, bikeways or guardrails).

(10) Approvals for changes in access control within existing right-of-ways.

(11) Road construction within an existing right-of-way which has already been acquired for a HUD housing project and for which earlier NEPA analysis has already been prepared.

M. Other.

(1) Data gathering activities such as inventories, soil and range surveys, timber cruising, geological, geophysical, archeological, paleontological and cadastral surveys.

(2) Establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services.

(3) Actions where BIA has concurrence or co-approval with another Bureau and the action is categorically excluded for that Bureau.

(4) Approval of an Application for Permit to Drill for a new water source or observation well.

(5) Approval of conversion of an abandoned oil well to a water well if water facilities are established only near the well site.

(6) Approval and issuance of permits under the Archaeological Resources Protection Act (16 U.S.C. 470aa-ll) when the permitted activity is being done as a part of an action for which a NEPA analysis has been, or is being prepared.

(7) Approval of leases, easements or funds for single-family homesites and associated improvements, including but not limited to, construction of homes, outbuildings, access roads, and utility lines, which encompass five acres or less of contiguous land, provided that such sites and associated improvements do not adversely affect any tribal

cultural resources or historic properties and are in compliance with applicable federal and tribal laws. Home construction may include up to four dwelling units, whether in a single building or up to four separate buildings.

III. Comments Invited

The BIA encourages interested persons to submit written comments on any BIA CATEX. For example, comments may address keeping, revising, or deleting current CATEXS and suggest new CATEXS for consideration. Persons submitting information should include their name, address, and other appropriate contact information. Before including such personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. You may submit your information by one of the means listed under **ADDRESSES**. If you submit information by mail or hand delivery, submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. If you submit information by mail and would like to know it was received, please enclose a stamped, self-addressed postcard or envelope. The BIA will consider all comments received during the comment period.

Dated: January 24, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2018–04513 Filed 3–5–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–9381, AA–9414, AA–9415, AA–9419, AA–9420, AA–9429, AA–9430, AA–9437, AA–9699, AA–9722; 18X.LLAK944000. L14100000.HY0000.P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface and subsurface estates in certain lands to Calista Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971, as amended (ANCSA).

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Chelsea Kreiner, BLM Alaska State Office, 907–271–4205, or *ckreiner@blm.gov*. The BLM Alaska State Office may also be contacted via Telecommunications Device for the Deaf (TDD) through the Federal Relay Service at 1–800–877–8339. The relay service is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Calista Corporation. The decision approves conveyance of the surface and subsurface estates in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended. The lands are located within the Yukon Delta National Wildlife Refuge, and aggregate 122.49 acres. The BLM will also publish the notice of the decision once a week for four consecutive weeks in *The Delta Discovery* newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until April 5, 2018 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Chelsea Kreiner,

Land Law Examiner, Adjudication Section.

[FR Doc. 2018–04474 Filed 3–5–18; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12200000.PM0000 18XL1109AF]

Meetings of the Dumont Dunes Subgroup of the California Desert District Advisory Council, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, the Federal Advisory Committee Act of 1972, and the Federal Lands Recreation Enhancement Act of 2004 (REA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Dumont Dunes Subgroup of the California Desert District Advisory Council (DAC) will meet as indicated below.

DATES: The BLM's Dumont Dunes Subgroup of the California DAC will hold public meetings on March 24, 2018, from 12:00 p.m. to 2:30 p.m., and on September 18, 2018, from 12:00 p.m. to 2:30 p.m.

ADDRESSES: The meetings will be held at the Barstow Field Office, 2601 Barstow Rd., Barstow, CA 92311.

FOR FURTHER INFORMATION CONTACT: Katrina Symons, BLM Barstow Field Office, email: *ksymons@blm.gov,* telephone: 760–252–6000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual 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. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: The Dumont Dunes Subgroup operates under the authority of the DAC and provides input to the BLM regarding issues pertinent to the Dumont Dunes Off-Highway Vehicle Area. Meetings are open to the public. Proposed agenda items for the two public meetings include holiday volunteer scheduling and BLM updates on management of the Area, according to the principles of multiple use and sustained yield. The

public comment period for each meeting will be from 1:45 p.m. to 2:15 p.m.

Written comments may be filed in advance of the meetings addressed to the California Desert District Advisory Council, Dumont Dunes Subgroup, c/o Barstow Field Office, 2601 Barstow Rd., Barstow, CA 92311 or emailed to *ksymons@blm.gov.* Written comments are also accepted at the time of the meeting. Final agendas for the two public meetings will be posted on the BLM web page at: *https://www.blm.gov/visit/dumont-dunes-ohv-area* when finalized.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that the BLM withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Authority: 43 CFR 1784.4–2

Beth Ransel,

California Desert District Manager.

[FR Doc. 2018–04473 Filed 3–5–18; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC02200–L14400000–DU0000–17XL1109AF.MO#4500106565]

Notice of Intent To Amend the Miles City Field Office 2015 Resource Management Plan and To Prepare an Associated Environmental Assessment, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Miles City Field Office (MCFO), Miles City, Montana, intends to prepare an amendment to the MCFO Approved Resource Management Plan (RMP) with an associated Environmental Assessment (EA) to analyze the sale of the reversionary interest held by the United States (U.S.) in 11.83 acres of land previously conveyed out of Federal ownership, and by this Notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This Notice initiates the public scoping process for the RMP Amendment with an associated EA. Comments on issues may be submitted in writing until April 5, 2018. The BLM does not plan to hold any scoping meetings for this Plan Amendment. In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: Send written comments to the Field Manager, Miles City Field Office, Bureau of Land Management, 111 Garryowen Road, Miles City, MT 59301. Documents pertinent to this proposal may be examined at the MCFO.

FOR FURTHER INFORMATION CONTACT: Beth Klempel, telephone 406–233–2800, or email *bklempel@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Klempel 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. You will receive a reply during normal business hours. Normal business hours are 8:00 a.m. to 4:30 p.m., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM MCFO, Miles City, MT, intends to prepare an amendment to the MCFO RMP with an associated EA, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Custer County, Montana, and encompasses the reversionary interest held by the U.S. in 11.83 acres of land previously conveyed out of Federal ownership. The BLM has received a request from the current owner to purchase the reversionary interest held by the U.S. in the following described land:

Principal Meridian, Montana

T. 7 N., R. 47 E.,
Sec. 5, Tract X.

The area described contains 11.83 acres in Custer County, Montana.

In 1992, the BLM conveyed the land described above to the Miles Community College under the authority of the Recreation and Public Purposes Act of June 14, 1926 (R&PP) for educational and recreational purposes. Under the college's development plan with the BLM, it has used the land for a rodeo arena, equestrian events, recreation facilities, agriculture-related courses, and programs for the community college's use. If the college purchases the U.S.' reversionary interest, the college could also allow the public to rent the facilities for community use or large events, such as indoor rodeos, concerts, and agriculture and recreation expos. When public land is conveyed under the authority of the R&PP, the U.S. retains a reversionary interest in the land, which could result in title to the land reverting to the U.S. if the land is not used for the purposes for which it was conveyed, or if the land is sold or transferred without the BLM's approval. The BLM is responsible for monitoring the reversionary interest in perpetuity to ensure the land is used for the purposes for which it was conveyed.

The reversionary interest in the land described above was not specifically identified for sale in the 2015 MCFO RMP and a Plan Amendment is required to process a direct sale. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process.

The BLM anticipates that the EA will consider both a Plan Amendment and possible subsequent sale of the Federal reversionary interest. The BLM anticipates that the EA will include, at a minimum, input from the disciplines of land-use planning, renewable resources, and non-renewable resources. This Plan Amendment will be limited to an analysis of whether the reversionary interest in the land described above meets the criteria for sale under Section 203 of FLPMA.

You may submit comments in writing to the BLM as shown in the **ADDRESSES** section above. To be most helpful, your comments should be submitted by the close of the 30-day scoping period.

The BLM will use its fulfillment of the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (16 U.S.C 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to

cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

The BLM will evaluate identified issues to be addressed in the Plan Amendment, and will place them into one of three categories:

1. Issues to be resolved in the Plan Amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this Plan Amendment.

The BLM will provide an explanation in the EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the Plan Amendment. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1501.7 and 43 CFR 1610.2)

Diane M. Friez,

Eastern Montana/Dakotas District Manager.

[FR Doc. 2018–04483 Filed 3–5–18; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22748; PPWOCRADN0–PCU00RP15.R50000]

Native American Graves Protection and Repatriation Review Committee: Notice of Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service is soliciting nominations for one member of the Native American Graves Protection and Repatriation Review Committee. The Secretary of the Interior will appoint one member from nominations submitted by national museum organizations or national scientific organizations. The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), and is regulated by the Federal Advisory Committee Act (FACA).

DATES: Nominations must be received by June 4, 2018.

ADDRESSES: Melanie O'Brien, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program (2253), National Park Service, 1849 C Street NW, Room 7360, Washington, DC 20240, (202) 354–2201 or via email *nagpra_dfo@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program (2253), National Park Service, 1849 C Street NW, Room 7360, Washington, DC 20240, (202) 354–2201 or via email *nagpra_dfo@nps.gov.*

SUPPLEMENTARY INFORMATION: The Review Committee is responsible for:

1. Monitoring the NAGPRA inventory and identification process;

2. Reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items;

3. Facilitating the resolution of disputes;

4. Compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains;

5. Consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations;

6. Consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and

7. Making recommendations regarding future care of repatriated cultural items.

The Review Committee consists of seven members appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Review Committee. Three members are appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Indian religious leaders. Three members are appointed from nominations submitted by national museum or scientific organizations. One member is appointed from a list of persons developed and consented to by all of the other members.

Members serve as Special Government Employees, and are required to complete annual ethics training. Members are appointed for 4-year terms and incumbent members may be reappointed for 2-year terms. The Review Committee's work is completed during public meetings. The Review Committee attempts to meet in person twice a year and meetings normally last two or three days. In addition, the Review Committee may also meet by public teleconference one or more times per year.

Review Committee members serve without pay but are reimbursed for each day of meeting attendance. Review Committee members are also reimbursed for travel expenses incurred in association with Review Committee meetings (25 U.S.C. 3006(b)(4)). Additional information regarding the Review Committee, including the Review Committee's charter, meeting protocol, and dispute resolution procedures, is available on the National NAGPRA Program website, at *www.nps.gov/NAGPRA/REVIEW/.*

Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

Nominations must:

1. Be submitted by a national museum organization or national scientific organization and should be submitted on the official letterhead of the organization.

2. Affirm that the signatory is the official authorized by the organization to submit the nomination.

3. Affirm that the organization's activity pertains or relates to the United States as a whole, as opposed to a lesser geographical scope.

4. Provide the nominator's original signature, daytime telephone number, and email address.

5. Include the nominee's full legal name, home address, home telephone number, and email address.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an

informed decision regarding meeting the membership requirements of the Committee and permit the Department of the Interior to contact a potential member.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information with your nomination, you should be aware that your entire nomination—including your personal identifying information—may be made publicly available at any time. While you can ask us in your nomination to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2; 25 U.S.C. 3006.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2018–04539 Filed 3–5–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–25026; PPNEGATEB0, PPMVSCS1Z.Y00000]

Notice of March 23, 2018, Meeting of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service is hereby giving notice of a meeting of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee.

DATES: The meeting will take place on Friday, March 23, 2018, at 9:00 a.m., with a public comment period at 11:00 a.m. (Eastern).

ADDRESSES: The meeting will be held in the meeting room at the Northeast Fisheries Science Center James J. Howard Marine Sciences Laboratory, 74 Magruder Road, Sandy Hook Highlands, New Jersey 07732.

FOR FURTHER INFORMATION CONTACT: Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, or by telephone (718) 354–4602, or by email *daphne_yun@nps.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), the purpose of the Committee is to provide advice to the Secretary of the Interior, through the Director of the National Park Service, on the development of a reuse plan and on matters relating to future uses of certain buildings at the Fort Hancock Historic District, located within the Sandy Hook Unit of Gateway National Recreation Area in New Jersey. All meetings are open to the public.

The Committee website, *https://www.forthancock21.org,* includes summaries from all prior meetings. Interested persons may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments will be accepted prior to, during, or after the meeting.

Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to no more than five minutes per speaker.

All comments will be made part of the public record and will be electronically distributed to all Committee members. Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 54 U.S.C. 100906; 5 U.S.C. Appendix 1–16.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2018–04485 Filed 3–5–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2018–0004; 189E1700D2 ET1SF0000.PSB000.EEEE500000; OMB Control Number 1014–0017]

Agency Information Collection Activities; Safety and Environmental Management Systems (SEMS)

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before May 7, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2018–0004 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0017 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BSEE; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might BSEE enhance the quality, utility, and clarity of the information to be collected; and (5) How might BSEE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before

including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR part 250, subpart S, concern the Safety and Environmental Management Systems (SEMS) (including the associated forms), and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The SEMS program describes management commitment to safety and the environment, as well as policies and procedures to assure safety and environmental protection while conducting OCS operations (including those operations conducted by all personnel on the facility). BSEE will use the information obtained by submittals and observed via SEMS audits to ensure that operations on the OCS are conducted safely, as they pertain to both human and environmental factors, and in accordance with BSEE regulations, as well as industry practices. The ultimate work authority (UWA) and other recordkeeping will be reviewed diligently by BSEE during inspections/audits, etc., to ensure that industry is correctly implementing the documentation and that the requirements are being followed properly.

Title of Collection: 30 CFR part 250, subpart S, Safety and Environmental Management Systems (SEMS).

OMB Control Number: 1014–0017.

Form Number: Form BSEE–0131 Performance Measures Data.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulfur lessees, operators, and/or third-party personnel or organization.

Total Estimated Number of Annual Respondents: Not all of the potential respondents will submit information in any given year and some may submit multiple times.

Total Estimated Number of Annual Responses: 2,381,721.

Estimated Completion Time per Response: 15 minutes to 27,054 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 2,238,164.

Respondent's Obligation: Responses are mandatory.

Frequency of Collection: Primarily on occasion, and varies by section.

Total Estimated Annual Nonhour Burden Cost: $5,220,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: February 5, 2018.

Doug Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2018–04499 Filed 3–5–18; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2018–0003; 189E1700D2 ET1SF0000.PSB000.EEEE500000; OMB Control Number 1014–0007]

Agency Information Collection Activities; Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before May 7, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2018–0003 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0007 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BSEE; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might BSEE enhance the quality, utility, and clarity of the information to be collected; and (5) How might BSEE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR 254 establish requirements for spill-response plans for oil-handling facilities seaward of the coast line, including associated pipelines, and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

BSEE uses the information collected under 30 CFR 254 to determine

compliance with the Oil Pollution Act of 1990 (OPA) by lessees/operators. Specifically, BSEE needs the information to:

- Determine that lessees/operators have an adequate plan and are sufficiently prepared to implement a quick and effective response to a discharge of oil from their facilities or operations.
- Review plans prepared under the regulations of a State and submitted to BSEE to satisfy the requirements in 30 CFR 254 to ensure that they meet minimum requirements of OPA.
- Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill-response plans and to lead and witness spill-response exercises.
- Assess the sufficiency and availability of contractor equipment and materials.
- Verify that sufficient quantities of equipment are available and in working order.
- Oversee spill-response efforts and maintain official records of pollution events.
- Assess the efforts of lessees/operators to prevent oil spills or prevent substantial threats of such discharges.

Title of Collection: 30 CFR part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

OMB Control Number: 1014–0007.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal oil, gas, or sulphur lessees or operators of facilities located in both State and Federal waters seaward of the coast line and oil-spill response companies.

Total Estimated Number of Annual Respondents: Varies, not all of the potential respondents will submit information in any given year and some may submit multiple times.

Total Estimated Number of Annual Responses: 1,610.

Estimated Completion Time per Response: Varies from 10 minutes to 215 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 74,461.

Respondent's Obligation: Most responses are mandatory, while others are required to obtain or retain benefits.

Frequency of Collection: On occasion, monthly, annually, biennially, and varies by section.

Total Estimated Annual Nonhour Burden Cost: We have not identified any non-hour cost burdens associated with this collection of information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: February 5, 2018.

Doug Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2018–04500 Filed 3–5–18; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Toner Cartridges and Components Thereof, DN 3298*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and 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 at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (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: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Canon Inc., Canon U.S.A., Inc., and Canon Virginia, Inc. on February 28, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner cartridges and components thereof. The complaint names as respondents: Ninestar Corporation from China; Ninestar Image Tech Limited of China; Ninestar Technology Company, Ltd. of City of Industry, CA; Apex Microtech Ltd., of Hong Kong; Static Control Components, Inc., of Sanford, NC; Aster Graphics, Inc. of Placentia, CA; Jiangxi Yibo E-tech Co., Ltd. of China; Aster Graphics Co., Ltd. of China; Print-Rite Holdings Ltd. of Hong Kong; Print-Rite N.A., Inc. of La Vergne, TN; Union Technology Int'l (M.C.O.) Co. Ltd. of Macau; Print-Rite Unicorn Image Products Co. Ltd. of China; Kingway Image Co., Ltd. d/b/a Zhu Hai Kingway Image Co., Ltd. of China; Ourway Image Tech. Co., Ltd. of China; Ourway Image Co., Ltd. of China; Zhuhai Aowei Electronics Co., Ltd. of China; Ourway US Inc. of City of Industry, CA; Acecom, Inc.—San Antonio d/b/a InkSell.com of San Antonio, TX; ACM Technologies, Inc. of Corona, CA; Arlington Industries, Inc. of Waukegan, IL; Bluedog Distribution Inc. of Hollywood, FL; Do It Wiser LLC d/b/a Image Toner of Alpharetta, GA; EIS Office Solutions, Inc. of Houston, TX; eReplacements LLC of Grapevine, TX; Frontier Imaging Inc. of Compton, CA; Garvey's Office Products, Inc. of Niles, IL; Global Cartridges of Burlingame, CA; GPC Trading Co., Limited d/b/a GPC Image of Hong Kong; Hong Kong BoZe Co. Limited, d/b/a Greensky of Hong Kong; Master Print Supplies, Inc. d/b/a HQ Products of Burlingame, CA; i8 International, Inc. d/b/a Ink4Work.com of City of Industry, CA; Ink Technologies Printer Supplies, LLC of Dayton, OH; LD Products, Inc. of Long Beach, CA; Linkyo Corp. d/b/a SuperMediaStore.com of La Puente, CA; CLT Computers, Inc. d/b/a Multiwave and MWave of Walnut, CA; Imaging Supplies Investors, LLC d/b/a SuppliesOutlet.com, SuppliesWholesalers.com, and OnlineTechStores.com of Reno, NV; Online Tech Stores, LLC d/b/a SuppliesOutlet.com, SuppliesWholesalers.com, and OnlineTechStores.com of Grand Rapids, MI; Kuhlmann Enterprises, Inc. d/b/a Precision Roller of Phoenix, AZ; Print After Print, Inc. d/b/a OutOfToner.com of Phoenix, AZ; Fairland, LLC d/b/a ProPrint of Anaheim Hills, CA; Reliable

Imaging Computer Products, Inc. of Northridge, CA; Apex Excel Limited d/b/a ShopAt247 of Rowland Heights, CA; The Supplies Guys, LLC of Lancaster, PA; Billiontree Technology USA Inc. d/b/a Toner Kingdom of City of Industry, CA; FTrade Inc. d/b/a ValueToner of Staten Island, NY: V4INK, Inc. of Ontario, CA.; World Class Ink Supply, Inc. of Woodbury, NJ; 9010–8077 Quebec Inc. d/b/a Zeetoner of Canada; and Zinyaw LLC d/b/a TonerPirate and Supply District of Houston, TX. The complainant requests that the Commission issue a general exclusion order or in the alternative a limited exclusion order, and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation 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 requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

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 § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (Docket No. 3298) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electonic Filing Procedures, Electronic Filing Procedures.[1]) 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 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,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

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 §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 1, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–04540 Filed 3–5–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Advisory Committee on Rules of Evidence, Judicial Conference of the United States.

ACTION: Revised notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a meeting on April 26–27, 2018. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.* The announcement for this meeting was previously published in the **Federal Register** on February 5, 2018.

DATES: April 26–27, 2018.

Time: April 26—3:00 p.m. to 5:30 p.m.; April 27—9:00 a.m. to 5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, Administrative Office of the United States Courts, One Columbus Circle NE, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Staff, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 28, 2018.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2018–04470 Filed 3–5–18; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—National Spectrum Consortium

Notice is hereby given that, on January 16, 2018, pursuant to Section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Spectrum Consortium (''NSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Augustine Consulting, Inc. (ACI), Monterey, CA; Knowledge Based Systems, Inc., College Station, TX; Cambium Networks, Inc., Rolling Meadows, IL; Terry Consultants, Inc., Annandale, VA; and Verus Research, Albuquerque, NM, have been added as parties to this venture.

Welkin Sciences, LLC, Colorado Springs, CO; Altagrove LLC, Herndon, VA; The Research Armadillo, Flower Mound, TX; Glover 38th St. Holdings LLC, Smithfield, VA; SpectrumFi, Sunnyvale, CA; Under the Grid, LLC, Pacific Grove, CA; System & Technology Research, Woburn, MA; Rensselaer Polytechnic Institute, Troy, NY; Sage Management Enterprise, LLC, Columbia, MD; nLight Solutions LLC, Charlotte, NC; DRS Signal Solutions, Inc., Germantown, MD; and DRS Sustainment Systems, Inc., St. Louis, MO, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On September 24, 2014, NSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 2014 (79 FR 65424).

The last notification was filed with the Department on October 13, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 13, 2017 (82 FR 52331).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2018–04443 Filed 3–5–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on January 11, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum (''The Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agile Network Systems Limited, Fareham, UNITED KINGDOM; Alexander Consulting Group—ACG Digital, London, UNITED KINGDOM; Antarctic Palmtrees Limited, Watford, UNITED KINGDOM; ARGELA Yazilim ve Bilisim Teknolojileri Sanayi ve Ticaret A.S., Istanbul, TURKEY; Atilze Digital, Petaling Jaya, MALAYSIA; Bahrain Telecommunications Company (Batelco), Manama, BAHRAIN; Black Tangent Pte. Ltd., Singapore, SINGAPORE; CanGo Networks Private Ltd., Chennai, INDIA; Circa Information Corporation, Fergus, CANADA; City of Belfast, Belfast, UNITED KINGDOM; Civimetrix Telecom, Magog, CANADA; Cloudstreet, Espoo, FINLAND; Cmind Inc, Gatineau, CANADA; Comporium Communications, Rock Hill, SC; Dave Calder, Pleasant Hill, CA; Digalance, Dubai, UNITED ARAB EMIRATES; GEMALTO SA, Paris, FRANCE; GeoSpock Ltd., Cambridge, UNITED KINGDOM; HCL Hong Kong SAR Limited, Wan Chai HONG KONG-CHINA; Hochschule Fresenius für Management, Wirtschaft und Medien GmbH, Hamburg, GERMANY; Hutchison 3G UK, Maidenhead, UNITED KINGDOM; IPgallery, Ra'anana, ISRAEL; KNOWHAWK sprl, Pont-à-Celles, BELGIUM; Kurrant, Singapore, SINGAPORE; LocalSearch Web Pty Ltd, Robina, AUSTRALIA; MayerConsult Inc., Ottawa, CANADA; MTN Group Limited, Johannesburg, SOUTH AFRICA; Neustar, Sterling, VA; NF CSB d.o.o., Ljubljana, SLOVENIA; Openet, Dublin, IRELAND; Orange Luxembourg, Bertrange, LUXEMBOURG; Plintron Global Technology Solutions Pvt Ltd., Chennai, INDIA; POSITIVE MOMENTUM LIMITED, London, ENGLAND; Progresif Cellular Sdn Bhd, Bandar Seri Begawan, BRUNEI; Proximus SA, Brussels, BELGIUM; Reinfer Ltd., London, UNITED KINGDOM; ServiceMax from GE Digital, London, UNITED KINGDOM; Siminn, Reykjavík, ICELAND; SLA Digital, Belfast, UNITED KINGDOM; Telesur, Paramaribo, SURINAME; The Institute of Electrical and Electronics Engineers Incorporated, New York, NY; Trektel, Miami Lakes, FL; twim GmbH, Zug, SWITZERLAND; Vocus Communications, Melbourne, AUSTRALIA; and Vodacom Mozambique, Cidade de Maputo, MOZAMBIQUE, have been added as parties to this venture.

Also, the following members have changed their names: Monolith Software to Federos, Frisco, TX; Labcities to Antarctic Palmtrees Limited, Watford, UNITED KINGDOM; iisy AG to solvatio AG, Rimpar, GERMANY; and ForecastCons Ltd. to FORNAX d.o.o., Podgorica, MONTENEGRO.

In addition, the following parties have withdrawn as parties to this venture: AdvOSS, Richmond, CANADA; Alaska Communications Systems Holdings, Inc., Anchorage, AK; Bell Integrator, Moscow, RUSSIA; Blueline, Antananarivo, MADAGASCAR; BLUGEM COMMUNICATIONS LIMITED, Barnstaple, UNITED KINGDOM; Chorus New Zealand Limited, Wellington, NEW ZEALAND; City of Atlanta, Atlanta, GA; DigitalRoute, Stockholm, SWEDEN; Elite Business, Tunis, TUNISIA; EnterpriseWeb, Glen Falls, NY; Etihad Atheeb Telecom Company, Riyadh, SAUDI ARABIA; Fiberhome Telecommunication Technologies Co. Ltd., Wuhan, PEOPLE'S REPUBLIC OF CHINA; Fulcrum Technologies Inc., Seattle, WA; HHB SOLUTIONS LIMITED, Kowloon, HONG KONG-CHINA; Higher Logic, LLC, Arlington, VA; Hitachi Data Systems, Santa Clara, CA; Infonova, Unterpremstatten, AUSTRIA; Intellity Consulting, SpA, Lima, PERU; IPvideosys, Sunnyvale, CA; Isle of Man—MICTA, Ballasalla, ISLE OF MAN; JBS, Chernihiv, UKRAINE; Kiltartan Consulting, Rondebosch, SOUTH AFRICA; MDS Global, Warrington, UNITED KINGDOM; Mediaan/abs bv, Heerlen, NETHERLANDS; MITRE, Bedford, MA; MSTelcom, Luanda, ANGOLA; Nara Institute of Science and Technology, Ikoma, JAPAN; Now New Zealand Limited, Napier, NEW ZEALAND; Ontology Systems, London, UNITED KINGDOM; OpenCell, Paris, FRANCE; OPT Nouvelle Calédonie, Nouméa, NEW CALEDONIA; PERU Connect SAC, Miraflores, PERU; Pervazive, Bengaluru, INDIA; Powerlink, Virginia, AUSTRALIA; PRESECURE Consulting

GmbH, Munster, GERMANY; ProCom Consulting, Alpharetta, GA; Redknee Inc., Mississauga, CANADA; ServiceMesh, Inc., Los Angeles, CA; SFR, Paris, FRANCE; Sistema Turkey, Istanbul, TURKEY; State Information Technology Agency (SITA), Pretoria East, SOUTH AFRICA; Sutherland Labs, London, UNITED KINGDOM; Suvitech Co. Ltd., Bangkok, THAILAND; T2 Yazilim Ltd. Sti., Ankara, TURKEY; TECNOCOM, Madrid, SPAIN; Telekom Brunei Berhad (TelBru), Berakas, BRUNEI; Telesens IT, Kharkiv, UKRAINE; TIERONE, Inc., Reston, VA; Trust5, Dublin, IRELAND; TWINT AG, Bern, SWITZERLAND; Uecomm Ltd., Richmond, AUSTRALIA; University Politehnica of Bucharest, Bucharest, ROMANIA; Vitis Consultoria, Brasília, BRAZIL; Vodafone Hutchison Australia, North Sydney, AUSTRALIA; Waterfront Toronto, Toronto, CANADA; Airtel Africa, Nairobi, KENYA; Bristol is Open, Bristol, UNITED KINGDOM; Symantec Corporation, Mountain View, CA; Symsoft AB, Stockholm, SWEDEN; and True Corporation Public Company Limited, Bangkok, THAILAND.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on July 21, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 28, 2017 (82 FR 40806).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2018–04442 Filed 3–5–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Tax Performance System (TPS)

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), Employment and Training Administration is soliciting comments regarding a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Tax Performance System.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by May 7, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained at no cost by contacting Patrick Holmes by telephone at (202) 693–3203, TTY1–877–889–5627, (these are not toll-free numbers) or by email at *Holmes.Patrick.G@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW, Room S–4519, Washington, DC 20210; by email: *Holmes.Patrick.G@dol.gov;* or by Fax (202) 693–3975.

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Since 1987, states have been required by regulation at 20 CFR part 602 to operate a program to assess their Unemployment Insurance (UI) tax and benefit programs. TPS is designed to assess the major internal UI tax functions by utilizing several methodologies to examine the accuracy of the ETA 581, Contribution Operations Report, OMB approval number 1205–0178, expiring June 30, 2018, and its associated Computed Measures. A two-fold examination contains ''Systems Reviews'' which examine tax systems for the existence of internal controls and the extraction of small samples of those systems' transactions, which are then examined to verify the effectiveness of controls. Section 303(a)(1) of the Social Security Act authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0332.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Extension without change.

Title of Collection: Tax Performance System.

Form: TPS.

OMB Control Number: 1205–0332.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 52.

Frequency: Once.

Total Estimated Annual Responses: 52.

Estimated Average Time per Response: 1,709 hours (TPS review 1,669 hrs. + data entry 40 hrs.).

Estimated Total Annual Burden Hours: 88,868 hours.

Total Estimated Annual Other Cost Burden: $ 0.

Rosemary Lahasky,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2018–04509 Filed 3–5–18; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; Youth CareerConnect (YCC) Grant Program, Extension of Previously Approved Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents are properly assessed.

Currently, DOL is soliciting comments concerning the continued collection of data about Youth Career Connect (YCC) [SGA/DFA PY–13–01] grant program. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before May 7, 2018.

ADDRESSES: You may submit comments by either one of the following methods:

Email: ChiefEvaluationOffice@dol.gov; Mail or Courier: Jessica Lohmann, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Jessica Lohmann by email at *ChiefEvaluationOffice@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. *Background:* The information collection activities described in this notice will provide participant and grantee data on the YCC program. In spring 2014, the Employment and Training Administration (ETA) in DOL awarded 24 grantees to implement the YCC program, which is designed to provide high school students skill-developing and work-based learning opportunities through partnerships with colleges and employers for jobs in high-demand occupations. DOL requests data collection from YCC grantees for tracking grant progress and oversight of program performance reporting. This reporting structure features standardized individual data collection on program participants in both quarterly performance and narrative formats. The information collection for YCC grantee performance reporting also includes an online Participant Tracking System (PTS) that collects participant-level data.

This document requests approval for an extension of previously approved information collection (OMB Control No. 1291–0002) to continue to meet the reporting and recordkeeping requirements of the YCC grant program. This information collection maintains a reporting and record-keeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold YCC grantees appropriately accountable for the Federal funds they receive, allowing the Department to fulfill its oversight and management responsibilities.

II. *Desired Focus of Comments:* Currently, DOL is soliciting comments concerning the above data collection for grantee reporting on the YCC program. DOL is particularly interested in comments that do the following:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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—for example, permitting electronic submission of responses.

III. *Current Actions:* At this time, DOL is requesting clearance for grantee reporting on participant-level data and quarterly reports.

Type of Review: Extension of previously approved collection.

OMB Control Number: 1291–0002 (ICR Reference No: 201412–1291–001).

Affected Public: YCC Grantees and program participants.

ESTIMATED BURDEN HOURS

Type of instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hour per response	Annual estimated burden hours
Participant-level Data Collection for Participant Tracking System (PTS)	9,900	3,300	1	2.67	8,811

ESTIMATED BURDEN HOURS—Continued

Type of instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hour per response	Annual estimated burden hours
Quarterly Narrative Progress Reports	24	8	4	10	320
Quarterly Performance Reports	24	8	4	4	128
Total	9,948	3,316	.....	.....	9,226

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 27, 2018.

Molly Irwin,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2018–04545 Filed 3–5–18; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Analysis of Employer Performance Measurement Approaches

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, DOL is soliciting comments concerning the collection of data about the Analysis of Employer Performance Measurement Approaches. A copy of the proposed information Collection Request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 7, 2018.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.fgov; Mail or Courier:* Megan Lizik, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Contact Megan Lizik by email at *ChiefEvaluationOffice@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Chief Evaluation Office (CEO), in collaboration with the Employment and Training Administration (ETA), is conducting a 36-month analysis of employer services measurement approaches and metrics, as well as their cross-state and cross-program applicability, with a goal of understanding and implementing a final indicator of performance. Under the Workforce Innovation and Opportunity Act (WIOA), the Secretaries of Labor and Education are required to establish one or more primary indicators of performance that indicate the effectiveness of core programs in serving employers. Through town halls, workgroups, and questions posed through the notice of proposed rule-making, the Secretaries of Labor and Education established three measures to be piloted by States: (1) An employee retention measure, (2) an employer penetration rate, and (3) a repeat business measure. States were also encouraged to pilot additional measures to assess effectiveness in serving employers. No clear metric has emerged to date as a single point of measurement of success in providing services to employers.

The study will explore and establish an understanding of the state of the field in the area of employer services measurement and supplement the start-up of reporting by the States on the National Pilot measures. Key objectives of the study include: (1) Developing and understanding how employer services are defined by the federal government, States, localities, and core WIOA programs and exploring options for developing a uniform definition of employer services; (2) identifying what measures exist for understanding employer services, key objectives of these measures, and possibilities for uniform implementation at the federal level; and (3) developing options for an evaluation design to assess the validity, reliability, and feasibility of proposed measures and alternative measures of effectiveness in serving employers.

This notification requests clearance for: (1) A 45-minute online survey of state WIOA administrators in the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands; (2) a 20-minute online survey of a sample of employers identified in partnership with the National Association of State Workforce Agencies (NASWA); (3) site visits that include structured interviews and focus groups to approximately 8 States; and (4) interviews with approximately 8 employers.

The survey of state WIOA administrators will collect information on which measures are being used by States, including National Pilot measures and alternate measures, progress made in implementing those measures, and how those measures are being used beyond required federal reporting.

The survey of a sample of employers will document businesses' understanding of employer services from the workforce system and what it means for those services to be effective. The sample of employers will be drawn from DirectEmployers members, NASWA Business of the Year Award Winners, and others recommended by NASWA.

The site visits to a selection of approximately eight States are intended to allow a deeper understanding of why particular measures were selected, progress in implementing performance measures, and related challenges. This fieldwork will include semi-structured interviews and focus groups. The States will be selected based on the results of the survey and other study knowledge, to include a mix of locations in terms of geographic region, performance measures being used, and status of implementation. Semi-structured interviews with a selection of approximately eight employers are intended to more fully explore issues of interest that emerge from the employer survey responses. Employer interview respondents will be selected based on survey responses as well as suggestions from NASWA regarding employers with particularly strong experience engaging with the workforce system.

II. Desired Focus of Comments

Currently, DOL is soliciting comments concerning the above data collection for the analysis of employer performance measurement approaches. DOL is particularly interested in comments that do the following:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency related to employer services, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the ICR to survey and fieldwork respondents, including the validity of the study approach and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the information collection on respondents, including 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).

TABLE 1—ESTIMATED TIME BURDEN

Information collection activity	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden per response (hours)	Annual burden hours
Survey—State WIOA Administrator	[a] 43	14	1	0.75	11
Survey—Employer	[b] 474	158	1	0.33	53
Site Visit Protocol—State Administrator	32	11	1	0.75	8
Site Visit Protocol—Local Administrator	8	3	1	0.75	2
Site Visit Protocol—State and Local Workforce Development Board Staff and Members	32	11	1	0.75	8
Site Visit Protocol—State and Local Staff Collecting Performance Data	16	5	1	0.75	4
Site Visit Protocol—American Job Center Staff	[c] 40	13	1	1	13
Interview—Employer	8	3	1	0.75	2
Total	653	218			101

[a] Based on an 80 percent response rate.
[b] Based on a 50 percent response rate.
[c] One focus group of five per site visit.

III. Current Actions

At this time, the Department of Labor is requesting clearance for data collection via online surveys and fieldwork for the analysis of employer performance measurement approaches.

Type of review: New ICR

OMB Control Number: 1290–0NEW

Affected Public: Individuals working on state and local workforce development programs, Workforce Development Boards, and American Job Centers selected for surveys and fieldwork; HR department representatives of businesses selected for surveys and interviews.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget (OMB) approval; they will also become a matter of public record.

Dated: February 27, 2018.

Molly Irwin,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2018–04546 Filed 3–5–18; 8:45 am]

BILLING CODE 4510–HX–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Value Engineering (VE)

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB).

ACTION: Proposed revision to Office of Management and Budget Circular No. A–131, ''Value Engineering''.

SUMMARY: In accordance with OMB Memorandum M–17–26 ''Reducing Burden for Federal Agencies by Rescinding and Modifying OMB Memoranda,'' the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget (OMB) is proposing to amend OMB Circular A–131, Value Engineering, to reduce the reporting burden on Federal agencies. Value Engineering is an effective technique for cutting waste and inefficiency—helping Federal agencies reduce acquisition costs, improve performance, enhance quality, and foster innovation. The proposal would eliminate the requirement for agencies to report annually to OMB and instead encourage agencies to share best practices, case studies and other information on the Acquisition Gateway (*https://hallways.cap.gsa.gov/login-information*) that can facilitate better understanding and use of this management tool within the Executive Branch.

DATES: Interested parties should submit comments within 30 days of this notice.

ADDRESSES: Comments may be submitted through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: James Wade, OFPP, *jwade@omb.eop.gov.*

Background

Value Engineering (VE) is a management technique that is used to analyze activities and identify alternative processes for completing the activities at a lower cost. Industry first developed VE during World War II as a means of continuing production despite shortages of critical materials. The Federal Government subsequently adopted VE as a mechanism to improve efficiency. Policies adding the use of VE are set forth in OMB Circular A–131 at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A131/a131-122013.pdf.*

Use of VE supports the Administration's efforts to emphasize critical thinking and analysis instead of compliance activity and documentation. Although several Federal agencies have reported life-cycle savings in a broad range of acquisition programs, including defense, transportation, and construction projects, overall usage of VE by federal agencies has been limited. OFPP believes agency workforce awareness and consideration of VE can be improved by redirecting agency resources away from compliance reporting and towards information sharing with other agencies on use of the tool through the Acquisition Gateway (*https://hallways.cap.gsa.gov/login-information*). The Gateway provides federal buyers with a forum for improving government acquisition. The Acquisition Innovation Hub within the Gateway facilitates information sharing with tools and resources for acquisition professionals and other stakeholders. These actions are called for by OMB Memorandum M–17–26, ''Reducing Burden for Federal Agencies by Rescinding and Modifying OMB Memoranda.'' Memorandum M–17–26 was designed to eliminate inefficiencies created by past OMB direction and improve the efficiency of government operations.

Accordingly, OFPP proposes the following changes to Circular A–131, as revised in December 2013:

1. Replace section 8, entitled ''Reports to OMB'' with the following new section 8: *Information Sharing.* Agencies are encouraged to share best practices, case studies and other information about their experience using VE on the Acquisition Gateway (*https://hallways.cap.gsa.gov/login-information*). The Gateway connects federal buyers with resources and tools to improve acquisition throughout the government. The Acquisition Innovation Hub within the Gateway facilitates information sharing between acquisition professionals and other stakeholders. Sharing information on the Hub can help build greater awareness of VE and accelerate the pace of innovation and other benefits that can come from the use of this management tool.

2. Make the following conforming changes:

a. Delete paragraph f. from section 7, which refers to reporting.

b. Delete the Attachment to the Circular, which provides a format for reporting to OMB.

For a copy of OMB Circular A–131, go to *https://www.whitehouse.gov/sites/whitehouse.gov/ files/omb/circulars/A131/a131-122013.pdf.*

Although public comment is not required in the development of these changes, OMB welcomes input on the proposed amendments to the Circular described above and will consider feedback prior to finalizing changes to the Circular.

Lesley A. Field,

Deputy Administrator for Federal Procurement Policy.

[FR Doc. 2018–04445 Filed 3–5–18; 8:45 am]

BILLING CODE 3110–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412; NRC–2018–0041]

FirstEnergy Nuclear Operating Company; Beaver Valley Power Station; Unit Nos. 1 and 2; Use of Optimized ZIRLO™ Fuel Rod Cladding

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an April 9, 2017, request from FirstEnergy Nuclear Operating Company (FENOC), in order to use Optimized ZIRLO™ fuel rod cladding at the Beaver Valley Power Station, Unit Nos. 1 and 2 (Beaver Valley).

DATES: The exemption was issued on March 6, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0041 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0041. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Tanya E. Hood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1387, email: *Tanya.Hood@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The FirstEnergy Nuclear Operating Company (FENOC) is the holder of Renewed Facility Operating License Nos. 50–334 and 50–412, which authorize operation of Beaver Valley. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The facilities consist of pressurized-water reactors located in Shippingport Borough on the Ohio River in Beaver County, Pennsylvania. The ZIRLO® corrosion model was based on a model originally developed for zircaloy-4 cladding. As utilities moved to increased fuel thermal duty associated with higher peaking factors, uprated core power, and longer cycle lengths, cladding corrosion has become one of the important factors in assessing the potential for increased fuel thermal duty.

II. Request/Action

Pursuant to title 10 of the *Code of Federal Regulations* (10 CFR) section 50.12, ''Specific exemptions,'' the

licensee requested, by letter dated April 9, 2017 (ADAMS Accession No. ML17100A269), an exemption from § 50.46, ''Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors,'' and 10 CFR part 50, appendix K, ''ECCS Evaluation Models,'' to allow the use of Optimized ZIRLO™ fuel rod cladding for future core reload applications. The regulations in § 50.46 contain acceptance criteria for the ECCS for reactors fueled with zircaloy or ZIRLO® fuel rod cladding material. In addition, 10 CFR part 50, appendix K, requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal/water reaction. The Baker-Just equation assumes the use of a zirconium alloy different from Optimized ZIRLO™ material. Therefore, an exemption to § 50.46 and 10 CFR part 50, appendix K, is required to support the use of Optimized ZIRLO™ fuel rod cladding at Beaver Valley.

The exemption request relates solely to the specific types of cladding material specified in these regulations for use in light-water reactors (*i.e.,* fuel rods with zircaloy or ZIRLO® cladding). This request will provide for the application of the acceptance criteria of § 50.46 and 10 CFR, part 50, appendix K, to fuel assembly designs using Optimized ZIRLO™ fuel rod cladding.

III. Discussion

Pursuant to § 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under § 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

The Optimized ZIRLO™ fuel cladding is different from standard ZIRLO® in two respects: (1) The tin content is lower and (2) the microstructure is different. This difference in tin content and microstructure can lead to differences in some material properties. Westinghouse Electric Company (Westinghouse), the manufacturer of Optimized ZIRLO™ fuel rod cladding, has committed to provide irradiated data and validate fuel performance models ahead of burnups achieved in batch application (*i.e.,* a group of fuel assemblies).

The NRC staff's safety evaluation of Optimized ZIRLO™ (WCAP–12610–P–A & CENPD–404–P–A) dated June 10, 2005 (ADAMS Package Accession No. ML051670395), included ten conditions and limitations. The NRC staff reviewed FENOC's April 9, 2017, application against these specific conditions and concluded that the licensee is in compliance with all of the applicable conditions, with the exception of Conditions 6 and 7.

Conditions 6 and 7 relate to validating in-reactor performance and fuel performance models based on lead test assembly data obtained ahead of batch application. Westinghouse provided additional information from irradiation programs to comply with Conditions 6 and 7 of the NRC staff's safety evaluation, by letters dated February 25, 2013 (ADAMS Accession No. ML13070A188), and February 9, 2015 (ADAMS Accession No. ML15051A427), demonstrating compliance with these two conditions.

One of the main objectives of the ongoing Westinghouse creep (growth) program was to confirm the adequacy of the Westinghouse Performance Analysis and Design Model creep models for Optimized ZIRLO™ and verify that the steady state irradiation creep rate is the same in tension and compression. Based upon the supporting data provided by Westinghouse in Figures 3 through 6 of WCAP–12610–P–A & CENPD–404–P–A Addendum 1–A (ADAMS Accession No. ML13070A189), the NRC staff determined that the creep models are adequate for the first operating cycle where the fuel rod cladding is predominately in compressive creep.

The NRC staff performed its review of Conditions 6 and 7 in a letter dated August 3, 2016 (ADAMS Accession No. ML16173A354). The NRC staff determined that the data provided in Westinghouse letters dated February 25, 2013, and February 9, 2015, satisfy Conditions 6 and 7. Therefore, licensees no longer need to provide additional data when referencing WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™,'' July 2006, in future license amendment requests.

The licensee provided documentation of its compliance with the Westinghouse topical report WCAP–12610–P–A & CENPD–404–P–A Addendum 1–A commitments in its application. Based on that documentation and the information contained in Westinghouse's revised compliance letters dated February 25, 2013, and February 9, 2015, the NRC staff finds the licensee's compliance with safety evaluation Conditions 6 and 7 is acceptable.

A. The Exemption Is Authorized by Law

This exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material at Beaver Valley. As stated above, § 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The fuel that will be irradiated at Beaver Valley contains cladding material that does not conform to the cladding material that is explicitly defined in 10 CFR 50.46 and implicitly defined in 10 CFR part 50, appendix K. However, the criteria of these regulations will continue to be satisfied for the operation of the Beaver Valley cores containing Optimized ZIRLO™ fuel cladding. The NRC staff has determined that granting the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

The objectives of § 50.46(b)(2) and (b)(3) and 10 CFR part 50, appendix K, section I.A.5, are to ensure that cladding oxidation and hydrogen generation are appropriately limited during loss-of-coolant accidents and conservatively accounted for in ECCS evaluation models. As previously documented in the NRC staff's safety evaluation of topical reports submitted by Westinghouse, dated June 10, 2005, and subject to compliance with the specific conditions of approval established in the safety evaluation, the NRC staff found that Westinghouse demonstrated the applicability of the ECCS acceptance criteria to Optimized ZIRLO™. The NRC staff concluded that oxidation measurements provided by the licensee in the letter from Westinghouse to the NRC, dated November 2007 (ADAMS Accession No. ML073130560), illustrate that oxide thickness and associated hydrogen pickup for Optimized ZIRLO™ at any given burnup would be less than those of both zircaloy-4 and ZIRLO®.

The NRC staff previously found that metal-water reaction tests performed by Westinghouse on Optimized ZIRLO™ (see appendix B of WCAP–12610–P–A & CENPD–404–P–A Addendum 1–A) demonstrate conservative reaction rates relative to the Baker-Just equation. Thus, the NRC staff determined that the application of appendix K, section I.A.5, is not necessary to achieve the underlying purpose of the rule in these circumstances. Since these evaluations demonstrate that the underlying

purpose of the rule will be met, there will be no undue risk to the public health and safety. The facility operating licenses require that reload cores be operated in accordance with the operating limits specified in the technical specifications and core operating limits report. Thus, the granting of this exemption request will not pose an undue risk to public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The exemption request would allow the licensee to use an improved fuel rod cladding material. In its letter dated April 9, 2017, the licensee stated that all the requirements and acceptance criteria will be maintained. The licensee is required to handle and control special nuclear material in these assemblies in accordance with its approved procedures. Use of Optimized ZIRLO™ fuel rod cladding in the Beaver Valley cores will not adversely affect plant operations. Therefore, the NRC staff has determined that this exemption does not adversely impact common defense and security.

D. Special Circumstances

Special circumstances, in accordance with § 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of § 50.46 and 10 CFR part 50, appendix K, is to establish acceptance criteria for ECCS performance. The regulations ensure that nuclear power reactors fueled with uranium oxide pellets within zircaloy or ZIRLO® cladding must be provided with an ECCS designed to provide core cooling following postulated loss-of-coolant accidents. Westinghouse demonstrated in its NRC-approved topical report WCAP–12610–P–A & CENPD–404–P–A Addendum 1–A that ECCS effectiveness will not be adversely affected by a change from zircaloy or ZIRLO® clad fuel to Optimized ZIRLO™ clad fuel. Normal safety analyses performed prior to core reload will confirm that there is no adverse impact on ECCS performance. Therefore, since the underlying purposes of § 50.46 and 10 CFR part 50, appendix K, are achieved through the use of Optimized ZIRLO™ fuel rod cladding material, the special circumstances required by § 50.12(a)(2)(ii) for the granting of an exemption exist.

E. Environmental Considerations

The NRC staff determined that the exemption discussed herein meets the eligibility criteria for the categorical exclusion set forth in § 51.22(c)(9) because it is related to a requirement concerning the installation or use of a facility component located within the restricted area, as defined in 10 CFR part 20, and the granting of this exemption involves: (1) No significant hazards consideration, (2) no significant change in the types or a significant increase in the amounts of any effluents that may be released offsite, and (3) no significant increase in individual or cumulative occupational radiation exposure. Therefore, in accordance with § 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC staff's consideration of this exemption request. The basis for the NRC staff's determination is discussed in an evaluation of the requirements of § 51.22(c)(9) in the proposed no significant hazards consideration determination for the associated amendment as published in the **Federal Register** on July 18, 2017 (82 FR 32881).

IV. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see **ADDRESSES** Section of this document.

Document	ADAMS accession No.
Beaver Valley Power Station, Unit Nos. 1 and 2, ''License Amendment Request to Modify Technical Specifications 4.2.1 and 5.6.3 and a 10 CFR 50.12 Exemption Request to Implement Optimized ZIRLO™ Fuel Rod Cladding'' (April 9, 2017).	ML17100A269
Westinghouse—Final Safety Evaluation for Addendum 1 to Topical Report WCAP–12610–P–A & CENPD–404–P–A Addendum 1–A, ''Optimized ZIRLO™'' (June 10, 2005).	ML051670395
Westinghouse—LTR–NRC–13–6, NP-Attachment—SER Compliance with WCAP-12610–P–A & CENPD–404–P–A Addendum 1–A ''Optimized ZIRLO™'' (February 25, 2013).	ML13070A188
Westinghouse—LTR–NRC–15–7, Submittal of Responses to Draft RAIs and Revisions to Select Figures in LTR–NRC–13–6 to Fulfill Conditions 6 and 7 of the Safety Evaluation for WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A (February 9, 2015).	ML15051A427
Westinghouse—LTR–NRC–13–6, NP-Attachment, SER Compliance of WCAP–12610–P–A & CENPD–404–P–A Addendum 1–A (Non-Proprietary) ''Optimized ZIRLO™''(February 2013).	ML13070A189
Satisfaction of Conditions 6 & 7 of the Safety Evaluation for WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A ''Optimized ZIRLO™'' Topical Report.	ML16173A354
SER Compliance with WCAP–12610–P–A & CENPD–404–P–A Addendum 1–A, ''Optimized ZIRLO™'' (Non-Proprietary) (November 2007).	ML073130560

V. Conclusion

Accordingly, the Commission has determined that pursuant to § 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants FENOC an exemption from the requirements of § 50.46 and 10 CFR part 50, appendix K, to allow the use of Optimized ZIRLO™ fuel rod cladding material at Beaver Valley.

Dated at Rockville, Maryland, this 1st day of March 2018.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–04549 Filed 3–5–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0027]

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

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of two amendment requests. The amendment requests are for North Anna Power Station, Units 1 and 2, and Vogtle Electric Generating Plant, Units 3 and 4. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by April 5, 2018. A request for a hearing must be filed by May 7, 2018. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by March 16, 2018.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0027. 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.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–3–D1, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384; email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0027, facility name, unit number(s), plant docket number, application date, and subject 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–2018–0027.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *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–2018–0027, facility name, unit number(s), plant docket number, application date, and subject 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. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-

day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance

with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: December 15, 2017. A publicly-available version is in ADAMS under Accession No. ML17349A924.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The requested amendment proposes consistency changes to combined license Appendix C (and to plant-specific Tier 1 information) and associated Tier 2* and Tier 2 information to clarify the thickness of the Nuclear Island (NI) Basemat, to revise wall thicknesses and descriptions in the Auxiliary Building, and to clarify floor thicknesses in the Annex Building. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, Appendix D, design certification rule is also requested for the plant-specific Design Control Document Tier 1 material departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not affect the operation or reliability of any system,

structure or component (SSC) required to maintain a normal power operating condition or to mitigate anticipated transients without safety-related systems. The change to the NI Basemat and Auxiliary Building dimensions is a consistency change, and involves no design changes or technical reanalysis. The change to the Annex Building concrete thickness acceptance criteria is a clarification and does not involve a change to the design of the Annex Building or reanalysis of the Annex Building. The change to the Annex Building kitchen and restroom floor thickness involves only structural changes, and does not affect the performance of any SSC relied upon to maintain normal power operation, or to effect safe shutdown using nonsafety-related equipment. The change to the Annex Building kitchen and restroom floor thickness does not adversely affect occupational radiation dose to personnel in these areas because calculations show the dose rates in the Annex Building during normal operations and in post-accident conditions are maintained within regulatory limits. Therefore, the requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any safety-related SSC relied upon to mitigate design basis accidents. The proposed changes to the NI Basemat and the Auxiliary Building resolve inconsistencies to reflect NI existing structural design, which has been analyzed and shown to comply with seismic and structural criteria. The change to the Annex Building concrete thickness acceptance criteria is a clarification, and does not involve a change to the design of the Annex Building or reanalysis of the Annex Building. The seismic Category II section of the Annex Building has been shown to maintain its structural integrity following a design basis earthquake. The proposed changes to the Annex Building kitchen and restroom floor thickness do not affect the structural integrity or seismic response of the Annex Building. The design of these structures continues to meet the requirements of 10 CFR 50 Appendix A General Design Criterion 2, Design Bases for Protection Against Natural Phenomena. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect existing safety margins. The proposed changes to the NI Basemat and the Auxiliary Building resolve inconsistencies to reflect NI existing structural design. The change to the Annex Building concrete thickness acceptance criteria is a clarification, and does not involve a change to the design of the Annex Building or reanalysis of the Annex Building. The proposed changes to the Annex Building kitchen and restroom floor thickness do not involve a reduction to the structural integrity of the seismic Category II portion of the building, as adequate reinforcement is provided in the floor of the kitchen and restroom areas of the [Control Support Area (CSA)] to support the design function of the Annex Building. No margin to the specified acceptable fuel design limits is affected by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station (NAPS), Units 1 and 2, Louisa County, Virginia

Date of amendment request: May 2, 2017. A publicly-available version is in ADAMS under Accession No. ML17129A446.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise Technical Specification (TS) 3.7.18, ''Spent Fuel Pool Storage,'' and TS 4.3.1, ''Criticality,'' to allow the storage of fuel assemblies with a maximum enrichment of up to 5.0 weight percent uranium 235 (U–235) in the NAPS spent fuel pool (SFP) storage racks and the new fuel storage racks (NFSR). The amendments would further revise the allowable fuel assembly parameters and storage patterns for fuel in the SFP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not affect the plant equipment or structure, including the SFP, NFSR, or fuel handling equipment, including how equipment is operated and maintained. There are no changes to the equipment for fuel handling or how fuel assemblies are handled, including how fuel assemblies are inserted into and removed from SFP and NFSR storage locations. There will be no changes to administrative means to verify correct fuel assembly storage in the SFP, which will now also be used to verify required [Rod Cluster Control Assembly (RCCA)] storage in selected Region 2 assemblies, or the required response to a fuel assembly misloading or drop event. There are no changes to how RCCAs will be handled, including how RCCAs are inserted into or removed from a fuel assembly or other location such as a[n] SFP storage location. Also, since the proposed change does not modify plant equipment or its operation and maintenance, including equipment used to maintain SFP soluble boron levels, the proposed change will not impact a boron dilution event or plant response to it.

The criticality safety evaluation concluded that the NFSR limiting accident is the optimum moderation condition with each storage location loaded with a maximum reactivity fuel assembly. The NFSR will maintain k_{eff} <0.98 for this postulated scenario including all uncertainties and biases. The NFSR also maintains k_{eff} ≤0.95 for the fully flooded scenario including all uncertainties and biases. Thus, the consequences of an accident previously evaluated regarding the NFSR is not significantly increased. There is no change to the plant equipment or its operation and maintenance due to the proposed change. Thus, the probability of a flooding accident that could impact the NFSR is not significantly increased.

Regarding the SFP, there will now be two storage Regions. The process of choosing fuel assembly storage locations will not change, except that the storage arrangement (checkerboard) and burnup requirements will be revised and assemblies containing an RCCA can be stored in Region 2 without consideration of the burnup curves. The physical handling, insertion, removal, and storage of fuel assemblies in SFP racks will not change. The NAPS program for choosing fuel assembly storage locations, for fuel handling, and for assuring that the fuel assemblies are placed into correct locations will remain in place. Thus, the probability of a fuel assembly misloading or a fuel assembly drop in the SFP will not significantly increase due to the proposed change.

A number of postulated accidents for the SFP were reviewed for the proposed change which included postulated fuel assembly misloading and drop scenarios. The criticality safety evaluation for the SFP concluded that the limiting accident, which bounds all other scenarios, is a multiple misload of a maximum reactivity fuel assembly into each SFP storage location. The criticality safety evaluation concluded that a[n] SFP soluble boron concentration of 2600 [parts per million (ppm)] will maintain k_{eff} ≤0.95 including all uncertainties and biases for this postulated scenario. The current TS, which is not being changed, requires a minimum concentration of 2600 ppm soluble boron at all times that fuel is in the SFP. Since there is no change to the plant equipment that maintains boron concentration or how the boron

concentration is maintained, the probability of an accident involving an incorrect amount of SFP soluble boron is not significantly increased. Also, since k_{eff} would remain ≤0.95, there is no significant increase in the consequences of a postulated accident.

There are no changes to plant equipment, including its operation and maintenance, as a result of the proposed change, including equipment associated with maintaining SFP soluble boron concentration or possible flow paths that could contribute to a boron dilution event. Thus, no new avenues for a boron dilution event will be created. There will be no change regarding how the plant maintains boron concentration or responds to a boron dilution event. The criticality safety evaluation for the postulated boron dilution event shows that, like the existing analysis, the SFP maintains k_{eff} ≤0.95 at 900 ppm soluble boron. Thus, there is no significant increase in the probability or consequences of a boron dilution accident.

In each of the above scenarios the proposed change does not significantly increase the probability of an accident previously evaluated. In each postulated accident k_{eff} continues to be less than or equal to the licensing limit of 0.95, or less than 0.98 for the NFSR optimum moderation scenario.

The NAPS SFP is currently licensed to store a fuel assembly in each of the 1737 spent fuel rack storage locations. Thus, the SFP seismic/structural loading requirements for the proposed change are bounded by the existing TS which have been shown to protect the fuel during normal and accident conditions, including during a postulated seismic event. Thus, there is no increase in the consequences of a seismic event.

The proposed license amendment makes no changes to any safety analysis limits, including core power level, operating temperature or pressure, or peaking factors. There are no changes being made to any fuel burnup limits. Thus, it is concluded that:

- There is no increase in the radiological consequences in response to postulated accidents,
- there is no change to the maximum allowable SFP heat load,
- there is no impact on fuel rod integrity during normal or accident conditions, and
- there is no impact on the ability of RCCAs to fully insert during normal or accident conditions.

Thus, it is concluded that the probability or consequences of a previously evaluated accident do not significantly increase.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no change to any plant equipment, including how equipment is operated and maintained. Equipment used to handle fuel assemblies (or any heavy load) over the NFSR or the SFP, or how the fuel assemblies are stored, inserted into and removed from fuel storage locations is not changed. There is no change to how RCCAs will be inserted into or removed from a fuel assembly or other location, or otherwise how RCCAs are handled. Any fuel assemblies containing a[n] RCCA may now be stored in Region 2 without being in the ''Acceptable'' region of the burnup curves. However, if such an assembly was stored in Region 2 without the RCCA, it would be treated as any other fuel misload event in which an assembly is stored in Region 2 without meeting the requirements of the burnup curves. Thus, there are no new accidents created over and above the existing postulated accidents of a fuel misload or a fuel assembly drop in the SFP, or a flooding event in the NFSR area.

Also, since there is no change to the plant equipment or how equipment is operated and maintained, the probability of a new type of accident that could impact the SFP or NFSR is not significantly increased.

Since the proposed change will not change fuel/RCCA handling equipment or how fuel assemblies and RCCAs are handled and stored, nor will it change any other plant equipment, there is no mechanism for creating a new or different kind of accident not previously evaluated. Thus, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not involve a significant reduction in a margin of safety.

The licensing requirement for the SFP is that k_{eff} remain ≤0.95 under normal and all postulated accident conditions with credit for soluble boron. The criticality safety evaluation concluded that this requirement is met for the bounding postulated accident of a multiple misload of a maximum reactivity fuel assembly into each SFP storage location, and for the postulated boron dilution event.

In addition the criticality safety evaluation concluded the following regarding normal conditions with 0 ppm soluble boron in the SFP:

- The SFP will maintain k_{eff} <1.0.
- For a fuel handling event that brings two fresh 5.0 weight percent U–235 fuel assemblies, not stored in a spent fuel rack or dry shielded container, [near] each other, k_{eff} is maintained <0.95 with 0 ppm of soluble boron in the SFP water for a distance >12 inches. With credit for soluble boron k_{eff} is maintained <0.95 for any distance less than 12 inches apart.

The criticality safety evaluation also allows the following storage configurations. In each case the storage configuration either reduces or does not increase reactivity assuring that k_{eff} margin is maintained:

- Storing a[n] RCCA and/or cell blocker in a Region 1 empty location.
- Storing non-fuel components in any spent fuel rack storage location where fuel assemblies are allowed.
- Storing non-fuel components in the guide tubes of any fuel assembly.

The criticality safety evaluation evaluated Non-standard Fuel Assemblies stored in the NAPS SFP to determine whether they need to contain a[n] RCCA for Region 2 storage. This information is used to maintain k_{eff} margin when storing Non-standard Fuel Assemblies.

The licensing requirements for the NFSR is that k_{eff} remain ≤0.95 for the fully flooded scenario, and <0.98 for the optimum moderation scenario. The criticality safety evaluation concluded that these requirements are met assuming each storage location is loaded with a maximum reactivity fuel assembly.

Thus, all the margins of safety are maintained, and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, Virginia 23219.

NRC Branch Chief: Michael T. Markley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate

General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, on February 12, 2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2018–03235 Filed 3–5–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting, Revised

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting March 8–10, 2018, 11545 Rockville Pike, Rockville, Maryland 20852.

Thursday, March 8, 2018, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Regulatory Guide 1.232, ''Guidance for Developing Principal Design Criteria for Non-Light Water Reactors'' (Open)—The Committee will hear briefings by and discussion with representatives of the NRC staff regarding the subject guide.

10:45 a.m.–12:15 p.m.: Topical Report ANP–10333P, Revision 0, ''AURORA–B: An Evaluation Model for Boiling Water Reactors; Application to Control Rod Drop Accident (CRDA)'' (Closed)—The Committee will hear briefings by and discussion with representatives of the NRC staff and Framatome regarding the subject topical report. [*Note:* This session is closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

1:15 p.m.–2:45 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

3:00 p.m.–4:00 p.m.: Topical Report APR1400–F–M–TR–13001–P, Revision 1, ''PLUS7 Fuel Design for the APR1400'' (Open/Closed)—The Committee will hear briefings by and discussion with representatives of the NRC staff and KNHP regarding the subject topical reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

4:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Friday, March 9, 2018, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

10:00 a.m.–11:00 a.m.: Preparation for Meeting with Commission (Open)—The

Committee will hear discussion on preparation for upcoming meeting with the Commission in April.

11:00 a.m.–12:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Saturday, March 10, 2018, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852

8:30 a.m.–12:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html or http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–6702), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 28th day of February 2018.

For the Nuclear Regulatory Commission.

Russell E. Chazell,

Advisory Committee Management Officer.

[FR Doc. 2018–04471 Filed 3–5–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017–262; MC2018–127 and CP2018–173]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 8, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2017–262; *Filing Title:* USPS Notice of Change in Prices Pursuant to Amendment to Priority Mail Contract 340; *Filing Acceptance Date:* February 28, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Timothy J. Schwuchow; *Comments Due:* March 8, 2018.

2. *Docket No(s).:* MC2018–127 and CP2018–173; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 76 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 28, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Timothy J. Schwuchow; *Comments Due:* March 8, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–04541 Filed 3–5–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 6, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 28, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 76 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–127, CP2018–173.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–04469 Filed 3–5–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a meeting on Thursday, March 8, 2018 at 9:30 a.m. (ET).

PLACE: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 9:30 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov*.

MATTERS TO BE CONSIDERED: On February 7, 2018, the Commission issued notice of the Committee meeting (Release No. 33–10456), indicating that the meeting is open to the public (except during that portion of the meeting reserved for an administrative work session during lunch), and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a quorum of the Commission may attend the meeting.

The agenda for the meeting includes: Remarks from Commissioners; a discussion of regulatory approaches to combat retail investor fraud; a discussion regarding financial support for law school clinics that support investors (which may include a recommendation of the Committee as a whole); a discussion regarding dual-class share structures (which may include a recommendation of the Investor as Owner Subcommittee); a discussion regarding efforts to combat the financial exploitation of vulnerable adults; subcommittee reports; and a nonpublic administrative work session during lunch.

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: March 1, 2018.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2018–04606 Filed 3–2–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82794/March 1, 2018]

Securities Exchange Act of 1934; Order Granting Petitions for Review and Scheduling Filing of Statements

In the Matter of the Cboe BZX Exchange, Inc.

For an Order Granting the Approval of Proposed Rule Change to Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities under New Exchange Rule 11.28 (File No. SR–BatsBZX–2017–34)

This matter comes before the Securities and Exchange Commission (''Commission'') on petition to review the approval, pursuant to delegated authority, of the Bats BZX Exchange, Inc. (now known as Cboe BZX Exchange, Inc.) (''BZX'' or ''Exchange'') proposed rule change to adopt Cboe Market Close, a closing match process for non-BZX Listed Securities.

On May 16, 2017, the Commission issued a notice of filing of the proposed rule change filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder.[3] On July 3, 2017, a longer time period was designated within which to act on the proposed rule change.[4] On August 18, 2017, proceedings were instituted under Section 19(b)(2)(B) of the Exchange Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On November 17, 2017, pursuant to Section 19(b)(2) of the Exchange Act,[7] a longer period was designated for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[8] On December 1, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, renaming ''Bats Market Close'' as ''Cboe Market Close.'' On January 17, 2018, after consideration of the record for the proposed rule change, the Division of Trading and Markets (''Division''), pursuant to delegated authority,[9] approved the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 80683, 82 FR 23320 (May, 22 2017).

[4] *See* Exchange Act Release No. 81072, 82 FR 31792 (July 10, 2017).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Exchange Act Release No. 81437, 82 FR 40202 (Aug. 24, 2017).

[7] 15 U.S.C. 78s(b)(2).

[8] *See* Exchange Act Release No. 82108, 82 FR 55894 (Nov. 24, 2017).

[9] 17 CFR 200.30 3(a)(12).

change, as modified by Amendment No. 1 (''Approval Order'').[10]

On January 31, 2018, pursuant to Commission Rule of Practice 430,[11] NYSE Group, Inc. (''NYSE'') and The Nasdaq Stock Market LLC (''Nasdaq'') each filed petitions for review of the Approval Order. Pursuant to Commission Rule of Practice 431(e), the Approval Order is stayed by the filing with the Commission of a notice of intention to petition for review.[12] Pursuant to Rule 431 of the Rules of Practice,[13] the petitions for review of the Approval Order of NYSE and Nasdaq are granted.[14] Further, the Commission hereby establishes that any party to the action or other person may file a written statement in support of or in opposition to the Approval Order on or before March 22, 2018.

For the reasons stated above, it is hereby:

Ordered that the petitions of NYSE and Nasdaq for review of the Division's action to approve the proposed rule change by delegated authority be *granted*; and

It is further *ordered* that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before March 22, 2018.

It is further *ordered* that the January 17, 2018 order approving the proposed rule change, as modified by Amendment No. 1 (File No. SR–BatsBZX–2017–34), shall remain stayed pending further order by the Commission.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04512 Filed 3–5–18; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* Exchange Act Release No. 82522, 83 FR 3205 (Jan. 23, 2018).

[11] 17 CFR 201.430.

[12] 17 CFR 201.431(e).

[13] 17 CFR 201.431.

[14] On February 2, 2018, NYSE filed a corrected petition for review that the Commission will consider in lieu of the version filed on January 31, 2018.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82793; File No. SR–OCC–2018–004]

Self-Regulatory Organizations; The Options Clearing Corporation; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change To Revise The Options Clearing Corporation's Schedule of Fees

February 28, 2018.

I. Introduction

On January 19, 2018, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, File No. SR–OCC–2018–004, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on February 2, 2018.[4] Under Section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (i) Temporarily suspending File No. SR–OCC–2018–004; and (ii) instituting proceedings to determine whether to approve or disapprove File No. SR–OCC–2018–004.

II. Description of the Proposed Rule Change

The proposed rule change by OCC would revise OCC's Schedule of Fees effective March 1, 2018 to implement an increase in clearing fees in accordance with OCC's Fee Policy,[6] which was adopted as part of its plan to raise additional capital (''Capital Plan'').[7] As stated in the Notice, OCC filed the proposed rule change to revise OCC's Schedule of Fees in accordance with its Fee Policy and set fees at a level designed to cover OCC's operating expenses and maintain a Business Risk Buffer of 25%.[8]

OCC stated that it recently reviewed its current Schedule of Fees[9] against projected revenues and expenses for 2018 in accordance with its Fee Policy to determine whether the Schedule of Fees was sufficient to cover OCC's anticipated operating expenses and achieve the Business Risk Buffer. OCC stated that it analyzed: (i) Expenses budgeted for 2018; (ii) projected other revenue streams for 2018; (iii) projected volume mix; and (iv) projected volume growth for 2018. After this review, OCC determined that the current fee schedule is set at a level that would be insufficient to ensure that OCC achieves its Business Risk Buffer as required under the Fee Policy.[10] OCC stated that it arrived at the proposed fee schedule below by determining the figures that provide the best opportunity for OCC to achieve coverage of its anticipated operating expenses plus a Business Risk Buffer. Accordingly, OCC proposed the Schedule of Fees set forth in the table below:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] Securities Exchange Act Release No. 82596 (Jan. 30, 2018), 83 FR 4944 (Feb. 2, 2018) (SR–OCC–2018–004) (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] *See* Notice at 4944–45. OCC also filed a proposed rule change with the Commission to revise its Fee Policy to provide that proposed fee changes are required to be implemented no sooner than thirty (30) days from the date of filing of the proposed rule change concerning such fee change (as opposed to sixty (60) days). *See* Securities Exchange Act Release No. 82576 (Jan. 24, 2018), 83 FR 4324 (Jan. 30, 2018) (SR–OCC–2018–001). OCC submitted the proposed changes to its Fee Policy to the Commodity Futures Trading Commission (''CFTC'') under CFTC Regulation 40.6. OCC stated that implementation of the proposed fee change on March 1, 2018 would require either: (i) Commission approval of SR–OCC–2018–001 and certification of the Fee Policy changes in SR–OCC–2018–001 under CFTC Regulation 40.6 or (ii) an exception to the 60-day notice period provision in the Fee Policy authorized by OCC's Board of Directors and the holders of all of the outstanding Class B Common Stock of OCC.

[7] *See* Securities Exchange Act Release No. 77112 (February 11, 2016), 81 FR 8294 (February 18, 2016) (SR–OCC–2015–02) (''Approval Order''). The Capital Plan was later subject to judicial review by the U.S. Court of Appeals for the District of Columbia Circuit (''D.C. Circuit''), which remanded the Approval Order to the Commission to further analyze whether the Capital Plan is consistent with the Act. *Susquehanna Int'l Grp., LLP* v. *SEC,* 866 F.3d 442 (D.C. Cir. 2017). The Commission's review of the Plan on remand is ongoing, and the Capital Plan remains in effect during this ongoing review.

[8] *See* Notice at 4944–45. The Business Risk Buffer is an amount of fee revenue that OCC targets above its anticipated operating expenses to allow for unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements.

[9] OCC previously revised its Schedule of Fees effective December 1, 2016, to implement a fee increase in accordance with the Fee Policy. *See* Securities Exchange Act Release No. 79028 (October 3, 2016), 81 FR 69885 (October 7, 2016) (SR–OCC–2016–012).

[10] OCC provided a summary of its analysis in a confidential Exhibit 3 to the filing.

Current fee schedule		Proposed fee schedule	
Trades with contracts of:	Current fee	Trades with contracts of:	Proposed fee
1–1,100	$0.050/contract	1–1,018	$0.054/contract.
>1,100	$55/trade	>1,018	$55/trade.

OCC proposed to modify its Schedule of Fees to: (i) Increase its per contract clearing fee from $0.050 to $0.054 per contract; and (ii) adjust the quantity of contracts at which the fixed, per trade clearing fee begins from greater than 1,100 contracts per trade to greater than 1,018 contracts per trade. OCC stated that the proposed changes are designed to target a level of revenues sufficient to cover OCC's operating expenses plus the Business Risk Buffer while continuing to maintain its existing fixed, per trade, fee at $55 per trade.

OCC stated that in accordance with its Fee Policy, OCC will continue to monitor cleared contract volume and operating expenses to determine if further revisions to OCC's Schedule of Fees are required so that monies received from clearing fees cover its operating expenses plus the Business Risk Buffer.[11]

III. Summary of Comment Received

On February 22, 2018, the Commission received a comment letter on the proposed rule change from Susquehanna International Group, LLP (''SIG'').[12] In the comment letter, SIG expressed concern regarding whether the information provided by OCC in the Notice was sufficient to allow for meaningful public comment on the proposal.[13] Specifically, SIG asserted that OCC's Shareholder Exchanges are incented to overestimate OCC's expenses, because such overestimation would lead to increased dividends.[14] SIG asserted further that, without access to the expense projections filed as a confidential exhibit to the proposed rule change, the public has no basis to believe that the proposed fee increase is reasonable and no ability to comment critically on OCC's supporting analysis.[15] In addition, SIG characterized OCC's proposal to increase fees as a negative consequence of the Capital Plan.[16]

IV. Suspension of File No. SR–OCC–2018–004

Pursuant to Section 19(b)(3)(C) of the Act,[17] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[18] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed further below, the Commission believes a temporary suspension of the proposed rule change is warranted here to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder. In particular, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change to consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that clearing agency rules provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

V. Proceedings To Determine Whether To Approve or Disapprove File No. SR–OCC–2018–004

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[19] and 19(b)(2)(B) of the Act[20] to determine whether the proposed rule change should be approved or disapproved.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[21] the Commission is providing notice of the grounds for disapproval under consideration. As noted above, the Fee Policy to which the proposed rule change relates was adopted as part of OCC's Capital Plan, and the Capital Plan remains subject to Commission review.[22] The commenter asserts that the fee increase contradicts previous statements by OCC regarding ''OCC's assurances of low fees in its Capital Plan submissions,'' calls into question the consistency of the Capital Plan with the Act, and is otherwise without basis.[23] The Commission believes it is appropriate to institute proceedings to assess whether the considerations currently before the Commission in connection with its review of the Capital Plan on remand are implicated by the issues raised by the proposed fee change.[24] Moreover, the commenter

[11] Any subsequent changes to OCC's Schedule of Fees would be the subject of a subsequent proposed rule change filed with the Commission.

[12] *See* letter from Richard J. McDonald, SIG, dated February 14, 2018, to Brent J. Fields, Secretary, Commission (''SIG Letter''). *See* comments on the proposed rule change (SR–OCC–2018–004), *https://www.sec.gov/comments/sr-occ-2018-004/occ2018004.htm.*

[13] SIG Letter at 2.

[14] SIG Letter at 3. OCC is owned by Chicago Board Options Exchange, Incorporated (''CBOE''); International Securities Exchange, LLC; NASDAQ OMX PHLX, LLC; NYSE American LLC; and NYSE Arca, Inc. *See* Approval Order at 8294.

[15] SIG Letter at 2.

[16] *Id.* at 1. OCC's Board of Directors decided that OCC was significantly undercapitalized, and, therefore, proposed an expedited plan to substantially increase OCC's capitalization. *See* Approval Order at 8294. Subsequent to the Approval Order, parties, including SIG, filed a petition for review of the Approval Order in the DC Circuit, challenging the Commission's Approval Order. The DC Circuit ultimately remanded the case to the Commission for further proceedings without reaching the merits of the Capital Plan. *Susquehanna,* 866 F.3d at 443. The court did not vacate the Approval Order prior to remand, instead leaving the Capital Plan in place and remanding to give the Commission an opportunity to reevaluate the Capital Plan. *Id.* at 451. As noted above, the Commission's reconsideration of the Capital Plan is ongoing.

[17] 15 U.S.C. 78s(b)(3)(C).

[18] 15 U.S.C. 78s(b)(1).

[19] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[20] 15 U.S.C. 78s(b)(2)(B).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] *See supra* note 7.

[23] SIG Letter at 2.

[24] The Commission notes that one of the issues before us in considering the Capital Plan is the contention by some of those commenting on the Plan that the Plan will lead to an increase in fees. In responding to these comments in our initial approval of the Plan, we observed that ''[t]he Exchange Act rule filing requirements for fee changes provide an opportunity for public comment and an opportunity for the Commission to review

Continued

argues that, without access to the information provided by OCC on a confidential basis, the public cannot ''meaningfully comment on the propriety of the proposed fee increase.'' [25] The Commission is also instituting proceedings to allow for additional consideration and comment on this and other issues raised by the commenter. Finally, the Commission believes that OCC's proposed rule change raises questions as to whether it is consistent with Section 17A(b)(3)(D) of the Act,[26] which requires clearing agency rules to provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

VI. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the proposed fee change. In particular, the Commission invites the written views of interested persons concerning whether the proposed fee change is consistent with Section 17A(b)(3)(D) of the Act [27] or any other provision of the Act, rules, and regulations thereunder. Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–OCC–2018–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–OCC–2018–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp*.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR–OCC–2018–004 and should be submitted on or before March 27, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before April 10, 2018.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[28] that File No. SR–OCC–2018–004, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04484 Filed 3–5–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33038; File No. 812–14760]

Alcentra Capital Corporation, et al.

February 28, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit business development companies (''BDCs'') and certain closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: Alcentra Capital Corporation (the ''Company''); Alcentra BDC Equity Holdings, LLC (the ''Subsidiary''); Alcentra Middle Market Fund IV, L.P. (the ''Existing Co-Investment Affiliate''); Alcentra NY, LLC (''Alcentra NY''); The Dreyfus Corporation (''Dreyfus''); Dreyfus Alcentra Global Credit Income 2024 Target Term Fund, Inc. (''DCF''); Stira Alcentra Global Credit Fund (''Stira Alcentra,'' and together with the Company and DCF, the ''Existing Regulated Funds''); and Stira Investment Adviser, LLC (''Stira Adviser'').

FILING DATES: The application was filed on April 10, 2017 and amended on August 21, 2017, October 27, 2017, January 26, 2018, and February 14, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 26, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549–1090. Applicants: Alcentra Capital Corporation, Alcentra Middle Market Fund IV, L.P, Alcentra NY, LLC, Alcentra BDC Equity Holdings, LLC, The Dreyfus Corporation, and Dreyfus

the change, summarily suspend it and institute proceedings to ultimately approve or disapprove the change, as applicable, to ensure an SRO's rules meet regulatory requirements.'' See Approval Order at 8303.

[25] SIG Letter at 3.

[26] 17 CFR 240.17Ad–22(d)(7).

[27] 15 U.S.C. 78q–1(b)(3)(D).

[28] 15 U.S.C. 78s(b)(3)(C).

[29] 17 CFR 200.30–3(a)(12).

Alcentra Global Credit Income 2024 Target Term Fund, Inc., 200 Park Avenue, 7th Floor, New York, NY 10166; Stira Alcentra Global Credit Fund and Stira Investment Adviser, LLC, 18100 Von Karman Avenue, Suite 500, Irvine, CA 92612.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, or Robert H. Shapiro, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company was organized as a corporation under the General Corporate Laws of the State of Maryland. The Company operates as an externally-managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[1] The Company's investment objective is to generate both current income and capital appreciation primarily by making direct investments in lower middle-market companies in the form of subordinated debt and, to a lesser extent, senior debt and minority equity investments. Four of the seven members of the board of directors (''Board'')[2] of the Company are persons who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (the ''Independent Directors'').

2. The Subsidiary, a Delaware limited liability company, is a Wholly-Owned Investment Sub (as defined below), the sole business purpose of which is to hold one or more investments on behalf of the Company.

3. DCF is a Maryland corporation that is a diversified, closed-end management investment company registered under the Act that has a limited term of approximately seven years. DCF's investment objective is to seek high current income by investing at least 80% of its managed assets in credit instruments and other investments with similar economic characteristics. The Board of DCF currently consists of six members, all of whom are Independent Directors.

4. Stira Alcentra is a non-diversified, closed-end management company registered under the Act organized as a Delaware statutory trust. Stira Alcentra's investment objective is to provide current income and capital preservation with the potential for capital appreciation. Stira Alcentra intends to pursue its investment objective by providing customized financing solutions to lower middle-market and middle-market companies in the form of floating and fixed rate senior secured loans, second lien loans and subordinated debt and, to a lesser extent, minority equity investments. Stira Alcentra's shares will not be listed for trading on any securities exchange. Three of the five members of the Board of Stira Alcentra are Independent Directors.

5. The Existing Co-Investment Affiliate is a Delaware limited partnership. The Existing Co-Investment Affiliate's investment objective is to generate both current income and capital appreciation primarily by making direct investments in lower middle-market companies. The Existing Co-Investment Affiliate currently has no investments. In reliance on the exclusion from the definition of ''investment company'' provided by section 3(c)(1) or 3(c)(7) of the Act, none of the Co-Investment Affiliates (as defined below) will be registered under the Act.

6. Alcentra NY is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). Alcentra NY is a subsidiary of the Alcentra Group, which is an indirect, wholly-owned subsidiary of The Bank of New York Mellon Corporation (''BNY Mellon''). Alcentra NY serves as investment adviser to the Company pursuant to an investment advisory agreement. Because the Subsidiary is a wholly-owned, consolidated subsidiary of the Company, Alcentra NY manages the assets of the Subsidiary. Alcentra NY also serves as investment adviser to the Existing Co-Investment Affiliate and as sub-adviser to DCF and Stira Alcentra.

7. Dreyfus, a wholly-owned subsidiary of BNY Mellon, is a corporation organized under the laws of the State of New York and an investment adviser registered under the Advisers Act. Dreyfus serves as the investment manager to DCF pursuant to a management agreement. Dreyfus has delegated substantially all of its portfolio management obligations to Alcentra NY pursuant to an investment sub-advisory agreement, but is responsible for the overall management of DCF's portfolio and for the supervision and ongoing monitoring of Alcentra NY. Dreyfus will not source potential co-investments under the order.

8. Stira Adviser is organized as a Delaware limited liability company and is registered as an investment adviser under the Advisers Act. Stira Adviser serves as investment adviser to Stira Alcentra pursuant to an investment advisory agreement. Stira Adviser has delegated substantially all of its portfolio-management obligations to Alcentra NY pursuant to an investment sub-advisory agreement, but will have general oversight over the investment process on behalf of Stira Alcentra. Stira Adviser also will have ultimate responsibility for Alcentra NY's performance under the terms of the investment sub-advisory agreement.

9. Alcentra NY is solely responsible for identifying and recommending investments for Stira Alcentra. Prior to any investment by Stira Alcentra, Alcentra NY will hold an investment committee meeting, with respect to which Stira Adviser has observer rights. Stira Adviser will participate in the investment process with regard to Stira Alcentra through the exercise of its observer rights. Stira Adviser will not source any Potential Co-Investment Transactions (as defined below) under the requested Order.

10. Applicants seek an order (''Order'') to permit a Regulated Fund[3] (or a Wholly-Owned Investment Sub) and one or more other Regulated Funds (or a Wholly-Owned Investment Sub) and/or one or more Co-Investment

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] ''Board'' refers to the board of directors or trustees, as applicable, of any Regulated Fund (as defined below).

[3] ''Regulated Funds'' means the Existing Regulated Funds and any future closed-end investment companies that (a) are registered under the Act or have elected to be regulated as a BDC under the Act, (b) are (i) advised by an Alcentra/Dreyfus Adviser, as defined below, or (ii) advised by Stira Adviser and sub-advised by an Alcentra/Dreyfus Adviser where the Alcentra/Dreyfus Adviser has discretionary authority to make investment decisions for such Regulated Fund, and (c) that intend to participate in the Co-Investment Program. ''Alcentra/Dreyfus Adviser'' means Alcentra NY, Dreyfus, or an entity registered under the Investment Advisers Act of 1940 (''Advisers Act'') that is controlling, controlled by, or under common control with BNY Mellon. The term ''Adviser'' means an Alcentra/Dreyfus Adviser or Stira Adviser. Alcentra NY and Dreyfus are direct or indirect wholly-owned subsidiaries of BNY Mellon. All references to the term ''Adviser'' include successors-in-interest. A successor-in-interest is limited to any entity resulting from a reorganization of the Adviser into another jurisdiction or a change in the type of business organization.

Affiliates[4] to participate in the same investment opportunities through a proposed co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) and rule 17d–1.[5] ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or a Wholly-Owned Investment Sub) participates together with one or more other Regulated Funds (or a Wholly-Owned Investment Sub) and/or one or more Co-Investment Affiliates in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or a Wholly-Owned Investment Sub) could not participate together with one or more other Regulated Funds (or a Wholly-Owned Investment Sub) and/or one or more Co-Investment Affiliates without obtaining and relying on the Order.[6]

11. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[7] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Co-Investment Affiliate or another Regulated Fund because it would be a company controlled by the Regulated Fund for purposes of sections 17(d) and 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the requested Order, as though the Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If a Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

12. In selecting investments for the Regulated Funds, an Alcentra/Dreyfus Adviser will consider only the investment objective, investment policies, investment position, capital available for investment and other factors relevant to each Regulated Fund. Each of the Co-Investment Affiliates has or will have investment objectives and strategies that are similar to or overlap with the Objectives and Strategies[8] of each Regulated Fund. To the extent there is an investment opportunity that falls within the Objectives and Strategies of one or more Regulated Funds and the investment objectives and strategies of one or more of the Co-Investment Affiliates, the Alcentra/Dreyfus Adviser would expect such Regulated Funds and Co-Investment Affiliates to co-invest with each other, with certain exceptions based on available capital or diversification.[9]

13. After making the determinations required in conditions 1 and 2(a), other than in the case of pro rata Dispositions (as defined below) and Follow-On Investments,[10] as provided in conditions 7 and 8, the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors or trustees of the Board that are eligible to vote under section 57(o) of the Act (the ''Eligible Directors''). The ''required majority,'' as defined in section 57(o) of the Act (''Required Majority''),[11] of a Regulated Fund will approve each Co-Investment Transaction prior to any investment by the Regulated Fund.

14. All subsequent activity, meaning either to (a) sell, exchange, or otherwise dispose of an investment (collectively, a ''Disposition'') or (b) complete a Follow-On Investment, in respect of an investment acquired in a Co-Investment Transaction will also be made in accordance with the terms and conditions set forth in the application. With respect to the pro rata Dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata Disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Co-Investment Affiliate and Regulated Fund in such Disposition or Follow-On Investment is proportionate to its outstanding investments in the issuer immediately preceding the Disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata Dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such Disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata Dispositions and Follow-On Investments with the result that all Dispositions and/or Follow-On

[4] ''Co-Investment Affiliates'' means the Existing Co-Investment Affiliate and any Future Co-Investment Affiliate. ''Future Co-Investment Affiliate'' means any entity (i) whose investment adviser is an Adviser, (ii) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act and (iii) that intends to participate in the Co-Investment Program.

[5] The Order would supersede an exemptive order issued by the Commission (the ''Prior Order''). Alcentra Capital Corporation, *et al.,* Investment Company Act Release Nos. 31927 (Dec. 4, 2015) (notice) and 31951 (Dec. 30, 2015) (order). No person will continue to rely on the Prior Order if the Order is granted.

[6] All existing entities that currently intend to rely on the Order have been named as applicants. Any other existing or future entity that relies on the Order in the future will comply with the terms and conditions of the application.

[7] ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund (and, in the case of any SBIC Subsidiaries (as defined below), to maintain a license under the SBA Act (as defined below) and issue debentures guaranteed by the SBA (as defined below)); (iii) with respect to which the Board of a Regulated Fund has the sole authority to make all determinations with respect to the Wholly-Owned Investment Sub's participation under the conditions to the Application; and (iv) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act. ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended, the (''SBA Act'') as a small business investment company (an ''SBIC'').

[8] ''Objectives and Strategies,'' with respect to each Regulated Fund, means the Regulated Fund's investment objectives and strategies, as described in the Regulated Fund's registration statement on Form N–2, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the ''1933 Act''), or under the Securities Exchange Act of 1934 and the Regulated Fund's report to stockholders.

[9] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[10] ''Follow-On Investment'' means any additional investment in an existing portfolio company, the exercise of warrants, conversion privileges or other similar rights to acquire additional securities of the portfolio company.

[11] In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

Investments must be submitted to the Eligible Directors.

15. No Independent Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

16. Under condition 14, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Co-Investment Affiliates (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the condition. Applicants believe that this condition will ensure that the Independent Directors will act independently in evaluating the Co-Investment Program, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. Applicants represent that the Independent Directors will evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the Regulated Fund's shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the other Regulated Funds and Co-Investment Affiliates may be deemed to be a person related to a Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that any Order of the Commission granting the requested relief will be subject to the following conditions:

1. Each time an Alcentra/Dreyfus Adviser considers a Potential Co-Investment Transaction for a Co-Investment Affiliate or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Alcentra/Dreyfus Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Alcentra/Dreyfus Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Alcentra/Dreyfus Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Co-Investment Affiliates, collectively, in the same transaction, exceeds the amount of the investment opportunity, the amount proposed to be invested by each such party will be allocated among them pro rata based on each participating party's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each. The applicable Alcentra/Dreyfus Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's available capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Alcentra/Dreyfus Adviser will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each Regulated Fund and each Co-Investment Affiliate to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Co-Investment Affiliates only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) the terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its stockholders and do not involve overreaching in respect of the Regulated Fund or its stockholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the Regulated Fund's stockholders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by the other Regulated Funds or any Co-Investment Affiliates would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of any other Regulated Fund or Co-Investment Affiliate; provided that, if any other Regulated Fund or Co-Investment Affiliate, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not

be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition 2(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Alcentra/Dreyfus Adviser agrees to, and does, provide periodic reports to the Board of the Regulated Fund with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any other Regulated Fund, or any Co-Investment Affiliate, or any affiliated person of either receives in connection with the right of any other Regulated Fund or a Co-Investment Affiliate to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Co-Investment Affiliates (which each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, the Co-Investment Affiliates, the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by sections 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Alcentra/Dreyfus Adviser will present to the Board of the applicable Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds and Co-Investment Affiliates during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8 below,[12] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Co-Investment Affiliate, or any affiliated person of another Regulated Fund or Co-Investment Affiliate is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Co-Investment Affiliate. The grant to a Co-Investment Affiliate or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Co-Investment Affiliate or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the Alcentra/Dreyfus Adviser will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed Disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the Disposition.

(b) Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to any participating Co-Investment Affiliates and any other Regulated Funds.

(c) A Regulated Fund may participate in such Disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Co-Investment Affiliate and Regulated Fund in such Disposition is proportionate to its outstanding investments in the issuer immediately preceding the Disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this condition. In all other cases, the Alcentra/Dreyfus Adviser will provide its written recommendation as to the Regulated Fund's participation to the Regulated Fund's Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Co-Investment Affiliate and each Regulated Fund will bear its own expenses in connection with any such Disposition.

8. (a) If any Co-Investment Affiliate or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the Alcentra/Dreyfus Adviser will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Co-Investment Affiliate and each Regulated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Follow-On Investments made in accordance with this condition. In all other cases, the Alcentra/Dreyfus Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the Follow-On Investment is not based on the Co-Investment Affiliates' and the Regulated

[12] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Alcentra/Dreyfus Adviser to be invested by each Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the participating Co-Investment Affiliates in the same transaction, exceeds the amount of the opportunity, then the amount to be invested by each such party will be allocated among them pro rata based on each participating party's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Independent Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by the Co-Investment Affiliates and the other Regulated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Independent Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act), of any Co-Investment Affiliate.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Co-Investment Affiliates and the Regulated Funds, be shared by the participating Co-Investment Affiliates and the participating Regulated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

13. Any transaction fee [13] (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating Co-Investment Affiliates and Regulated Funds on a pro rata basis based on the amount they each invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Co-Investment Affiliates and Regulated Funds based on the amount each invests in such Co-Investment Transaction. None of the Co-Investment Affiliates, the Regulated Funds, the Advisers nor any affiliated person of the Regulated Funds or Co-Investment Affiliates will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Co-Investment Affiliates and the Regulated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C), and (b) in the case of the Advisers, investment advisory fees paid in accordance with their respective investment advisory agreements with the Regulated Funds and Co-Investment Affiliates).

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) all other matters under either the Act or applicable State law affecting the Board's composition, size, or manner of election.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

16. The Advisers to the Regulated Funds and Co-Investment Affiliates will maintain written policies and procedures reasonably designed to ensure compliance with the foregoing conditions. These policies and procedures will require, among other things, that each of the Advisers to each Regulated Fund will be notified of all Potential Co-Investment Transactions that fall within a Regulated Fund's then-current Objectives and Strategies and will be given sufficient information to make its independent determination and recommendations under conditions 1, 2(a), 7 and 8.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04447 Filed 3–5–18; 8:45 am]

BILLING CODE 8011–01–P

[13] Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, March 8, 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 Peirce, 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;

Litigation matter; 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: March 1, 2018.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2018–04607 Filed 3–2–18; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 10345]

60-Day Notice of Proposed Information Collection: Statement of Political Contributions, Fees, and Commissions Relating to Sales of Defense Articles and Defense Services

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to May 7, 2018.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2018–0012'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: DDTCPublicComments@state.gov*.
- *Regular Mail:* Send written comments to: Directorate of Defense Trade Controls, Attn: Andrea Battista, 2401 E St. NW, Suite H–1205, Washington, DC 20522–0112.

You must include the subject (PRA 60 Day Comment), information collection title (Statement of Political Contributions, Fees, and Commissions Relating to Sales of Defense Articles and Defense Services), and OMB control number (1405–0025) in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding this collection to Andrea Battista, who may be reached at *BattistaAL@state.gov* or 202–663–3136.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Political Contributions, Fees, and Commissions Relating to Sales of Defense Articles and Defense Services.
- *OMB Control Number:* 1405–0025.
- *Type of Request:* Extension.
- *Originating Office:* Directorate of Defense Trade Controls (DDTC).
- *Form Number:* No Form.
- *Respondents:* Persons requesting a license or other approval for the export, reexport, or retransfer of USML-regulated defense articles or defense services valued in an amount of $500,000 or more that are being sold commercially to or for the use of the armed forces of a foreign country or international organization or persons who enter into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of $500,000 or more under section 22 of the AECA.
- *Estimated Number of Respondents:* 120.
- *Estimated Number of Responses:* 500.
- *Average Time per Response:* 60 minutes.
- *Total Estimated Burden Time:* 500 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

DDTC regulates the export and temporary import of defense articles and services enumerated on the USML in accordance with the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). In accordance with section 39 of the AECA, the Secretary of State must require, in part, adequate and timely reporting of political contributions, gifts, commissions and fees paid, or offered or agreed to be paid in connection with the sales of defense articles or defense services licensed or approved under AECA sections 22 and 38. Pursuant to ITAR § 130.9(a), any person applying for a license or approval required under section 38 of the AECA for sale to the armed forces of a foreign country or international organization valued at $500,000 or more must inform DDTC, and provide certain specified information, when they have paid, offered to, or agreed to pay, (1) political contributions in an aggregate amount of $5,000 or greater; or (2) fees or commissions in an aggregate amount equaling or exceeding $100,000. Similarly, ITAR § 130.9(b) requires any person who enters into a contract with the Department of Defense under section 22 of the AECA, valued at $500,000 or more, to inform DDTC and provide the specified information, when they or their vendors, have paid, or offered or agreed to pay, in respect to any sale (1) political contributions in an aggregate amount of $5,000 or greater; or (2) fees or commissions in an aggregate amount equaling or exceeding $100,000. Respondents are also required to collect information pursuant to Sections 130.12 and 130.13 prior to submitting their report to DDTC.

Methodology

Respondents will submit information as attachments to relevant license applications or requests for other approval.

Anthony M. Dearth,

Chief of Staff (Acting), Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2018–04433 Filed 3–5–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 10346]

Determination Under Section 7070(c)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 Regarding the Central Government of Venezuela

Pursuant to section 7070(c)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 (Div. J, Pub. L. 115–31), I hereby determine that the Government of Venezuela has recognized the independence of, or has established diplomatic relations with, the Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia.

This determination shall be published in the **Federal Register** and on the Department of State website and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Rex W. Tillerson,

Secretary of State.

[FR Doc. 2018–04532 Filed 3–5–18; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 10343]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a public meeting from 10:30 a.m. until 12:00 p.m., Tuesday, March 20, 2018 at the Rayburn Office Building, room 2200 (45 Independence Ave SW, Washington, DC 20515).

The public meeting will be on *Optimizing diplomatic engagement: An evidence-based, results-oriented approach.* The session will include a presentation and discussion of recommendations on improving the assessment of State Department public diplomacy programs.

This meeting is open to the public, members and staff of Congress, the State Department, Defense Department, the media, and other governmental and non-governmental organizations. An RSVP is required. To attend and make any requests for reasonable accommodation, email Michelle Bowen at *BowenMC1@state.gov* by 5pm on Friday, March 16, 2018. Please arrive for the meeting by 10:15am to allow for a prompt start.

The United States Advisory Commission on Public Diplomacy appraises U.S. Government activities intended to understand, inform, and influence foreign publics. The Advisory Commission may conduct studies, inquiries, and meetings, as it deems necessary. It may assemble and disseminate information and issue reports and other publications, subject to the approval of the Chairperson, in consultation with the Executive Director. The Advisory Commission may undertake foreign travel in pursuit of its studies and coordinate, sponsor, or oversee projects, studies, events, or other activities that it deems desirable and necessary in fulfilling its functions.

The Commission consists of seven members appointed by the President, by and with the advice and consent of the Senate. The members of the Commission shall represent the public interest and shall be selected from a cross section of educational, communications, cultural, scientific, technical, public service, labor, business, and professional backgrounds. Not more than four members shall be from any one political party. The President designates a member to chair the Commission.

The current members of the Commission are: Mr. Sim Farar of California, Chairman; Mr. William Hybl of Colorado, Vice Chairman; Ambassador Penne Korth-Peacock of Texas; Anne Terman Wedner of Illinois; and Ms. Georgette Mosbacher of New York. Two seats on the Commission are currently vacant.

To request further information about the meeting or the U.S. Advisory Commission on Public Diplomacy, you may contact its Executive Director, Dr. Shawn Powers, at *PowersSM@state.gov.*

Shawn Powers,

Executive Director, Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 2018–04505 Filed 3–5–18; 8:45 am]

BILLING CODE 4710–45–P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21080]

National Express Transit Corporation—Acquisition of Control—Aristocrat Limousine and Bus, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On February 5, 2018, National Express Transit Corporation (National Express), an intrastate passenger motor carrier, and Brenda Baxter, Richard Wright, and Ralph Wright (collectively, Sellers) (National Express and Sellers collectively, Applicants), jointly filed an application for National Express to acquire from Sellers control of Aristocrat Limousine and Bus, Inc. (Aristocrat), an interstate and intrastate passenger motor carrier. The Board is tentatively approving and authorizing the transaction and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules.

DATES: Comments must be filed by April 20, 2018. Applicants may file a reply by May 7, 2018. If no opposing comments are filed by April 20, 2018, this notice shall be effective on April 21, 2018.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21080 to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, send one copy of comments to: Andrew K. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W. Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245–0376. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: National Express is a motor carrier incorporated under the laws of Delaware that provides intrastate passenger transportation service and utilizes approximately 774 passenger-carrying vehicles and 855 drivers. Additionally, National Express, which does not have interstate authority from the Federal Motor Carrier Safety Administration (FMCSA), owns and controls two passenger motor carriers that do hold FMCSA interstate carrier authority: Rainbow Management Service Inc. (Rainbow) (MC–490015), which provides interstate and intrastate charter and special party passenger services in New York, and Trans Express, Inc. (Trans Express) (MC–187819), which provides interstate and intrastate passenger transportation services in New York. National Express is indirectly controlled by a British corporation, National Express Group, PLC (Express Group). Express Group also indirectly controls the following interstate and intrastate motor carriers of passengers (collectively, National Express Affiliated Carriers):

- Beck Bus Transportation Corp., which holds interstate carrier authority (MC–143528), is primarily engaged in providing student school bus transportation services in Illinois;
- Durham School Services, L.P., which holds interstate carrier authority (MC–163066), is primarily engaged in

providing student school bus transportation services in several states, and charter passenger services to the public;

- MV Student Transportation Inc., which holds interstate carrier authority (MC–148934), is primarily engaged in providing student school bus transportation services, and charter passenger services to the public;
- National Express Transit—Yuma (NETY), which holds interstate carrier authority (MC–960629), is primarily engaged in providing paratransit services in the area of Yuma, Ariz.;
- Petermann Ltd., which holds interstate carrier authority (MC–364668), is primarily engaged in providing non-regulated school bus transportation services in Ohio, and charter passenger services to the public;
- Petermann Northeast LLC, which holds interstate carrier authority (MC–723926), is primarily engaged in providing student school bus transportation services, primarily in Ohio and Pennsylvania, and also provides charter passenger services to the public;
- Petermann Southwest LLC, which holds interstate carrier authority (MC–644996), is primarily engaged in providing non-regulated school bus transportation services in Texas, and also provides charter passenger services to the public;
- Petermann STSA, LLC, which holds interstate carrier authority (MC–749360), is primarily engaged in providing non-regulated school bus transportation services, primarily in Kansas, and also provides charter passenger services to the public;
- The Provider Enterprises, Inc. d/b/a Provider Bus, which holds interstate carrier authority (MC–986909), is primarily engaged in providing non-regulated school bus transportation services in New Hampshire;
- Queen City Transportation, LLC, which holds interstate carrier authority (MC–163846), is primarily engaged in providing non-regulated school bus transportation in Ohio, and charter passenger services to the public;
- Trinity, Inc., which holds interstate carrier authority (MC–364003), provides non-regulated school bus transportation services in southeastern Michigan, and charter service to the public;
- Trinity Student Delivery LLC, which holds interstate carrier authority (MC–836335), primarily provides non-regulated school bus transportation services in areas of northern Ohio, and passenger charter services to the public; and
- White Plains Bus Company, Inc., d/b/a Suburban Charters, which holds interstate carrier authority (MC–160624), primarily provides non-regulated school bus transportation services in New York, and charter service to the public.

Aristocrat, a motor carrier of passengers, is a New Jersey corporation that holds interstate carrier authority (MC–173839). It provides intrastate and interstate passenger charter services in New Jersey, as well as interstate passenger charter services in New York and Pennsylvania. In providing its services, Aristocrat utilizes 33 passenger vehicles and 28 drivers. Sellers hold all the issued and outstanding equity stock of Aristocrat.

Applicants state that the proposed transaction would place Aristocrat under the control of National Express. The proposed transaction contemplates that National Express would assume 100% control of Aristocrat through stock ownership. According to Applicants, after the transaction, Aristocrat would continue to provide services under the same name but would be operated within the National Express corporate family. Applicants assert that Aristocrat is experienced in the passenger service markets already served by National Express and some of its affiliated carriers.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b) and a statement, pursuant to 49 U.S.C. 14303(g), that Rainbow, Trans Express, the National Express Affiliated Carriers, and Aristocrat exceeded $2 million in gross operating revenues for the preceding 12-month period.[1]

Applicants submit that the proposed transaction would not have a material, detrimental impact on the adequacy of transportation services to the public but rather would improve services to the public. According to Applicants, National Express does not intend to change the operations of Aristocrat but would operate it within the National Express corporate family, which, National Express states, would enhance the overall viability of the carriers within the corporate family. National Express anticipates that the proposed transaction would result in operating efficiencies and cost savings derived from economies of scale, which would help ensure adequate service to the public.

Applicants state that there are no significant fixed charges associated with the proposed transaction.

Applicants also assert that because National Express intends to continue Aristocrat's existing operations, the proposed transaction would not have a substantial impact on employees or labor conditions, although staffing redundancies could potentially result in limited downsizing of back-office and/or managerial-level personnel.

Applicants further assert that the proposed transaction would not adversely affect competition or the public interest. Applicants claim that Aristocrat is a relatively small carrier in the overall markets in which it competes—interstate motor coach passenger charter services in the New York City metropolitan area, northern New York, northern New Jersey, and northern Pennsylvania (the Service Area). Applicants assert that Aristocrat directly competes with many other passenger charter services in the Service Area, and that there is a competitive market within the Service Area due to a large number of charter service providers. Additionally, Applicants state that the charter operations offered by Aristocrat are geographically dispersed from most of the affiliated carriers of National Express and that there is little overlap in service areas among National Express, its affiliates, and Aristocrat.

On the basis of the application, the Board finds that the proposed acquisition of control is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our website at *WWW.STB.GOV.*

It is ordered:

[1] Parties must certify that its transaction involves carriers whose aggregate gross operating revenues exceed $2 million, as required under 49 CFR 1182.2(a)(5).

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective April 21, 2018, unless opposing comments are filed by April 20, 2018.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: February 28, 2018.

By the Board, Board Members Begeman and Miller.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–04537 Filed 3–5–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2018–0016]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on two information collections that will be expiring on May 31, 2018. PHMSA will request an extension with no change for the information collections identified by OMB control numbers 2137–0594 and 2137–0622.

DATES: Interested persons are invited to submit comments on or before May 7, 2018.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov website: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2018–0016, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement:

''Comments on PHMSA–2018–0016.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies two information collection requests that PHMSA will submit to OMB for renewal. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA will request a three-year term of approval for each information collection activity. PHMSA requests comments on the following information collections:

1. Title: Customer-Owned Service Lines.

OMB Control Number: 2137–0594.

Current Expiration Date: 5/31/2018.

Type of Request: Renewal of a currently approved information collection.

Abstract: This information collection request requires operators of gas service lines who do not maintain their customers' buried piping between service lines and building walls or gas utilization equipment to send written notices to their customers prescribing the proper maintenance of these gas lines and of the potential hazards of not properly maintaining these gas lines. Operators also must maintain records that include a copy of the notice currently in use and evidence that notices were sent to customers within the previous three years. The purpose of the collection is to provide the Office of Pipeline Safety with adequate information about how customer-owned service lines are being maintained to prevent the potential hazards associated with not maintaining the lines. Examples of sufficient notification include a prepared notification with the customer's bill.

Affected Public: State and local governments.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 550,000.

Estimated annual burden hours: 9,167.

Frequency of Collection: On occasion.

2. Title: Pipeline Safety: Public Awareness Program.

OMB Control Number: 2137–0622.

Type of Request: Renewal of a currently approved information collection.

Abstract: The Federal Pipeline Safety Regulations require each operator to develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's Recommended Practice RP 1162. Upon

request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate state agency. The operator's program documentation and evaluation results must also be available for periodic review by appropriate regulatory agencies (49 CFR 192.616 and 195.440). The purpose of the collection is to establish communications and provide information necessary to enhance public understanding of how pipelines function and the public's role in promoting pipeline safety. The timeframes for developing programs are 23 hours annually per operator.

Affected Public: Operators of Natural Gas and Hazardous Liquid Pipelines.

Estimated number of responses: 22,500.

Estimated annual burden hours: 517,480 hours.

Frequency of collection: On occasion.

Comments are invited on:

(a) The need for the renewal and revision of these collections of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on March 1, 2018, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2018–04519 Filed 3–5–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0136]

Pipeline Safety: Meeting of the Gas Pipeline Advisory Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a public meeting of the Technical Pipeline Safety Standards Committee, also known as the Gas Pipeline Advisory Committee (GPAC). The GPAC will meet to continue discussing topics and provisions for the proposed rule titled ''Safety of Gas Transmission and Gathering Pipelines.''

DATES: The committee will meet on Monday, March 26, 2018, from 1:00 p.m. to 5:00 p.m., Tuesday, March 27, 2018, from 8:30 a.m. to 5:00 p.m., and on Wednesday, March 28, 2018, from 8:30 a.m. to 5:00 p.m. ET. Members of the public who wish to participate are asked to register no later than March 16, 2018. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, may notify PHMSA by March 16, 2018. For additional information, see the **ADDRESSES** section.

ADDRESSES: The meeting will be held at a location yet to be determined in the Washington, DC Metropolitan area. The meeting location, agenda and any additional information will be published on the following pipeline advisory committee meeting and registration page at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=132.*

The meeting will not be webcast; however, presentations will be available on the meeting page and posted on the E-Gov website, *http://www.regulations.gov,* under docket number PHMSA–2016–0136 within 30 days following the meeting.

Public Participation

This meeting will be open to the public. Members of the public who wish to participate are asked to register at the meeting link above no later than March 16, 2018, prior to the meeting. Anyone wishing to make a statement on the topics discussed during the meeting should send an email to *cheryl.whetsel@dot.gov.* Each statement should not exceed two minutes.

Written comments: Persons who wish to submit written comments on the meeting may submit them to the docket in the following ways:

E-Gov website: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays.

Instructions: Identify the docket number PHMSA–2016–0136 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, consider reviewing DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or view the Privacy Notice at *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2016–0136.'' The docket clerk will date stamp the postcard prior to returning it to you via the U.S. mail.

Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Services for Individuals with Disabilities: The public meeting will be physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Cheryl Whetsel at *cheryl.whetsel@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the meetings, contact Cheryl Whetsel by phone at 202–366–

4431 or by email at *cheryl.whetsel@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Details and Agenda

The GPAC will be considering the proposed rule titled, ''Safety of Gas Transmission and Gathering Pipelines,'' which was published in the **Federal Register** on April 8, 2016, (81 FR 20722) and on the associated regulatory analysis. In the proposed rule, PHMSA proposed the following changes to Part 192:

- Require periodic assessments of pipelines in locations where persons are expected to be at risk that are not already covered under the integrity management (IM) program requirements.
- Modify the repair criteria, both inside and outside of high consequence areas.
- Require inspections of pipelines in areas affected by extreme weather, man-made and natural disasters, and other similar events.
- Provide additional specificity for in-line inspections, including explicit requirements to account for uncertainty of reported inspection data when evaluating in-line inspection data to identify anomalies.
- Expand integrity assessment methods to explicitly address guided wave ultrasonic inspection and excavation with direct in-situ examination.
- Provide clearer functional requirements for conducting risk assessments for IM, including addressing seismic risks.
- Expand the mandatory data collection and integration requirements for IM, including data validation and seismicity.
- Add requirements to address management of change.
- Repeal the use of API Recommended Practice 80 for gathering lines.
- Apply Type B requirements along with emergency requirements to newly regulated greater than 8-inch Type A gathering lines in Class 1 locations (GAO Recommendation 14–667).
- Extend the reporting requirements to all gathering lines.
- Expand requirements for corrosion protection to specify additional post-construction quality checks, and periodic operational and maintenance checks to address coating integrity, cathodic protection, and gas quality monitoring.
- Require operators to report maximum allowable operating pressure exceedances.
- Require safety features on in-line inspection tool launchers and receivers.
- Add certain types of roadways to the definition of ''identified sites'' (NTSB P–14–1).
- Address grandfathered pipe and pipe with inadequate records.

The GPAC meeting agenda will include a discussion and votes on the following topics as time permits:

- Issues not finalized during the March 2, 2018, meeting.
- MAOP Reconfirmation.
- Repair Criteria.
- Miscellaneous Issues and Definitions.

In addition, PHMSA will use this meeting to discuss the strategy for addressing the issues relative to gas gathering pipelines in the proposed rule.

II. Committee Background

The GPAC is a statutorily mandated advisory committee that advises PHMSA on proposed gas pipeline safety standards and their associated risk assessments. The committee is established in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, as amended) and 49 U.S.C. 60115. The committee consists of 15 members with membership evenly divided among federal and state governments, the regulated industry, and the general public. The committee advises PHMSA on the technical feasibility, reasonableness, cost-effectiveness, and practicability of each proposed pipeline safety standard.

Issued in Washington, DC, on March 1, 2018, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2018–04520 Filed 3–5–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2018–0031]

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Department of Transportation's (DOT) Office of the Secretary (OST) announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Department of Transportation (DOT) seeks to obtain OMB approval of a generic clearance to collect feedback on our service delivery.

DATES: Comments on this notice must be received by May 7, 2018.

ADDRESSES: Your comments should be identified by Docket No. DOT–OST–2018–0031 and may be submitted through one of the following methods:

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

All written comments will be available for public inspection on *Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Habib Azarsina, Office of the Chief Information Officer, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590, 202–366–1965 (Voice), 202–366–7870 (Fax), or *habib.azarsina@dot.gov*.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Department's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insight into customer or stakeholder perceptions, opinions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Department of Transportation and its

customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback or information collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population.

The Department will submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary.
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government.
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies.
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future.
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained.
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the Department (if released, the Department must indicate the qualitative nature of the information).

This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Type of Review: New.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Governments.

Estimated Number of Respondents: 6,000.

Estimated Annual Responses: 2,000.

Estimated Annual Burden Hours: 2,000 hours.

Frequency: One-time requirement.

Issued in Washington, DC, on February 27, 2018.

Habib Azarsina,

OST Privacy & PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–04504 Filed 3–5–18; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Notice.

SUMMARY: The charter for the Electronic Tax Administration Advisory Committee (ETAAC) was renewed on February 27, 2018, in accordance with the Federal Advisory Committee Act (FACA).

FOR FURTHER INFORMATION CONTACT: Michael Deneroff at (202) 317–6851, or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the charter for the Electronic Tax Administration Advisory Committee (ETAAC) was renewed on February 27, 2018, in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2.

The establishment and operation of the Electronic Tax Administration Advisory Committee (ETAAC) is required by the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98), Title II, Section 2001(b)(2).

The purpose of the ETAAC is to provide continued input into the development and implementation of the IRS organizational strategy for electronic tax administration. The ETAAC will provide an organized public forum for discussion of electronic tax administration issues such as prevention of identity theft and refund fraud in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. The ETAAC members will convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs and procedures, and suggest improvements.

Dated: February 28, 2018.

John Lipold,

ETAAC Designated Federal Official.

[FR Doc. 2018–04452 Filed 3–5–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the 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. The IRS is soliciting comments concerning guidance necessary to facilitate business electronic filing under section 1561, guidance necessary to facilitate business electronic filing and reduction, guidance necessary to facilitate business election filing; finalization of controlled group qualification rules, and limitations on the importation of net built-in Losses.

DATES: Written comments should be received on or before May 7, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Sara Covington, (202) 317–6038, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: T.D. 9304—Guidance Necessary to Facilitate Business Electronic Filing Under Section 1561, T.D. 9329—Guidance Necessary to Facilitate Business Electronic Filing and Burden Reduction, T.D. 9451—Guidance Necessary to Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules and T.D. 9759—Limitations on the Importation of Net Built-In Losses.

OMB Number: 1545–2019.

Regulation Project Numbers: TD 9304 (REG–161919–05), TD 9329 (REG134317–05), TD 9451 (REG–

161919–05) and TD 9759 (REG–161948–05).

Abstract: TD 9304, regulations provide guidance to taxpayers regarding how to allocate the amounts of tax benefit items under section 1561(a) amongst the component members of a controlled group of corporations which have an apportionment plan in effect. TD 9329, contains final regulations that simplify, clarify, or eliminate reporting burdens and also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. TD 9451, provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations. TD 9759, provide guidance for preventing the importation of loss when a corporation that is subject to U.S. income tax acquires loss property tax-free in certain transactions and the loss in the acquired property accrued outside the U.S. tax system by requiring the bases of the assets received to be equal to value.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 375,000.

Estimated Time per Respondent: 1 hr., 40 minutes.

Estimated Total Annual Burden Hours: 262,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 28, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–04450 Filed 3–5–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–FE, Form 8453–EMP, 8879–F and Form 8879–EMP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the 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. The IRS is soliciting comments concerning Form 8453–FE, U.S. Estate or Trust Declaration and Signature for an IRS e-file Return; Form 8453–EMP, Employment Tax Declaration for an IRS e-file Return; 8879–F, IRS e-file Signature Authorization for Form 1041 and Form 8879–EMP, IRS e-file Signature Authorization for Forms 940, 940–PR, 941, 941–PR, 941–SS, 943, 943–PR, 944, and 945.

DATES: Written comments should be received on or before May 7, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (202) 317–6038, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Estate of Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.

OMB Number: 1545–0967.

Form Number: 8453–FE.

Abstract: Form 8453–FE is used to authenticate the electronic Form 1041, U.S. Income Tax Return for Estates and Trusts, authorize the electronic filer to transmit via a third-party transmitter, and authorize an electronic fund withdrawal for payment of federal taxes owed.

Estimated Number of Respondents: 2,150,000.

Estimated Time per Response: 3 hours, 5 minutes.

Estimated Total Annual Burden Hours: 6,622,000.

Title: Employment Tax Declaration for an IRS e-file Return.

OMB Number: 1545–0967.

Form Numbers: 8453–EMP.

Abstract: Form 8453–EMP will be used to authenticate an electronic employment tax form, authorize the electronic return originator (ERO), if any, to transmit via a third-party transmitter; authorize the intermediate service provider (ISP) to transmit via a third-party transmitter if filed online (not using an ERO), and provide the taxpayer's consent to authorize an electronic funds withdrawal for payment of federal taxes owed.

Estimated Number of Respondents: 8,538,400.

Estimated Time per Response: 2 hours, 23 minutes.

Estimated Total Annual Burden Hours: 20,406,776.

Title: IRS e-file Signature Authorization for Forms 940, 940–PR, 941, 941–PR, 941–SS, 943, 943–PR, 944, and 945.

OMB Number: 1545–0967.

Form Number: 8879–EMP.

Abstract: Form 8879–EMP is used if a taxpayer and the electronic return originator (ERO) want to use a personal identification number (PIN) to electronically sign an electronic employment tax return. It is also used to authorize an electronic funds withdrawal, enable an ERO to file and sign electronically.

Estimated Number of Respondents: 8,538,400.

Estimated Time per Response: 2 hours, 53 minutes.

Estimated Total Annual Burden Hours: 24,590,592.

Title: IRS e-file Signature Authorization for Form 1041.

OMB Number: 1545–0967.

Form Number: 8879–F.

Abstract: Form 8879–F is used by an electronic return originator (ERO) when the fiduciary wants to use a personal identification number (PIN) to electronically sign an estate's or trust's

electronic income tax return, and if applicable consent to electronic funds withdrawal.

Estimated Number of Respondents: 1,774,081.

Estimated Time per Response: 1 hours, 13 minutes.

Estimated Total Annual Burden Hours: 2,164,379.

Current Actions: There are no changes to the Forms (8453–FE, 8453–EMP, 8879–EMP and 8879–F) in this collection.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or other for-profit organizations, and individuals, or households.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 26, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–04451 Filed 3–5–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Charter Renewal

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Charter for the Taxpayer Advocacy Panel Committee (TAP), has been renewed for a two-year period beginning February 27, 2018.

FOR FURTHER INFORMATION CONTACT: Ms.Terrie English, Taxpayer Advocacy Panel Director, at (214) 413–6522 or *TaxpayerAdvocacyPanel@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the approval of the Secretary of the Treasury to announce the charter renewal for the Taxpayer Advocacy Panel Committee (TAP). The TAP purpose is to provide a taxpayer perspective to the Internal Revenue Service (IRS) on critical tax administrative programs. The TAP shall provide listening opportunities for taxpayers to independently identify suggestions or comments to improve IRS customer service through grass roots outreach efforts, and have direct access to elevate improvement recommendations to the appropriate operating divisions. The TAP shall also serve as a focus group to provide suggestions and/or recommendations directly to IRS management on IRS strategic initiatives.

Dated: March 1, 2018.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2018–04548 Filed 3–5–18; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 83 Tuesday,
No. 44 March 6, 2018

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM16–23–000; AD16–20–000; Order No. 841]

Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA) to remove barriers to the participation of electric storage resources in the capacity, energy, and ancillary service markets operated by Regional Transmission Organizations (RTO) and Independent System Operators (ISO) (RTO/ISO markets).

DATES: This rule will become effective June 4, 2018.

FOR FURTHER INFORMATION CONTACT:

Michael Herbert (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8929, *michael.herbert@ferc.gov*.

Heidi Nielsen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8435, *heidi.nielsen@ferc.gov*.

SUPPLEMENTARY INFORMATION: This rule requires each RTO and ISO to revise its tariff to establish a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, facilitates their participation in the RTO/ISO markets. The participation model must (1) ensure that a resource using the participation model is eligible to provide all capacity, energy, and ancillary services that the resource is technically capable of providing in the RTO/ISO markets; (2) ensure that a resource using the participation model can be dispatched and can set the wholesale market clearing price as both a wholesale seller and wholesale buyer consistent with existing market rules that govern when a resource can set the wholesale price; (3) account for the physical and operational characteristics of electric storage resources through bidding parameters or other means; and (4) establish a minimum size requirement for participation in the RTO/ISO markets that does not exceed 100 kW. Additionally, each RTO/ISO must specify that the sale of electric energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets must be at the wholesale locational marginal price. We are taking this action pursuant to our legal authority under section 206 of the FPA to ensure that RTO/ISO tariffs are just and reasonable.

In the Notice of Proposed Rulemaking (NOPR), the Commission also proposed reforms related to distributed energy resource aggregations. While we continue to believe that removing barriers to distributed energy resource aggregations in the RTO/ISO markets is important, we have determined that more information is needed with respect to those proposals; therefore, we will not take final action on the proposed distributed energy resource aggregation reforms in this proceeding. Instead, the Commission will continue to explore the proposed distributed energy resource aggregation reforms under Docket No. RM18–9–000. To that end, concurrent with this Final Rule, a Notice of Technical Conference is being issued in Docket No. RM18–9–000 with questions related to the participation of distributed energy resource aggregations in the RTO/ISO markets so that we can gather additional information to help us determine what action to take on the distributed energy resource aggregation reforms proposed in the NOPR. All comments filed in response to the NOPR in this proceeding will be incorporated by reference into Docket No. RM18–9–000, and any further comments regarding the proposed distributed energy resource aggregation reforms, including comments regarding the technical conference, should be filed henceforth in Docket No. RM18–9–000.

Order No. 841

Final Rule

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Order No. 841

Final Rule

(Issued February 15, 2018)

I. Introduction

1. In this Final Rule, the Federal Energy Regulatory Commission (Commission) is adopting reforms to remove barriers to the participation of electric storage resources [1] in the Regional Transmission Organization and Independent System Operator markets (RTO/ISO markets).[2] For the reasons discussed below, we find that existing RTO/ISO market rules are unjust and unreasonable in light of barriers that they present to the participation of electric storage resources in the RTO/ISO markets, thereby reducing competition and failing to ensure just and reasonable rates. To help ensure that the RTO/ISO markets produce just and reasonable rates, pursuant to the Commission's legal authority under Federal Power Act (FPA) section 206,[3] the Commission modifies section 35.28 of its regulations [4] to require each RTO/ISO to revise its tariff to establish market rules that, recognizing the physical and operational characteristics of electric storage resources, facilitate their participation in the RTO/ISO markets, as discussed further below.

2. As the Commission explained in the NOPR, barriers to the participation of new technologies, such as many types of electric storage resources, in the RTO/ISO markets can emerge when the rules governing participation in those markets are designed for traditional resources and in effect limit the services that emerging technologies can provide.[5] For instance, electric storage resources in MISO that want to sell services other than frequency regulation would not have bidding parameters for electric storage resources available to them and it is unclear if or how they would be eligible to purchase energy from the MISO market.[6] Where such conditions exist, resources that are technically capable of providing services are precluded from competing with resources that are already participating in the RTO/ISO markets. This restriction on competition can reduce the efficiency of the RTO/ISO markets, potentially leading an RTO/ISO to dispatch more expensive resources to meet its system needs. By removing barriers to the participation of electric storage resources in the RTO/ISO markets, our actions in this Final Rule will enhance competition and, in turn, help to ensure that the RTO/ISO markets produce just and reasonable rates. Furthermore, due to electric storage resources' unique physical and operational characteristics—including their ability to both inject energy into the grid and receive energy from it—our actions here will help support the resilience of the bulk power system.

3. To address barriers to the participation of electric storage resources in the RTO/ISO markets, in this Final Rule, we require each RTO/ISO to revise its tariff to establish a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, facilitates their participation in the RTO/ISO markets. The RTOs/ISOs generally have a set of tariff provisions that apply to all market participants. In addition, the RTOs/ISOs create tariff provisions for specific types of resources when those resources have unique physical and operational characteristics or other attributes that warrant distinctive treatment from other market participants.[7] These distinct tariff provisions that are created for a particular type of resource are what we refer to in this Final Rule as a participation model. Accordingly, the participation model for electric storage resources that we require in this Final Rule is a set of tariff provisions that will help facilitate the participation of electric storage resources in the RTO/ISO markets.

4. For each RTO/ISO, the tariff provisions for the participation model for electric storage resources must (1) ensure that a resource using the participation model for electric storage resources is eligible to provide all capacity, energy, and ancillary services that it is technically capable of providing in the RTO/ISO markets; (2) ensure that a resource using the participation model for electric storage resources can be dispatched and can set the wholesale market clearing price as both a wholesale seller and wholesale buyer consistent with existing market rules that govern when a resource can set the wholesale price; (3) account for the physical and operational characteristics of electric storage resources through bidding parameters or other means; and (4) establish a minimum size requirement for participation in the RTO/ISO markets that does not exceed 100 kW. Additionally, each RTO/ISO must specify that the sale of electric energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets must be at the wholesale locational marginal price (LMP).

5. In the NOPR, the Commission also proposed reforms related to distributed energy resource aggregations.[8] While we continue to believe removing barriers to

[1] We define an electric storage resource as a resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid. *See infra* PP 29–36.

[2] For purposes of this Final Rule, we define RTO/ISO markets as the capacity, energy, and ancillary services markets operated by the RTOs and ISOs. We note that, in the Notice of Proposed Rulemaking (NOPR) in this proceeding, the Commission used ''organized wholesale electric markets'' and included that term in the proposed regulatory text. *See Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,718 (2016). We find that using ''RTO/ISO markets'' is sufficient to describe the markets at issue in this Final Rule and therefore will no longer use ''organized wholesale electric markets'' here or include that term in the regulatory text.

[3] 16 U.S.C. 824e (2012).

[4] 18 CFR 35.28 (2017).

[5] *See* NOPR at P 2.

[6] *See* MISO Data Request Response, Docket No. AD16–20–000, at 14, 17 (filed May 16, 2016) (MISO Data Request Response).

[7] As examples of RTO/ISO participation models, we point to Non-Generator Resources in CAISO, Alternative Technology Regulation Resources in ISO–NE, Generation Resources in MISO, Energy Limited Resources in NYISO, Economic Load Response resources in PJM, and Variable Energy Resources in SPP. *See* CAISO Data Request Response, Docket No. AD16–20–000, at 2 (filed May 16, 2016) (CAISO Data Request Response); ISO–NE Data Request Response, Docket No. AD16–20–000, at 3 (filed May 16, 2016) (ISO–NE Data Request Response); MISO Data Request Response at 4; NYISO Data Request Response, Docket No. AD16–20–000, at 2–3 (filed May 16, 2016) (NYISO Data Request Response); PJM Data Request Response, Docket No. AD16–20–000, at 5 (PJM Data Request Response); SPP Data Request Response, Docket No. AD16–20–000, at 3 (filed May 16, 2016) (SPP Data Request Response).

[8] *See* NOPR at PP 1–16, 103–158.

distributed energy resource aggregations in the RTO/ISO markets is important, we have determined that more information is needed with respect to those proposals; therefore, we will not take final action on the proposed distributed energy resource aggregation reforms in this proceeding.[9] Instead, the Commission will continue to explore the proposed distributed energy resource aggregation reforms under Docket No. RM18–9–000. To that end, concurrent with this Final Rule, a Notice of Technical Conference is being issued in Docket No. RM18–9–000 with questions related to the participation of distributed energy resource aggregations in the RTO/ISO markets so that we can gather additional information to help us determine what action to take on the distributed energy resource aggregation reforms proposed in the NOPR.[10] All comments filed in response to the NOPR in this proceeding will be incorporated by reference into Docket No. RM18–9–000, and any further comments regarding the proposed distributed energy resource aggregation reforms, including comments regarding the technical conference, should be filed henceforth in Docket No. RM18–9–000.[11]

6. As discussed further below, each RTO/ISO must file the tariff changes needed to implement the requirements of this Final Rule within 270 days of the publication date of this Final Rule in the **Federal Register**. We will allow each RTO/ISO a further 365 days from that date to implement the tariff provisions.

II. Background

7. Electric storage resources have unique physical and operational characteristics, namely their ability to both inject energy to the grid and receive energy from it. Certain electric storage resources, such as pumped-hydro resources,[12] have been participating in the RTO/ISO markets for many years, and, as the RTOs/ISOs have gained experience with these resources, the RTOs/ISOs have found new ways to facilitate the participation of pumped-hydro resources.[13] More recently, other types of electric storage resources, such as batteries and flywheels, are participating in the RTO/ISO markets.[14]

8. As the capabilities of electric storage resources improve and their costs decline to the point that they may be competitive with existing resources,[15] the Commission has become concerned that these resources face barriers that limit their participation in the RTO/ISO markets. To further examine this issue, the Commission hosted a panel to discuss electric storage resources at its November 19, 2015 open meeting. Subsequently, on April 11, 2016, Commission staff issued data requests to each of the six RTOs/ISOs seeking information about the rules in the RTO/ISO markets that affect the participation of electric storage resources.[16] Concurrently, Commission staff issued a request for comments, seeking information from interested persons on whether barriers exist to the participation of electric storage resources in the RTO/ISO markets that may potentially lead to unjust and unreasonable wholesale rates. In addition to the responses from the RTOs/ISOs, Commission staff received 44 comments.

9. On November 17, 2016, the Commission issued the NOPR in this proceeding, proposing to amend its regulations under the FPA to remove barriers to the participation of electric storage resources in the RTO/ISO markets. The Commission received 109 comments on the NOPR proposals from a diverse set of stakeholders.[17]

III. Need for Reform

10. In the NOPR, the Commission stated that its proposal in this proceeding is a continuation of efforts pursuant to its authority under the FPA to ensure that the RTO/ISO tariffs and market rules produce just and reasonable rates, terms and conditions of service.[18] Specifically, the Commission noted that it has observed that market rules designed for traditional resources can create barriers to entry for emerging technologies. The Commission explained that it was proposing to require the RTOs/ISOs to address barriers to the participation of electric storage resources in the RTO/ISO markets.[19]

11. The Commission acknowledged in the NOPR that electric storage resources are already providing energy and ancillary services in some RTO/ISO markets.[20] However, the Commission explained that these resources must often use existing participation models designed for traditional generation or load resources that do not recognize electric storage resources' unique physical and operational characteristics and their capability to provide capacity, energy, and ancillary services in the RTO/ISO markets.[21] Even where the RTOs/ISOs have established distinct participation models for electric storage resources, the Commission stated that those models limit the services that electric storage resources may provide[22]

[9] We clarify that the reforms adopted here regarding electric storage resources represent final agency action subject to rehearing and appeal.

[10] Notice of Technical Conference, Docket No. RM18–9–000 (Feb. 15, 2018).

[11] Further comments regarding the proposed distributed energy resource aggregation reforms should no longer be filed in Docket No. RM16–23–000.

[12] Pumped-hydro storage projects move water between two reservoirs located at different elevations (*i.e.,* an upper and lower reservoir) to store energy and generate electricity. *See https://www.ferc.gov/industries/hydropower/gen-info/licensing/pump-storage.asp.*

[13] *See, e.g., ISO New England Inc.,* Docket Nos. ER16–954–000 and ER16–954–001 (2016) (delegated letter order).

[14] *Midwest Indep. Trans. Sys. Operator, Inc.,* 129 FERC ¶ 61,303 (2009); NYISO Services Tariff, section 2.12 (defining ''Limited Energy Storage Resource'' as ''[a] Generator authorized to offer Regulation Service only and characterized by limited Energy storage, that is, the inability to sustain continuous operation at maximum Energy withdrawal or maximum Energy injection for a minimum period of one hour''); PJM Operating Agreement, Schedule 1, section 1.3 (defining an ''Energy Storage Resource'' as ''[a] flywheel or battery storage facility solely used for short term storage and injection of energy at a later time to participate in the PJM energy and/or ancillary services markets as a Market Seller.'')

[15] *See, e.g.,* Lazard's Levelized Cost of Storage Analysis—Version 3.0 (Nov. 2017), available at *https://www.lazard.com/media/450338/lazard-levelized-cost-of-storage-version-30.pdf.*

[16] Specifically, Commission staff requested information related to (1) the eligibility of electric storage resources to participate in the capacity, energy, and ancillary service markets in the RTOs/ISOs; (2) the technical qualification and performance requirements for market participants; (3) the bidding parameters for different types of resources; (4) opportunities for distribution-level and aggregated electric storage resources to participate in the RTO/ISO markets; (5) the treatment of electric storage resources when they are receiving electricity for later injection to the grid; and (6) any forthcoming rule changes or other stakeholder initiatives that may affect the participation of electric storage resources in the RTO/ISO markets.

[17] *See* Appendix A for a list of entities that submitted comments and the shortened names used throughout this Final Rule to describe those entities.

[18] *See* NOPR at P 9 (citing *Integration of Variable Energy Resources,* Order No. 764, FERC Stats. & Regs. ¶ 31,331, *order on reh'g,* Order No. 764–A, 141 FERC ¶ 61,232 (2012), *order on reh'g,* Order No. 764–B, 144 FERC ¶ 61,222 (2013); *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g,* Order No. 719–A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g,* Order No. 719–B, 129 FERC ¶ 61,252 (2009)).

[19] *See id.* P 10.

[20] *See id.* P 11.

[21] *See id.* PP 11–12.

[22] *See id.* P 11 *(citing Midwest Indep. Trans. Sys. Operator, Inc.,* 129 FERC ¶ 61,303 at PP 40, 64; MISO FERC Electric Tariff, section 1.S (Stored Energy Resources); NYISO Services Tariff, section 2.12 (defining Limited Energy Storage Resource as a ''Generator authorized to offer Regulation Service only and characterized by limited Energy storage, that is, the inability to sustain continuous operation at maximum Energy withdrawal or maximum Energy injection for a minimum period of one hour.'')). The Commission noted that NYISO limits

Continued

or are designed for electric storage resources with very specific characteristics (such as pumped-hydro facilities or resources with a maximum run-time that is less than one hour). The Commission also noted that existing RTO/ISO tariffs generally limit smaller electric storage resources to participating in the RTO/ISO markets as demand response resources, which can restrict these electric storage resources' ability to employ their full operational range, prohibit them from injecting power onto the grid, and preclude them from providing certain services that they are technically capable of providing (such as operating reserves).

12. Thus, the Commission preliminarily found that current tariffs that do not recognize the operational characteristics of electric storage resources limit the participation of electric storage resources in the RTO/ISO markets and result in inefficient use of these resources.[23] As a result, the Commission stated that the RTOs/ISOs may not efficiently dispatch resources, including electric storage resources, thereby reducing competition in the RTO/ISO markets. The Commission stated that limiting the services an electric storage resource is eligible to provide and limiting the efficiency with which it is dispatched to provide services could also inhibit developers' incentives to design their electric storage resources to provide all capacity, energy, and ancillary services that these resources could otherwise provide, further reducing competition in the RTO/ISO markets. The Commission stated that effective integration of electric storage resources into the RTO/ISO markets would enhance competition and, in turn, help to ensure that these markets produce just and reasonable rates.

1. Comments

13. In response to the NOPR, commenters elaborate on the degree to which, and how, existing RTO/ISO market rules pose barriers to the participation of electric storage resources in the RTO/ISO markets and the impact of those barriers.[24] For example, Advanced Energy Economy and GridWise state that RTO/ISO tariffs often lack participation models that allow for participation by advanced energy technologies, apply unnecessary and burdensome technical requirements originally developed for traditional generation technologies, or impose performance requirements that arbitrarily exclude advanced technologies.

14. Alevo, Eagle Crest, Massachusetts State Entities, and NYISO Indicated Transmission Owners claim that RTO/ISO market rules hinder the full participation of electric storage resources by failing to recognize these resources' unique operating characteristics and requiring them to use market rules designed for other types of resources, such as generation.[25] For example, Massachusetts State Entities explain that, in ISO–NE, electric storage resources have to use participation models for pumped-hydro resources, which do not take advantage of the flexibility of newer electric storage technologies.

15. A few commenters emphasize that making market rules technology neutral will remove barriers to entry for electric storage resources. For example, several commenters argue that market design should be technology neutral to ensure equal access to markets [26] and to reduce long-term investment risk associated with developing electric storage resources.[27] Microgrid Resources Coalition shares the Commission's concerns that the varying participation models among RTOs/ISOs limit market opportunities for new technologies.[28]

16. While commenters addressed concerns with specific aspects of the NOPR proposals, most commenters, including the RTOs/ISOs, generally agree that the Commission should act to remove barriers to the participation of electric storage resources in the RTO/ISO markets.[29] Further, commenters state that allowing electric storage resources to fully participate in the RTO/ISO markets could create more reliable and resilient electric markets and could provide energy security, fuel diversity, and valuable fast-responding capability to the RTO/ISO markets.[30] CAISO explains that there is no reason to exclude an electric storage resource from providing an existing wholesale electric service if that resource has the technical capabilities required to do so.[31]

17. Some commenters note that implementation of the reforms proposed in the NOPR could improve competition and/or efficiency in the RTO/ISO markets and provide other system benefits.[32] More specifically, Energy Storage Association contends that the benefits from participation of electric storage resources in the RTO/ISO markets include avoided capacity payments, lower peak prices, reduced need for traditional generators to cycle, facilitating effective ramp management, avoiding generator start-up and shut-down costs, and absorbing over-generation. Dominion argues that recognizing the characteristics of electric storage resources can lead to more efficient dispatch and utilization of resources. In addition, City of New York, Energy Storage Association, NYISO, Sunrun, and Tesla/SolarCity suggest that the NOPR reforms will lead to lower costs for consumers,[33] while Silicon Valley Leadership Group and Starwood Energy state that use of electric storage resources will reduce greenhouse gas emissions.[34] Institute for Policy Integrity explains that new storage technologies can reduce dependence on expensive transmission infrastructure.[35] Commenters also argue that electric storage resources can improve grid ''resiliency'' in the event of a significant weather emergency.[36]

18. EPSA/PJM Power Providers argue that, because there are many

Limited Energy Storage Resources to providing regulation service only and Demand Side Resources and Generators that can sustain operation for longer than one hour are not eligible to be Limited Energy Storage Resources. *Id.* (citing NYISO Data Request Response at 3–4).

[23] *See id.* P 12.

[24] *See* Advanced Energy Economy Comments at 14–15; GridWise Comments at 3.

[25] *See* Alevo Comments at 4–6; Eagle Crest Comments at 5; Massachusetts State Entities Comments at 13–14; NYISO Indicated Transmission Owners Comments at 3.

[26] *See* AES Companies Comments at 14; Alevo Comments at 7–8; EEI Comments at 6–7; Efficient Holdings Comments at 2, 5; ELCON Comments at 2–4; GridWise Comments at 3; Tesla/SolarCity Comments at 10–11.

[27] *See* Massachusetts State Entities Comments at 9.

[28] *See* Microgrid Resources Coalition Comments at 2.

[29] *See, e.g.,* Advanced Energy Economy Comments at 1, 3–6, 8–17; American Petroleum Institute Comments at 2; APPA/NRECA Comments at 1–2; EEI Comments at 2–4; EPRI Comments at 2; EPSA/PJM Power Providers Comments at 3, 6–9, 11–12; Energy Storage Association Comments at 3–5; IRC Comments at 2; NARUC Comments at 3; National Hydropower Association Comments at 2–4; TAPS Comments at 1.

[30] *See, e.g.,* IRC Comments at 2; ISO–NE Comments at 1, 4; NYISO Comments at 2; SPP Comments at 1–2.

[31] *See* CAISO Comments at 3.

[32] *See, e.g.,* Dominion Comments at 4–5; Energy Storage Association Comments at 4 (citing Massachusetts Department of Energy Resources, *State-of-Charge: Massachusetts Energy Storage Initiative Study* (Sept. 2016), available at *http://www.mass.gov/eea/docs/doer/state-of-charge-report.pdf*); Imperial Irrigation District Comments at 6; IRC Comments at 2; ISO–NE Comments at 1; Starwood Energy Comments at 3; TechNet Comments at 1; Telsa/SolarCity Comments at 1.

[33] *See* City of New York Comments at 4; Energy Storage Association Comments at 4; NYISO Comments at 2; Sunrun Comments at 1; Tesla/SolarCity Comments at 2, 5.

[34] *See* Silicon Valley Leadership Group Comments at 1; Starwood Energy Comments at 3.

[35] *See* Institute for Policy Integrity Comments at 3.

[36] *See* Advanced Energy Economy Comments at 3; Institute for Policy Integrity Comments at 3; IRC Comments at 2; Massachusetts State Entities Comments at 17; SPP Comments at 2.

unanswered questions (such as the cost of software changes), the Commission should not develop generic requirements for the RTOs/ISOs in a final rule without a clear record that such specification will not constrain any particular region.[37]

2. Commission Determination

19. For the reasons discussed below, we find that existing RTO/ISO market rules are unjust and unreasonable in light of barriers that they present to the participation of electric storage resources in the RTO/ISO markets, thereby reducing competition and failing to ensure just and reasonable rates. Specifically, RTO/ISO market rules that limit the services that electric storage resources are technically capable of providing may create barriers to the participation of electric storage resources in the RTO/ISO markets. Barriers also exist in the RTOs/ISOs that have already adopted market rules that provide for the participation of electric storage resources because these participation models were often designed for electric storage resources with very specific characteristics (such as pumped-hydro resources or other electric storage resources with a maximum run-time that is less than one hour), thus limiting electric storage resources from providing the full range of services they are technically capable of providing.

20. These barriers adversely affect competition in the RTO/ISO markets by limiting the participation of resources that are technically capable of providing services in those markets. Moreover, these barriers reduce competition and market efficiency by inhibiting developers' incentives to design their electric storage resources to provide all capacity, energy, and ancillary services that these resources could otherwise provide. We find that better integration of electric storage resources into the RTO/ISO markets is necessary to enhance competition and, in turn, help to ensure that these markets produce just and reasonable rates. Accordingly, as discussed further below, we require each RTO/ISO to revise its tariffs to remove barriers to the participation of electric storage resources in the RTO/ISO markets.

21. While we agree with EPSA/PJM Power Providers that it is necessary to provide each RTO/ISO with flexibility in the manner it incorporates certain aspects of these reforms into its tariff as explained below, we find that the record in this proceeding provides sufficient basis for requiring the generic requirements discussed herein.

IV. Discussion

A. Definition of Electric Storage Resource

1. NOPR Proposal

22. For the purpose of defining the set of resources for which an RTO/ISO must create a participation model, in the NOPR, the Commission proposed to define an electric storage resource as ''a resource capable of receiving electric energy from the grid and storing it for later injection of electricity back to the grid regardless of where the resource is located on the electrical system.'' [38] The Commission stated that these resources include all types of electric storage technologies, regardless of their size, storage medium (*e.g.,* batteries, flywheels, compressed air, pumped-hydro, etc.), or whether the resource is located on the interstate grid or on a distribution system.

2. Comments

23. The comments received on the proposed definition of electric storage resources generally ask the Commission to modify or clarify the definition but disagree on how the Commission should do so. Some commenters ask the Commission to modify or clarify the definition of electric storage resource to broaden its application. For example, they raise concerns with how the Commission's proposed definition treats behind-the-meter resources. First, Energy Storage Association argues that the NOPR definition only applies to resources connected directly to the transmission or distribution system and, therefore, asks the Commission to extend these reforms to behind-the-meter electric storage resources that net inject energy to the grid.[39] Second, some commenters ask that the Commission extend the NOPR reforms to behind-the-meter resources that do not inject power back to the grid.[40] Advanced Microgrid Solutions and Stem note that the definition of an electric storage resource in the NOPR implies that all such resources will inject electricity back to the grid. However, Advanced Microgrid Solutions and Stem argue that behind-the-meter electric storage resources can provide value to the grid even when they do not inject electricity to the grid. Advanced Microgrid Solutions and Stem thus ask the Commission to clarify that behind-the-meter electric storage resources that do not inject electricity back to the grid can use the participation model for electric storage resources to participate in the RTO/ISO markets.

24. Advanced Energy Economy expresses a related concern, arguing that the Commission's proposed definition of an electric storage resource does not capture all energy storage technologies, such as thermal and kinetic storage; storage co-located with generation resources (including variable resources) on the transmission grid; and other types of technologies that can perform an energy storage function but may not physically export electricity to the wholesale grid. Advanced Energy Economy suggests that the Commission remedy this concern by revising the definition of an electric storage resource to include all storage technologies that are capable of converting electric energy into stored energy and later supplying electric energy (either back to the grid or to a host customer or site).

25. In contrast, other commenters recommend that the Commission narrow its proposed definition of an electric storage resource.[41] Robert Borlick urges the Commission to limit the application of its proposed reforms to those electric storage resources that directly connect to transmission systems controlled by RTOs/ISOs, citing potential adverse impacts of distribution-interconnected resources on power systems. Xcel Energy Services also suggests that the proposed reforms should apply only to electric storage resources connected to the transmission system. While TAPS strongly supports facilitating the participation of transmission-interconnected storage and believes that distribution-interconnected storage could yield benefits to the RTO/ISO markets, it cautions that distribution-interconnected storage should comply with distribution utility tariffs and rates for delivery of energy between the transmission system and the resource's point of interconnection to the distribution system (including provisions related to losses and other terms and conditions of service), both for the resource's sales to the RTO/ISO markets *and* the resource's purchases of energy from the RTO/ISO markets.[42]

26. Several commenters address the implications of the proposed definition for state and federal jurisdiction. Connecticut State Entities state that they welcome the Commission's efforts to

[37] EPSA/PJM Power Providers Comments at 12–13.

[38] *See* NOPR at P 10.

[39] *See* Energy Storage Association Comments at 7, 21–22.

[40] *See* Advanced Energy Economy Comments at 18–20; Advanced Microgrid Solutions Comments at 10; Stem Comments at 6.

[41] *See* Robert Borlick Comments at 2; Xcel Energy Services Comments at 3–4.

[42] *See* TAPS Comments at 28–29.

fully provide resources access to wholesale electric markets without changing existing state and federal jurisdiction.[43] Some commenters express concerns regarding the jurisdictional implications of including electric storage resources connected at the distribution level in the definition of an electric storage resource.[44] NARUC asserts that state authority must remain intact under any final rule. Organization of MISO States supports the NOPR on the condition that state and other regulatory jurisdiction is maintained. APPA/NRECA, Maryland and New Jersey Commissions, MISO Transmission Owners, and NYISO Indicated Transmission Owners state that RTO/ISO market rules and Commission policy must maintain the ability of state and local authorities to regulate existing and future electric storage resources that interconnect at the distribution level or behind a customer meter and provide retail- or distribution-level services without the Commission considering such action as a barrier to participation in wholesale markets. This request includes Commission confirmation of state jurisdiction over matters such as distribution system design, interconnection to the distribution system, distribution system operations, distribution power quality, the ability of electric storage resources to participate in programs at the distribution level, and distribution system costs. APPA/NRECA believe that the NOPR confines the proposed reforms to the RTO/ISO markets and urge the Commission to reject requests to expand the scope of this final rule beyond that limited scope.

27. DTE Electric/Consumers Energy and MISO Transmission Owners assert that the Commission should allow states to decide whether electric storage resources in their state that are located on the distribution system or behind a retail meter are permitted to participate in the RTO/ISO markets through the electric storage resource participation model proposed in the NOPR.[45] Massachusetts Municipal Electric asks the Commission to clarify that its proposed reforms will enable, but not compel, electric storage resources located behind the meter to participate in the RTO/ISO markets.[46]

28. In contrast, Genbright argues that the Commission must not only assert primary jurisdiction over electric storage resources' sales of services in the RTO/ISO markets but also ensure that RTOs/ISOs do not rely on *ad hoc* interpretations of retail rules and regulations to erect barriers to the participation of electric storage resources in those markets.[47]

3. Commission Determination

29. Consistent with the NOPR proposal, in this Final Rule, we revise section 35.38(b) of the Commission's regulations to define an electric storage resource as ''a resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid.'' We find that removing the phrase ''regardless of where the resource is located on the electrical system'' from the NOPR proposal and instead clarifying where an electric storage resources may be located does not change the applicability of the definition and will also provide a more adaptable definition for other Commission actions.[48] We clarify that this definition is intended to cover electric storage resources capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid, regardless of their storage medium (*e.g.,* batteries, flywheels, compressed air, and pumped-hydro). Additionally, consistent with the NOPR proposal, we clarify that electric storage resources located on the interstate transmission system, on a distribution system, or behind the meter fall under this definition, subject to the additional clarifications provided below. By including all electric storage technologies, and by allowing resources that are interconnected to the transmission system, distribution system, or behind the meter to use the participation model for electric storage resources, we are ensuring that the market rules will not be designed for any particular electric storage technology.

30. We observe that an electric storage resource that injects electric energy back to the grid for purposes of participating in an RTO/ISO market engages in a sale of electric energy at wholesale in interstate commerce.[49] As a result, such an electric storage resource must fulfill certain responsibilities set forth in the FPA and the Commission's rules and regulations.[50]

31. We disagree with commenters who assert that the definition of an electric storage resource should be limited to those electric storage resources that are interconnected to the transmission system. Electric storage resources interconnected to the distribution system are already participating in the RTO/ISO markets,[51] and they should continue to be able to do so. Such a limitation also would be inconsistent with the participation of other types of resources because various types of traditional generation and demand-side resources that are not connected directly to the transmission system currently participate in the RTO/ISO markets.

32. Some commenters argue that the Commission should broaden its definition of an electric storage resource to apply to behind-the-meter resources that do not inject electricity onto the grid. We decline to do so. Through this Final Rule, we seek to ensure that RTO/ISO market rules account for the unique physical and operational characteristic of electric storage resources, namely their bidirectional capability to both inject energy to the grid and receive energy from it. Expanding the definition of an electric storage resource to include behind-the-meter resources that do not inject electric energy onto the grid would not advance this purpose because they would not be injecting electric energy back to the grid. In addition, we have previously found that behind-the-meter resources that do not inject electric energy onto the grid are considered demand response.[52] There

[43] *See* Connecticut State Entities Comments at 7.

[44] *See* APPA/NRECA Comments at 3–4; Maryland and New Jersey Commissions Comments at 3; Massachusetts State Entities Comments at 9; MISO Transmission Owners Comments at 6; NARUC Comments at 4; NYISO Indicated Transmission Owners Comments at 4; Organization of MISO States Comments at 1–2.

[45] *See* DTE Electric/Consumers Energy Comments at 7; MISO Transmission Owners Comments at 4, 7.

[46] *See* Massachusetts Municipal Electric Comments at 2.

[47] *See* Genbright Comments at 3–4.

[48] *See, e.g., Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response,* Order No. 842, 162 FERC ¶ 61,128 (2018), Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,718 (2016); Notice of Inquiry, FERC Stats. & Regs. ¶ 35,576.

[49] We note that injections of electric energy back to the grid do not necessarily trigger the Commission's jurisdiction. *See Sun Edison LLC,* 129 FERC ¶ 61,146 (2009), *reh'g granted on other grounds,* 131 FERC ¶ 61,213 (2010) (the Commission's jurisdiction would arise only when a facility operating under a state net metering program produces more power than it consumes over the relevant netting period); *MidAmerican Energy Co.,* 94 FERC ¶ 61,340 (2001).

[50] Examples of such responsibilities include filing rates under FPA section 205 (potentially including obtaining market-based rate authority); submitting FPA sections 203 and 204 filings related to corporate mergers and other activities; and fulfilling FPA section 301 accounting obligations and FPA section 305(b) interlocking directorate obligations. *See* 16 U.S.C. 824b, 824c, 824d, 825, 825d(b).

[51] *See, e.g., PJM Interconnection LLC,* 149 FERC ¶ 61,185 (2014), *order on reh'g,* 151 FERC ¶ 61,231 (2015).

[52] *See ISO New England Inc.,* 138 FERC ¶ 61,042, at PP 76–86, *reh'g denied,* 139 FERC ¶ 61,116, at PP 10–12, 26–31 (2012).

are existing participation models for demand response that already have well-established rules that are in some cases unique to demand response and we do not want the requirements of this Final Rule to disrupt or otherwise conflict with those rules.[53]

33. We also clarify that, by ''capable of . . . later injection of electric energy back to the grid,'' we mean that the electric storage resource is both physically designed and configured to inject electric energy back onto the grid and, as relevant, is contractually permitted to do so (*e.g.,* per the interconnection agreement between an electric storage resource that is interconnected on a distribution system or behind-the-meter with the distribution utility to which it is interconnected). Consequently, the definition of an electric storage resource excludes a resource that is either (1) physically incapable of injecting electric energy back onto the grid due to its design or configuration or (2) contractually barred from injecting electric energy back onto the grid.

34. While we decline in this Final Rule to expand the definition of an electric storage resource to include behind-the-meter resources that do not inject electric energy onto the grid, we note that the definition in this Final Rule establishes the minimum set of resources that each RTO/ISO must consider when developing an electric storage resource participation model to comply with this Final Rule. It does not preclude any RTO/ISO from proposing a broader definition for electric storage resources through a separate FPA section 205 filing.[54]

35. Further, this Final Rule requires each RTO/ISO to implement market rules applicable to electric storage resources, as defined herein, that voluntarily seek to participate in the RTO/ISO markets; this Final Rule does not require electric storage resources to participate in those markets. The Commission has exclusive jurisdiction over the wholesale markets and the criteria for participation in those markets, including the wholesale market rules for participation of resources connected at or below distribution-level voltages.[55] We also understand that numerous resources connected to the distribution system participate in the RTO/ISO markets today.[56] Under these circumstances, we are not persuaded to grant the MISO Transmission Owners' and DTE Electric/Consumers Energy's request that the Commission allow states to decide whether electric storage resources in their state that are located behind a retail meter or on the distribution system are permitted to participate in the RTO/ISO markets through the electric storage resource participation model.

36. That said, we emphasize the ongoing, vital role of the states with respect to the development and operation of electric storage resources. Such state responsibilities include, among other things, retail services and matters related to the distribution system, including design, operations, power quality, reliability, and system costs. We add that nothing in this Final Rule is intended to affect or implicate the responsibilities of distribution utilities to maintain the safety and the reliability of the distribution system or their use of electric storage resources on their systems.

B. Creation of a Participation Model for Electric Storage Resources

1. Participation Model for Electric Storage Resources

a. NOPR Proposal

37. In the NOPR, the Commission proposed to require each RTO/ISO to revise its tariff to include a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, facilitates their participation in RTO/ISO markets.[57] The Commission further proposed that the electric storage resource participation model satisfy certain requirements to accommodate the physical and operational characteristics of electric storage resources.[58]

b. Comments

38. Many commenters support the Commission's proposal to require each RTO/ISO to create a participation model for electric storage resources.[59] These commenters agree that there is a need to recognize the physical, technical and operational characteristics of electric storage resources,[60] remove artificial barriers to electric storage resource participation in the RTO/ISO markets,[61] and allow electric storage resources to be adequately and fairly compensated for the services they provide.[62] Commenters argue that these reforms will provide system and consumer benefits[63] (including increased competition and lower costs to consumers,[64] efficiency,[65] and system reliability benefits[66]) and will improve air quality.[67]

39. Some commenters, however, condition their support for the Commission's proposed electric storage resource participation model.[68] For example, EEI expresses support contingent on the proposed

[53] Participation by demand response resources in an RTO/ISO market does not involve a sale of electric energy at wholesale in interstate commerce. *See EnergyConnect, Inc.,* 130 FERC ¶ 61,031, at P 30 (2010); *see also FERC* v. *Elec. Power Supply Ass'n,* 136 S.Ct. 760 (2016) (RTO/ISO rules governing participation of demand response resources in the RTO/ISO markets are practices that directly affect rates in those markets.).

[54] *See* 16 U.S.C. 824d. We acknowledge that the definition of an electric storage resource that we adopt in this Final Rule may differ from existing, Commission-accepted practices. For example, in CAISO, a stand-alone electric storage resource or an aggregation of behind-the-meter electric storage resources that cannot or does not inject electric energy back to the grid is able to use CAISO's participation model for electric storage resources (the Non-Generator Resource model). *See California Indep. Sys. Operator Corp.,* 132 FERC ¶ 61,211 (2010). This Final Rule does not require each RTO/ISO to limit the applicability of its existing participation models to electric storage resources as they are defined in this Final Rule or prevent them from arguing on compliance why its Commission-accepted tariff complies with the requirements of this Final Rule.

[55] *See FERC* v. *Elec. Power Supply Ass'n,* 136 S.Ct. 760 (2016); *see also Advanced Energy Economy,* 161 FERC ¶ 61,245, at P 59–60 (2017).

[56] *See, e.g., Southern California Edison Co.,* Docket No. ER10–1356–000 (2010) (accepting Southern California Edison's Wholesale Distribution Access Tariff); *PJM Interconnection, L.L.C.,* Docket No. ER11–3148–000 (2011) (delegated letter order) (accepting Wholesale Market Participation Agreement among PJM, CleanLight Power, L.L.C. and Public Service Electric and Gas Company); PJM Manual 14C, § 1.3 (discussing requirements of Wholesale Market Participation Agreements).

[57] *See* NOPR at P 26.

[58] *See id.* P 28.

[59] *See, e.g.,* Advanced Microgrid Solutions Comments at 3; AES Companies Comments at 5, 14; Brookfield Renewable Comments at 2; CAISO Comments at 3–4; EEI Comments at 3–4; Energy Storage Association Comments at 1, 4–5; EPSA/PJM Power Providers Comments at 4, 11; Massachusetts State Entities Comments at 13–14; NYISO Comments at 5.

[60] *See, e.g.,* Advanced Energy Economy Comments at 22–24; AES Companies Comments at 3; APPA/NRECA Comments at 11; CAISO Comments at 3; City of New York Comments at 3; Research Scientists Comments at 2.

[61] *See, e.g.,* City of New York Comments at 3; Energy Storage Association Comments at 5; Exelon Comments at 4; NYISO Indicated Transmission Owners Comments at 2–3.

[62] *See, e.g.,* Dominion Comments at 4–5; Massachusetts Municipal Electric Comments at 2; NYISO Indicated Transmission Owners Comments at 2–3.

[63] *See, e.g.,* Alevo Comments at 4–6; NESCOE Comments at 3; Ohio Commission Comments at 4.

[64] *See, e.g.,* Beacon Power Comments at 2, 6; City of New York Comments at 3–4; EPRI Comments at 2; NESCOE Comments at 3; Union of Concerned Scientists Comments at 7.

[65] *See* EPRI Comments at 8–9; NESCOE Comments at 5.

[66] *See, e.g.,* EPRI Comments at 2; Institute for Policy Integrity Comments at 4; NESCOE Comments at 5.

[67] *See* City of New York Comments at 3–4.

[68] *See, e.g.,* EEI Comments at 4–6; EPSA/PJM Power Providers Comments at 3–4; Exelon Comments at 5–6, 12; Xcel Energy Services Comments at 14–15.

participation model ensuring adequate reliability, not causing undue discrimination to other market participants, and addressing cost allocation and double recovery. Similarly, Exelon emphasizes that the Commission should avoid approving tariff changes that may have a detrimental effect on reliability, safety, or markets. Xcel Energy Services supports the participation model if it is feasible and cost-effective. According to EPSA/PJM Power Providers, any initiatives or rules to facilitate participation of electric storage resources in the RTO/ISO markets must be compatible with, and support, the extensive system of conventional resources that make up the backbone of the bulk power system and implementation of a participation model for electric storage resources must preserve efficient operational and investment signals for all resources.

40. Whether or not they support the Commission's proposal to require each RTO/ISO to establish a participation model for electric storage resources, many commenters caution against granting undue preference in the markets to electric storage resources.[69] For example, Independent Energy Producers Association argues that the electric storage resource participation model should impose comparable performance obligations (such as penalties for non-performance, schedule deviations, and replacement obligations) to those required of other resources participating in the RTO/ISO markets. Similarly, several commenters contend that the Commission should focus on the technical requirements of the electric system and remain neutral about how or from which technology services are provided.[70] For example, Massachusetts State Entities urge the Commission to ensure that participation is not limited based on type, vintage, ownership, business model, or other criteria unrelated to how well a particular resource satisfies the physical and operational parameters of a defined electric market or service.

41. Commenters also address whether the Commission should provide regional flexibility for each RTO/ISO to comply with the rule by proposing requirements that accommodate electric storage resources that comport to their unique circumstances. Several commenters contend that regional flexibility is appropriate, with EEI, EPSA/PJM Power Providers, and Exelon noting that the proposed electric storage resource participation model provides such flexibility.[71] Connecticut State Entities suggest that the Commission should create threshold standards for all RTOs/ISOs but allow regional variations for cost allocation and rate design.[72]

42. Other commenters argue that the Commission should defer to the RTOs/ISOs to develop the detailed participation rules that take into account the unique needs of each market.[73]

43. For example, ISO–NE urges the Commission to avoid a one-size-fits-all approach. Specifically, ISO–NE is concerned that (1) the focus on participation models and market participant types rather than on services is inconsistent with its core market design objective of technology neutrality and (2) the rulemaking could require ISO–NE to fundamentally change this technology-neutral approach to the detriment of its markets. ISO–NE argues that adopting participation models could allow resource owners to engage in participation model ''shopping,'' a form of tariff rule arbitrage.

44. Given these concerns, ISO–NE asks the Commission to provide only general guidance to RTOs/ISOs, requiring them to (1) examine the requirements associated with providing each wholesale service in their markets and (2) assess whether and how to revise those requirements to better accommodate the participation of electric storage resources. ISO–NE also asks the Commission to clarify that RTOs/ISOs are not required to adopt a specific participation model construct but instead may propose to incorporate the participation of electric storage resources in their markets in a manner consistent with the RTO's/ISO's existing market constructs.

45. Similarly, while NESCOE supports the intent of the NOPR, it observes that further information is required on whether each RTO/ISO could modify its existing participation model(s) to address any barrier to the participation of electric storage resources in the RTO/ISO markets, rather than being required to create a new participation model.[74] TeMix also questions the need for a new participation model for electric storage resources, arguing that such a participation model will only add to the complexity of the RTO/ISO markets.[75] TeMix instead proposes that the Commission encourage reform of retail energy and distribution tariffs and require the RTOs/ISOs to frequently post wholesale bids and offers at the retail/wholesale interface to better allow retail customers to respond to the wholesale price of electricity.

46. Some commenters request that the Commission establish detailed requirements for a participation model for electric storage resources.[76] For example, Energy Storage Association argues that prescriptive requirements for the proposed electric storage resource participation model are necessary to ensure that the participation model is adequately defined. Starwood Energy requests that the Commission require uniform participation models across all of the RTOs/ISOs to ensure that all electric storage resources have the same opportunity to fully participate in the RTO/ISO markets, including the capacity markets, regardless of the region in which they are located. EPRI suggests that the definition of a participation model include, in addition to a set of tariff provisions, the set of software provisions required to represent the physical and operational characteristics of the particular resource.[77]

47. Several commenters suggest that the participation model for electric storage resources should account for the physical and operational differences among electric storage technologies because different electric storage resources (such as pumped-hydro) have different operating characteristics, provide different services, and are not intended to serve the same roles within the electric grid.[78] EPRI suggests that, given the current form of the day-ahead and real-time energy markets, there may need to be two participation models for electric storage resources.[79] EPRI explains that one participation model would be for resources whose transition

[69] *See, e.g.,* Avangrid Comments at 5; EEI Comments at 5; ELCON Comments at 3; EPSA/PJM Power Providers Comments at 4, 7–8; Exelon Comments at 2, 12; Independent Energy Producers Association Comments at 4; New York Utility Intervention Unit Comments at 3.

[70] *See, e.g.,* American Petroleum Institute Comments at 2–4; EEI Comments at 6–7; EPSA/PJM Power Providers Comments at 7–8; Massachusetts State Entities Comments at 8–9; MISO Transmission Owners Comments at 7; PJM Market Monitor Comments at 2–3, 4–5.

[71] *See, e.g.,* APPA/NRECA Comments at 11; EEI Comments at 4; EPSA/PJM Power Providers Comments at 11–12; Exelon Comments at 2; NESCOE Comments at 2–3, 9.

[72] *See* Connecticut State Entities Comments at 6.

[73] *See, e.g.,* Duke Energy Comments at 3; ISO–NE Comments at 10–14; MISO Comments at 2; National Hydropower Association Comments at 4.

[74] *See* NESCOE Comments at 2, 5.

[75] *See* TeMix Comments at 2–3, 4–5.

[76] *See* Energy Storage Association Comments at 8; Starwood Energy Comments at 7.

[77] *See* EPRI Comments at 2–3.

[78] *See, e.g.,* Brookfield Renewable Comments at 3; Dominion Comments at 4–5; DTE Electric/Consumers Energy Comments at 4–5; National Hydropower Association Comments at 4; NYPA Comments at 5; San Diego Water Comments at 12–13, 15.

[79] *See* EPRI Comments at 7–8.

time from charge to discharge, or vice versa, exceeds the market interval (*e.g.,* pumped-hydro and compressed-air) with the operational mode of these resources determined by the RTO's/ISO's security constrained unit commitment model. EPRI further explains that the second participation model would be for resources that transition from charge to discharge, or vice versa, within the market interval (*e.g.,* batteries and flywheels). EPRI states that it is likely these resources can be online and responsive at zero power output, and therefore do not need to be committed to a particular mode of operation, and can be dispatched as an injector or withdrawer of power.

48. Other commenters discuss the need to distinguish between electric storage resources based on their point of interconnection with the grid.[80] Organization of MISO States recommends that electric storage resource participation models differentiate between transmission-interconnected electric storage resources and distribution-interconnected electric storage resources due to the interplay and potential overlap between wholesale and retail rates for energy use of retail customers. Stem suggests that, in developing their electric storage resource participation models, RTOs/ISOs should distinguish between behind-the-meter and front-of-the-meter electric storage resources, as well as single site and aggregated resources, to ensure that each resource is being used to its full technical capabilities and behind-the-meter resources are not precluded from the most efficient use cases.

49. Two RTOs/ISOs request clarifications with respect to the Commission's proposal to require them to establish a participation model for electric storage resources.[81] ISO–NE and PJM want to ensure that the requirement that they establish a participation model for electric storage resources does not preclude electric storage resources participating in their markets from using other participation models (such as demand response or Alternative Technology Regulation Resource). PJM also argues that its current rules for electric storage resources should be carried forward because it allows electric storage resources to provide all services that they are capable of providing in a manner comparable to generation resources of similar size and with similar operational characteristics.

50. Finally, several commenters share information on existing RTO/ISO initiatives to remove barriers to the participation of electric storage resources in their markets.[82] California Commission notes that, in CAISO, most of the NOPR proposals are either already in place or under development.[83] Stem suggests that CAISO's current models, while incomplete, are the best place to start when designing a participation model for electric storage resources.[84]

c. Commission Determination

51. In this Final Rule, we adopt the NOPR proposal and add section 35.28(g)(9)(i) to the Commission's regulations to require each RTO/ISO to revise its tariff to include a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, facilitates their participation in the RTO/ISO markets. We find that requiring each RTO/ISO to create a participation model that recognizes the unique characteristics of electric storage resources will help eliminate barriers to their participation in the RTO/ISO markets, which will enhance competition and, in turn, help to ensure that these markets produce just and reasonable rates.

52. In response to concerns that the creation of a participation model for electric storage resources may undermine market designs that are based on services provided rather than resource type, we find that this Final Rule does not preclude an RTO/ISO from structuring its markets based on the technical requirements that a resource must meet to provide needed services. It simply requires that each RTO/ISO establish a participation model that ensures eligibility to participate in the RTO/ISO markets in a way that recognizes the physical and operational characteristics of electric storage resources. As such, this Final Rule does not grant undue preference to electric storage resources as a group or to specific electric storage technologies; rather, it removes barriers to their participation, enhancing competition among all resources that are technically capable of providing wholesale services. As noted above, resources that use the participation model required by this Final Rule must fulfill certain responsibilities set forth in the FPA and the Commission's rules and regulations.[85] Additionally, resources that use this participation model will be compensated for the wholesale services they provide in the same manner as other resources that provide these services.

53. With respect to commenters' arguments concerning regional flexibility in implementation, we find that this Final Rule strikes the appropriate balance between allowing each RTO/ISO to adopt market rules that complement its unique market design and providing sufficiently detailed requirements to ensure that each RTO/ISO eliminates barriers to electric storage resource participation in its markets. Specifically, this Final Rule does not adopt prescriptive, uniform market rules to which each RTO/ISO must adhere. Instead, the regulations establish minimum requirements (for, among other things, bidding parameters and resource size) that each RTO/ISO must meet when proposing market rules to comply with this Final Rule, permitting each RTO/ISO to propose market rules that comply with these minimum requirements in the way that best suits its individual market design.[86] We therefore decline to adopt additional or more prescriptive requirements for the participation model at this time.

54. We are not convinced that separate participation models are necessary for different types of electric storage resources (*e.g.,* slower, faster, or aggregated) because we believe that the physical differences between electric storage resources can be represented by complying with the requirements for bidding parameters that are discussed below and that a single participation model can be designed to be flexible enough to accommodate any type of electric storage resource. However, to the extent an RTO/ISO seeks to include in its tariff additional market rules that accommodate electric storage resources with specific physical and operational characteristics, the RTO/ISO may propose such revisions to its tariff through a separate FPA section 205 filing.[87]

55. We agree with CAISO that electric storage resources currently participate in the RTO/ISO markets in a variety of

[80] *See* Organization of MISO States Comments at 3; Stem Comments at 2–3; TeMix Comments at 3.

[81] *See* ISO–NE Comments at 29–30; PJM Comments at 6, 9, 11.

[82] *See, e.g.,* NYISO Comments at 4; MISO Comments at 3.

[83] *See* California Commission Comments at 3.

[84] *See* Stem Comments at 2–3.

[85] *See supra* P 30.

[86] For example, we acknowledge that it may be necessary in some markets to create market rules that differentiate between electric storage resources interconnected to the grid at different points (*i.e.,* at the transmission system, the distribution system, or behind-the-meter). Such differences could include different metering and accounting practices for certain electric storage resources, as discussed in the Metering and Accounting Practices for Charging Energy section. *See infra* P 322.

[87] *See* 16 U.S.C. 824d.

ways and may use a variety of existing participation models. We clarify that, where an RTO/ISO already has a separate participation model that electric storage resources may use (such as participation models for pumped-hydro resources or demand response), we are not requiring the RTO/ISO to consolidate that participation model with the participation model for electric storage resources required by this Final Rule. However, to the extent an RTO/ISO modifies existing participation models to comply with this Final Rule, it must ensure that those resulting participation models are available for all types of electric storage resources and comply with all of the other requirements set forth in this Final Rule.

56. While the participation model for electric storage resources should be designed to facilitate the participation of all types of electric storage technologies, we do not require all electric storage resources to use that participation model. To that end, we clarify that this Final Rule does not preclude electric storage resources from continuing to participate in demand response programs, as Alternative Technology Regulation Resources in ISO–NE, or under other participation models in any RTO/ISO in which they are eligible to participate. However, we clarify that, under section 35.28(g)(9) of the Commission's regulations, section 35.28(g)(9)(i) applies to resources using the participation model for electric storage resources and section 35.28(g)(9)(ii) applies to all electric storage resources that fall under the definition established in this Final Rule. Therefore, electric storage resources that may elect not to use the participation model for electric storage resources would still be able to pay the wholesale LMP for the electric energy they purchase from the RTO/ISO markets and then resell back to those markets.

2. Qualification Criteria for the Participation Model for Electric Storage Resources

a. NOPR Proposal

57. To ensure that the proposed participation model for electric storage resources will facilitate the participation of both existing and future electric storage resource technologies in the RTO/ISO markets, the Commission proposed that each RTO/ISO define the criteria in its tariff that a resource must meet to qualify to use the participation model for electric storage resources (*i.e.,* qualification criteria).[88] The Commission stated that these qualification criteria must be based on the physical and operational attributes of electric storage resources, must not limit participation to any particular type of electric storage resource or other technology, and must ensure that the RTO/ISO is able to dispatch a resource in a way that recognizes its physical constraints and optimizes its benefits to the RTO/ISO. The Commission invited comment on whether it should establish qualification criteria that each RTO/ISO must adopt and, if so, what specific criteria the Commission should require. The Commission explained that it was not proposing to limit the use of the electric storage resource participation model to electric storage resources as defined in the NOPR, acknowledging that there may be other types of resources whose physical and operational characteristics could qualify under the proposed participation model.[89]

b. Comments

58. While several commenters support providing each RTO/ISO with flexibility to propose appropriate qualification criteria on compliance with this Final Rule,[90] a few commenters suggest that the Commission require each RTO/ISO to propose qualification criteria that meet certain standards.[91] For example, Exelon, Imperial Irrigation District, and Magnum assert that qualification criteria should not limit participation to certain types of electric storage resources. Imperial Irrigation District argues that the qualification criteria for a resource to use the electric storage resource participation model should not be more specific than the physical and operational attributes cited in the NOPR (*i.e.,* the ability to both charge and discharge energy). EPRI states that, if an RTO/ISO adopts two different participation models for electric storage resources, one for slower responding resources and one for faster responding resources, then that RTO/ISO may need to establish different qualification criteria for each electric storage resource participation model.

59. Both MISO and SPP point to existing qualification criteria for providing certain services in their markets that they argue should apply to resources that use the electric storage resource participation model to provide those services.[92] MISO notes that, for certain services, a resource must be able to sustain provision of the service for the minimum amount of time (*e.g.,* contingency reserves have a 90-minute replenishment time and capacity resources must be capable of providing four hours of continuous energy). SPP makes similar arguments, noting that some products like regulation may have shorter output sustainability requirements than other products like energy.

60. In addition to qualification criteria, Fluidic argues that RTOs/ISOs should modify their protocols and procedures to include a uniform accrediting process for determining the capacity of an electric storage resource for participation in their markets.[93]

c. Commission Determination

61. To implement the new requirement in section 35.28(g)(9)(i) of the Commission's regulations for a participation model for electric storage resources, in this Final Rule, we adopt the NOPR proposal to require each RTO/ISO to define in its tariff the criteria that a resource must meet to use the participation model for electric storage resources (*i.e.,* qualification criteria). As proposed in the NOPR, these criteria must be based on the physical and operational characteristics of electric storage resources, such as their ability to both receive and inject electric energy, must not limit participation under the electric storage resource participation model to any particular type of electric storage resource or other technology and must ensure that the RTO/ISO is able to dispatch a resource in a way that recognizes its physical and operational characteristics and optimizes its benefits to the RTO/ISO. We find that such criteria are necessary to ensure that the electric storage resource participation model will accommodate both existing and future technologies.

62. Because the qualification criteria must not limit participation to any particular technology and instead will be based on the physical and operational characteristics of electric storage resources, these criteria will allow new electric storage resource technologies to participate in the RTO/ISO markets without the need for additional tariff revisions to explicitly permit their participation. This focus on the physical and operational characteristics of electric storage resources rather than the specific

[88] *See* NOPR at P 29.

[89] *See id.* P 30.

[90] *See, e.g.,* AES Companies Comments at 15–16; Bonneville Comments at 4; CAISO Comments at 4–5; MISO Comments at 9–10; NESCOE Comments at 9; PG&E Comments at 7; SoCal Edison Comments at 15–16.

[91] *See, e.g.,* EPRI Comments at 7–8; Exelon Comments at 4; Imperial Irrigation District Comments at 6–7; Magnum Comments at 8.

[92] *See* MISO Comments at 9–10; SPP Comments at 4.

[93] *See* Fluidic Comments at 4.

technology in use will remove barriers to entry for existing and future technologies, which will enhance competition in the RTO/ISO markets and, in turn, help to ensure that these markets produce just and reasonable rates. In addition, requiring each RTO/ISO to define in its tariff qualification criteria will provide greater certainty about which resources will be eligible to use the electric storage resource participation model in each RTO/ISO.

63. Also, as proposed in the NOPR, we provide each RTO/ISO with flexibility to propose qualification criteria that best suit its proposed participation model for electric storage resources. We decline to adopt Imperial Irrigation District's suggestion to specify that the qualification criteria for a resource to use the electric storage resource participation model should be limited to the physical and operational characteristics cited in the definition proposed in the NOPR (*i.e.,* the ability to both charge and discharge energy). We agree that the qualification criteria should not present barriers to the participation of any electric storage resource in the RTO/ISO markets. As long as any qualification criteria that the RTOs/ISOs propose do not create such barriers and are inclusive of, at a minimum, those resources set forth under the definition of electric storage resources in this NOPR, then we do not find that it is necessary to place additional limitations on any qualification criteria that the RTOs/ISOs may propose in response to this Final Rule.

64. In response to Fluidic, we clarify that the qualification criteria should not include a uniform accrediting process to determine the capacity of an electric storage resource. As discussed in the Eligibility to Provide All Capacity, Energy, and Ancillary Services section,[94] we understand that, like all other market participants, resources using the participation model for electric storage resources will be subject to testing procedures to determine their technical ability to provide a particular service and that this testing will be done based on the capacity that the resource wants to offer into the RTO/ISO markets.

65. With respect to MISO's and SPP's comments, we note that, based on our understanding, the requirements that MISO and SPP characterize as qualification criteria are technical requirements to provide a particular wholesale service. Such technical requirements should not be used as qualification criteria to determine whether a resource may use the participation model for electric storage resources. Rather, MISO and SPP would continue to use these requirements to determine whether individual resources using the participation model for electric storage resources are eligible to provide specific services.

3. Relationship Between Electric Storage Resource Participation Model and Existing Market Rules

a. NOPR Proposal

66. In the NOPR, the Commission proposed that each RTO/ISO propose any necessary additions or modifications to its existing tariff provisions to specify: (1) Whether resources that qualify to use the participation model for electric storage resources will participate in the RTO/ISO markets through existing or new market participation agreements; and (2) whether particular existing market rules apply to resources participating under the electric storage resource participation model.[95]

b. Comments

67. CAISO supports the NOPR proposal.[96] In contrast, ISO–NE requests that the Commission omit any specific directive about market participation agreements from a final rule.[97] ISO–NE notes that, in New England, all market participants use the same Market Participation Service Agreement regardless of resource type, and it does not interpret the NOPR to preclude its continued use of a single agreement. SPP remains silent as to whether it supports the NOPR proposal but states that it will modify both its tariff and market protocols to accommodate the participation of electric storage resources, noting that it will structure any new rules consistent with SPP balancing authority needs and requirements, while providing as much flexibility and opportunity for the participation of electric storage resources as possible.[98]

c. Commission Determination

68. To implement the new requirement in section 35.28(g)(9)(i) of the Commission's regulations for a participation model for electric storage resources, in this Final Rule, we adopt the NOPR proposal to require each RTO/ISO to propose any necessary additions or modifications to its existing tariff provisions to specify: (1) Whether resources that qualify to use the participation model for electric storage resources will participate in the RTO/ISO markets through existing or new market participation agreements and (2) whether particular existing market rules apply to resources participating under the electric storage resource participation model. We find that these requirements are necessary to provide certainty to resources using the electric storage resource participation model about the market rules that will govern their participation in each RTO/ISO market, thus removing barriers to their participation.

69. With respect to ISO–NE's concern that the RTOs/ISOs should not be precluded from using a single market participation agreement for all market participants, we clarify that this Final Rule allows the use of one or more existing agreements so long as the agreement(s) complies with the terms of this Final Rule.

C. Eligibility of Electric Storage Resources To Participate in the RTO/ISO Markets

1. Eligibility To Provide All Capacity, Energy, and Ancillary Services

a. NOPR Proposal

70. In the NOPR, the Commission proposed to require each RTO/ISO to modify its tariff to establish a participation model consisting of market rules for electric storage resources under which a participating resource is eligible to provide any capacity, energy, and ancillary service that it is technically capable of providing in the RTO/ISO markets.[99] The Commission also proposed that electric storage resources should be eligible, as part of the participation model, to provide services that the RTOs/ISOs do not procure through a market mechanism, such as blackstart service, primary frequency response service, and reactive power service, if they are technically capable. The Commission specified that, where compensation for these services exists, electric storage resources should also receive such compensation commensurate with the service provided.

b. Comments

71. Many commenters generally support the NOPR proposal.[100] In particular, several commenters support the NOPR proposal that electric storage resources, if technically capable, must

[94] *See infra* P 81.

[95] *See* NOPR at P 31.

[96] *See* CAISO Comments at 5.

[97] *See* ISO–NE Comments at 56.

[98] *See* SPP Comments at 5.

[99] *See* NOPR at P 48.

[100] *See, e.g.,* Advanced Energy Economy Comments at 23–25; American Petroleum Institute Comments at 3; EEI Comments at 6; Mensah Comments at 2; MISO Comments at 4; National Hydropower Association Comments at 7.

be eligible to provide services that the RTOs/ISOs do not procure through a market mechanism, such as blackstart service, primary frequency response service, and reactive power service.[101] However, APPA/NRECA suggest that the Commission give each RTO/ISO flexibility to demonstrate on compliance the extent to which an electric storage resource may not be technically capable of providing a given service reliably, efficiently, and cost-effectively.[102]

72. Several of the RTOs/ISOs explain their ongoing efforts to improve the opportunities for electric storage resources to participate in their markets.[103] MISO states that the NOPR proposal aligns with its tariff, which classifies resources based on their technical capabilities, including any technical limitations that they have. Moreover, MISO states that it is exploring the potential to enhance the opportunities for electric storage resources to participate in its markets, noting, however, that implementing such enhancements may require significant changes to its settlement systems and software. NYISO explains that, to ensure that its market rules are fully accessible to new electric storage technologies, it is working with stakeholders on a comprehensive review and reform of the rules related to electric storage resource participation in its markets.

73. CAISO points out that electric storage resources participating in CAISO's market have the opportunity to provide energy and ancillary services, including those that CAISO may procure outside of its market processes, if they meet the technical criteria to do so. Likewise, SPP notes that electric storage resources may provide non-market based services such as blackstart service and reactive power service if they meet the relevant technical requirements.

74. While ISO–NE states that it will revise its market rules in compliance with a final rule in this proceeding to eliminate barriers to the participation of electric storage resources in their markets, and SPP states that, prior to the issuance of the NOPR, it was planning to do so,[104] they each request clarification of the NOPR proposal that a resource using the electric storage resource participation model must be eligible to provide any capacity, energy, and ancillary service that it is technically capable of providing. According to ISO–NE, electric storage resources should not receive different treatment than other technology types. ISO–NE and SPP thus ask the Commission to clarify that an electric storage resource must be eligible to provide a service only if it meets the same requisite performance requirements to provide that service that apply to all other resources.

75. Energy Storage Association contends that it is imperative that RTOs/ISOs establish a process for resources to demonstrate that they are technically capable of providing a specific service.[105] Energy Storage Association asserts that such a process must be transparent and documented to create more certainty for new resources and to ensure that all resources that are technically capable of providing a particular service can do so.

c. Commission Determination

76. In this Final Rule, we adopt the NOPR proposal and add section 35.28(g)(9)(i)(A) to the Commission's regulations to require each RTO/ISO to establish market rules so that a resource using the participation model for electric storage resources is eligible to provide all capacity, energy, and ancillary services that it is technically capable of providing, including services that the RTOs/ISOs do not procure through an organized market. To provide clarity, we add the phrase ''technically capable of providing'' to the regulatory text we proposed in the NOPR. To be eligible to provide capacity, energy, and ancillary services, a resource using the participation model for electric storage resources will still need to meet the technical requirements for any of the services that it wants to provide. We recognize that the RTOs/ISOs have ongoing efforts to enhance opportunities for electric storage resources to participate in their markets and encourage each RTO/ISO to build upon these efforts when developing tariff revisions to comply with this Final Rule.

77. In response to ISO–NE, we clarify that each RTO/ISO is required to revise its tariff to allow a resource using the electric storage resource participation model to be eligible to provide a service only if that resource is technically capable of doing so. To the extent that an RTO/ISO has developed a standard set of technical requirements that all resources must meet to provide a given service, those requirements would also apply to a resource using the electric storage resource participation model if it wants to provide that service.

78. In response to ISO–NE and SPP, we clarify that ''technically capable'' of providing a service means that a resource can meet all of the technical, operational, and/or performance requirements that are necessary to reliably provide that service. For example, these requirements may include a minimum run-time to provide energy or the ability to respond to automatic generation control to provide frequency regulation. While we are clarifying the definition of ''technically capable'' here, we note that we are not considering in this proceeding the requirements that determine whether resources are technically capable of providing individual wholesale services.[106]

79. We decline to adopt APPA/NRECA's suggestion that the Commission give each RTO/ISO flexibility to demonstrate on compliance the extent to which an electric storage resource may not be technically capable of providing a given service reliably, efficiently, and cost-effectively. Each individual electric storage resource must still meet the technical requirements of providing any specific service, which would be determined by the RTO/ISO on a case-by-case basis.

80. As part of the requirement that each RTO/ISO develop a participation model for electric storage resources that allows electric storage resources to be eligible to provide services in all of its capacity, energy, and ancillary service markets, we also require that such participation model allow electric storage resources to be eligible to provide services that the RTOs/ISOs do not procure through an organized market mechanism (such as blackstart service, primary frequency response service, and reactive power service) if they are technically capable of providing those services. As noted above, we are not requiring each RTO/ISO to revise or revisit the technical requirements or compensation provisions of those markets.

81. We will not require the RTOs/ISOs to establish new processes through which a resource using the participation model for electric storage resources can demonstrate that it is technically

[101] *See, e.g.,* Advanced Energy Economy Comments at 29; APPA/NRECA Comments at 12–13; Exelon Comments at 6; National Hydropower Association Comments at 7; Xcel Energy Services Comments at 21.

[102] *See* APPA/NRECA Comments at 13.

[103] *See* CAISO Comments at 5–6; MISO Comments at 4–6; NYISO Comments at 5–6; SPP Comments at 7.

[104] *See* ISO–NE Comments at 14–15; SPP Comments at 3–4, 6–7.

[105] *See* Energy Storage Association Comments at 10–11.

[106] To the extent that an RTO/ISO seeks to revise its tariff provisions setting forth the technical requirements for providing any specific wholesale service, the RTO/ISO may propose such revisions to its tariff through a separate FPA section 205 filing. *See* 16 U.S.C. 824d.

capable of providing a specific service in their markets. The RTOs/ISOs already have technical requirements and testing procedures in place to ensure that market participants can provide the particular services that they seek to provide. We expect that these requirements and procedures will apply to resources using the electric storage resource participation model, just as they do to all other resources. However, as part of developing a participation model for electric storage resources, we encourage each RTO/ISO to consider whether any modifications or additions to the existing technical requirements, testing protocols, or other qualification procedures are necessary to facilitate the participation of electric storage resources in its markets.

2. Ability To De-Rate Capacity To Meet Minimum Run-Time Requirements

a. NOPR Proposal

82. In the NOPR, the Commission proposed to require each RTO/ISO to revise its tariff to clarify that an electric storage resource may de-rate its capacity to meet minimum run-time requirements to provide capacity or other services.[107] In RTOs/ISOs with capacity markets, the Commission proposed that the de-rated capacity value for electric storage resources be consistent with the quantity of energy that must be offered into the day-ahead energy market for resources with capacity obligations.

b. Comments

83. Many commenters generally support the proposal to require each RTO/ISO to revise its tariff to clarify that an electric storage resource may de-rate its capacity to meet minimum run-time requirements to provide capacity or other services.[108] Additionally, while many commenters either support or do not oppose the NOPR proposal, multiple entities request that the Commission clarify the proposal or raise specific issues about the proposal and its interaction with the RTO/ISO markets.

84. Multiple commenters raised issues surrounding performance requirements for electric storage resources in the RTO/ISO markets.[109] NRG agrees that the final rule should allow flexibility to de-rate in capacity markets but argues that the Commission should clarify that electric storage resources participating in capacity markets must meet the same performance metrics and criteria as other resources. American Petroleum Institute similarly supports allowing electric storage resources to de-rate to meet their capacity requirements but asserts that this should not affect the ability of these resources to participate in energy and ancillary services markets up to their nominal capacity. American Petroleum Institute also contends that electric storage resources should be subject to the same penalties for non-performance as generators and demand response.

85. Some entities raise issues about the interaction of the Commission's de-rating proposal with resource obligations.[110] Both Avangrid and EEI seek clarification that the proposal is intended to ensure that the resource's de-rate is consistent with obligations that the resource has in organized wholesale markets. AES Companies note that, because some electric storage resources may only provide wholesale services when there is excess available after serving retail load, their nameplate capacity may not be the same as the capacity available for wholesale services and would need to be reduced by the capacity reserved for providing retail services. Xcel Energy Services agrees that resources must reserve sufficient capacity to meet any applicable capacity obligations, but it also notes that there are regional differences in how capacity obligations are treated (*e.g.,* CAISO does not ''count'' storage capacity, while other RTOs/ISOs have a four-hour run-time requirement).

86. Energy Storage Association raises concerns regarding the Commission's proposal that the de-rated capacity value for an electric storage resource should be consistent with the quantity of energy that must be offered into the day-ahead energy market for resources with capacity obligations.[111] Energy Storage Association asserts that, because some RTOs/ISOs explicitly exempt electric storage resources from a day-ahead energy market must-offer obligation, there would not be a basis for determining a storage resource's capacity value. Instead, Energy Storage Association recommends that RTOs/ISOs assign electric storage resources a capacity value based on the quantity of energy that they can discharge continuously over the minimum run-time set by the RTO/ISO. SPP also supports the ability to de-rate the maximum capacity of an electric storage resource in order to qualify for provision of other products but requests that the Commission find that a storage resource de-rating its capacity to meet minimum run-time requirements is not physical withholding.[112]

87. Several other commenters consider the interaction between the Commission's de-rating proposal and market power issues.[113] For example, EEI asserts that the RTO/ISO or market monitor would need to verify minimum run-times and parameters to ensure that there is a reasonable basis for the de-rate. Exelon agrees that electric storage resources should be treated the same as generators providing capacity, which can de-rate, and states that the market monitor can investigate a market participant if there is a concern about an exercise of market power. NYISO also raises general concerns about market power issues, asking the Commission to consider the potential market power implications of allowing a resource to hold back energy through its offer, even if its intent is to discharge the energy at a later time.

88. Other commenters consider whether electric storage resources need to de-rate in all circumstances.[114] For example, California Energy Storage Alliance asks the Commission to confirm that shorter-duration electric storage resources should be eligible to participate in the markets and provide services, when reasonable, without de-rating. California Energy Storage Alliance argues that each RTO/ISO should make determinations regarding de-rating capacity based on market needs. CAISO contends that the Commission should not require any specific outage rules for electric storage resources and that the general outage management rules that apply to all other resources in individual RTO/ISO markets should also apply to electric storage resources.

89. EPRI raises concerns about the effectiveness of the Commission's proposal. EPRI asserts that the Commission's de-rating proposal is potentially an improved approximation of an electric storage resource's capacity value.[115] However, EPRI states that the proposal may not be entirely accurate because it assumes that an electric

[107] *See* NOPR at P 49.

[108] *See, e.g.,* AES Companies Comments at 16; Avangrid Comments at 5; City of New York Comments at 6–7; Energy Storage Association Comments at 8; Minnesota Energy Storage Alliance Comments at 3; MISO Comments at 12; NESCOE Comments at 10–11; NRG Comments at 14–15; R Street Institute Comments at 5; Xcel Energy Services Comments at 21.

[109] *See, e.g.,* AES Companies Comments at 17; American Petroleum Institute Comments at 7–8; NRG Comments at 15.

[110] *See, e.g.,* Avangrid Comments at 5; EEI Comments at 7; Xcel Energy Services Comments at 21–22.

[111] *See* Energy Storage Association Comments at 8–9.

[112] *See* SPP Comments at 7.

[113] *See, e.g.,* EEI Comments at 7; Exelon Comments at 7; NYISO Comments at 7.

[114] *See, e.g.,* CAISO Comments at 6; California Energy Storage Alliance Comments at 10–11.

[115] *See* EPRI Comments at 12–13.

storage resource would contribute less than its maximum capacity to provide energy across the entire four-hour minimum duration required for providing capacity in many RTOs/ISOs. EPRI asserts that, during periods where the RTO/ISO requires maximum capacity, an electric storage resource with a two-hour duration at maximum discharge may exhaust all energy production during the first two hours. EPRI argues that the Commission's proposal also does not guarantee that an electric storage resource will have full energy levels when the maximum capacity period begins. EPRI contends that, where the load typically peaks during just one hour of the highest load days, an electric storage resource with less than the minimum duration requirement of the capacity market may actually be providing greater capacity value than the proposed de-rated value. EPRI asserts that, depending on the ability of an electric storage resource to provide capacity when its duration of energy storage is less than the minimum duration requirement of the capacity market, must-offer rules for the day-ahead energy market must be fairly determined. EPRI adds that the hours which an electric storage resource must bid as an injector of energy per day and how much capacity it must bid for those days must be determined. EPRI adds that those rules should be consistent with other principles of must-offer rules for capacity providers and ensure that they lead to the electric storage resource's ability to perform during critical peak conditions.

90. Several commenters consider whether reforms beyond the Commission's proposal are needed. For example, some commenters argue for either exempting electric storage resources from minimum run-time requirements in some circumstances or developing new capacity products with shorter minimum run-time requirements.[116] Alevo argues that the Commission should require each RTO/ISO to have additional capacity market products that better reflect the capabilities of electric storage resources because minimum run-time requirements present a barrier to electric storage resource participation in capacity markets. R Street Institute states that capacity products and performance requirements may not be well-suited to extracting the full economic value of electric storage resources for resource adequacy purposes. R Street Institute states that these rules can create barriers to capacity market participation for electric storage resources but, at the same time, relaxing them too aggressively may raise reliability concerns. R Street Institute further explains that it may be useful for capacity constructs to distinguish between short- and long-duration resource needs. R Street Institute encourages the Commission to seek additional detailed comments on methodologies for electric storage resources to participate in capacity markets, stating that reforms may be best left to individual RTO/ISO compliance filings or individual RTO/ISO proceedings.

91. NextEra asserts that, in most RTOs/ISOs, reserve product commitment requirements systematically discriminate against electric storage resources by restricting their ability to offer their full capacity into the market and that de-rating capacity to meet existing requirements diminishes the value of electric storage resources and arbitrarily restricts competition.[117] In contrast, EPRI contends that each RTO/ISO should perform additional analysis to provide guidance on the amount of capacity that can be relied upon from limited-duration electric storage resources for particular services in each market.[118]

92. A few commenters address the must-offer requirements that are often associated with a resource's capacity supply obligation.[119] Energy Storage Association argues that electric storage resources should be exempt from, or otherwise allowed to manage, must-offer obligations. Advanced Energy Economy argues that must-offer requirements fail to account for the physical and operational characteristics of electric storage resources and arbitrarily exclude them from providing wholesale services that they are technically capable of providing. Advanced Energy Economy asserts that must-offer requirements were developed to prevent the exercise of market power and electric storage resources have no incentive or ability to exercise market power.

93. AES Companies claim that it may be necessary to modify RTO/ISO must-offer requirements to allow electric storage resources to participate in capacity markets while also providing non-dispatched services (such as primary frequency response and voltage control). AES Companies add that most must-offer requirements apply to a capacity resource during all dispatch intervals, even though specific services may only be needed for a set number of hours in a day.

c. Commission Determination

94. To implement section 35.28(g)(9)(i)(A) of the Commission's regulations, in this Final Rule, we adopt the NOPR proposal, as modified and clarified below, to require each RTO/ISO to revise its tariff to allow electric storage resources to de-rate their capacity to meet minimum run-time requirements. We find that allowing resources using the participation model for electric storage resources to de-rate their capacity to meet minimum run-time requirements to provide capacity or other services will help to ensure that electric storage resources are eligible to provide all services that they are technically capable of providing by taking into account their physical and operational characteristics, while still maintaining the quality and reliability of services they seek to provide. For example, this requirement would allow a 10MW/20MWh electric storage resource to offer 5MW of capacity into a capacity market with a 4-hour minimum run-time because that is the maximum output that the resource can sustain for the duration of the minimum run-time. Absent the opportunity to de-rate its capacity, the 10MW/20MWh electric storage resource would not be able to participate in that capacity market, despite its ability to reliably provide 5MW of capacity for the duration of the minimum run-time.

95. We also clarify several aspects of the NOPR proposal in response to commenters. In response to NRG, we clarify that this Final Rule does not exempt electric storage resources that participate in RTO/ISO capacity markets from meeting the performance metrics and criteria that apply to all other resources that participate in those markets. In fact, along with other requirements in this Final Rule that require an RTO's/ISO's participation model for electric storage resources to account for the physical and operational characteristics of electric storage resources,[120] allowing electric storage resources to de-rate their capacity to meet minimum run-time requirements should make it possible for energy-limited electric storage resources to satisfy relevant performance metrics in the RTO/ISO markets. In response to American Petroleum Institute, we

[116] *See, e.g.,* Alevo Comments at 8; R Street Institute Comments at 5.

[117] *See* NextEra Comments at 7.

[118] *See* EPRI Comments at 12–13.

[119] *See, e.g.,* Advanced Energy Economy Comments at 25–26, 28–29; AES Companies Comments at 16–17; Energy Storage Association Comments at 6, 12.

[120] *See, e.g.,* Physical and Operational Characteristics of Electric Storage Resources and State of Charge Management sections, *infra* PP 189–194, 251–257.

clarify that this Final Rule does not exempt an electric storage resource that is participating in RTO/ISO capacity markets from any applicable penalties for non-performance.

96. In response to SPP, we clarify that an electric storage resource de-rating its capacity to provide capacity or other services is not engaging in physical withholding if it is de-rating to meet minimum run-time requirements. In the case of an electric storage resource that de-rates its capacity to meet minimum run-time requirements, this resource would be de-rating its capacity for true and verifiable technical reasons pertaining to the market rules for providing various services. However, as the Commission has previously explained, physical withholding may include a market participant declaring that an electric facility has been de-rated, forced out of service, or otherwise been made unavailable for technical reasons that are unrelated to physical or legitimate commercial issues or that cannot be verified.[121] Thus, we find that each RTO/ISO may request that its market monitor verify whether an electric storage resource de-rated its capacity to meet a minimum run-time requirement to ensure that these resources are not engaging in physical withholding, as defined by the Commission.

97. Additionally, while commenters do not specifically describe any market power concerns outside the context of physical withholding, to the extent that market power concerns arise as a result of electric storage resources de-rating capacity to provide capacity or other services, each RTO/ISO may consider whether it is appropriate to update and/or apply existing market power mitigation processes to electric storage resources to alleviate market power concerns.

98. In response to California Energy Storage Alliance, we agree that electric storage resources may provide services in the RTO/ISO markets without de-rating so long as they meet the requirements to provide the particular service that they seek to provide. We also clarify that this Final Rule does not require any specific outage rules for electric storage resources.

99. Further, upon consideration of the comments, we clarify the part of the NOPR proposal stating that the de-rated capacity value for electric storage resources should be consistent with the quantity of energy that must be offered into the day-ahead energy market for resources with capacity obligations. Several commenters suggest that there may be reasons why the de-rated capacity value for electric storage resources might not be consistent with the quantity of energy that must be offered into the day-ahead energy market. For example, an electric storage resource may choose to de-rate to reflect its capacity interconnection rights; to reserve capacity for providing retail services; or because system operators may need the full capacity of electric storage resources based on real-time system conditions.[122] We find these points compelling. We also agree with Xcel Energy Services that the rules governing must-offer quantities vary between RTOs/ISOs and with Energy Storage Association that where electric storage resources do not have a must-offer obligation the de-rated quantity cannot be tied to such an obligation. We therefore provide each RTO/ISO flexibility either to use its existing rules for must-offer quantities or to modify its existing rules as necessary to reflect the physical and operational characteristics of electric storage resources. However, in response to Avangrid and EEI, we clarify that, if an electric storage resource elects to de-rate its capacity, it must not de-rate its capacity below any capacity obligations it has assumed, such as any applicable must-offer requirement. We also agree with Energy Storage Association that the de-rated quantity should be based on the quantity of energy that an electric storage resource can discharge continuously over the minimum run-time set by the RTO/ISO.

100. In response to those commenters suggesting that the RTO/ISO resource adequacy constructs provide accommodations for electric storage resources, we will not require the RTOs/ISOs to make specific changes to minimum run-time or must-offer requirements associated with providing capacity. While we agree with commenters that some of the requirements to participate in the resource adequacy constructs of the RTOs/ISOs may limit the ability of electric storage resources to participate, there is significant variation in how each RTO/ISO approaches resource adequacy. Thus, we do not believe it is appropriate to establish one standard approach to this issue in the RTO/ISO markets. However, we do find that it is important for electric storage resources that can provide value in those resource adequacy constructs to be eligible to participate. Therefore, in the interest of preserving flexibility for the RTOs/ISOs to address this issue given their unique resource adequacy constructs, we require each RTO/ISO to demonstrate on compliance with this Final Rule that its existing market rules provide a means for electric storage resources to provide capacity. If an RTO/ISO does not have existing tariff provisions that enable electric storage resources to provide capacity, such as the RTO/ISO tariff provisions described below, we require the RTO/ISO to propose such rules on compliance with this Final Rule.

101. To provide guidance for this requirement, we note that several of the RTOs/ISOs already have developed rules that allow energy-limited resources to provide capacity. Some of these market rules explicitly facilitate the participation of electric storage resources. For example, NYISO has an Energy Limited Resource model that facilitates the participation of electric storage resources in the capacity market by limiting their commitments to one four-hour interval per day, while CAISO requires that flexible resource adequacy resources be available only during peak hours. Other RTOs/ISOs rely on opportunity costs in incremental energy offer reference levels, allowing for a resource to reflect its energy-limited nature through high offers in the energy market that make it unlikely to be dispatched. For example, ISO–NE's tariff allows opportunity costs included in an incremental energy reference level based on costs associated with complying with emissions limits, water storage limits, and other operating permits that limit production of energy.[123] While some of these market rules may apply to resources using the participation model for electric storage resources, we require each RTO/ISO to demonstrate how such rules are applicable to resources using the participation model for electric storage

[121] *See Sw. Power Pool, Inc.,* 141 FERC ¶ 61,048, at P 451 (2012), *order on reh'g,* 142 FERC ¶ 61,205 (2013). Other examples of physical withholding that the Commission has identified, which we do not believe apply to de-rating to meet minimum run-time requirements, include: (1) Refusing to provide offers or schedules for an electric facility when it is required to offer into the market when it would otherwise have been in the economic interest to do so without market power; (2) operating a generation resource in real time to produce an output level that is less than dispatch targets; (3) de-rating a transmission facility or interface for technical reasons that are not true or verifiable; (4) operating a transmission facility in a manner that is not economic and that causes a binding transmission constraint or binding reserve zone constraint or local reliability issue; and (5) declaring that the capability of resources to provide energy or operating reserves is reduced for reasons that are not true or verifiable. *Id.*

[122] *See, e.g.,* AES Companies Comments at 16–17; Avangrid Comments at 5; Energy Storage Association Comments at 8–9; EPRI Comments at 12–13.

[123] ISO–NE Tariff, Market Rule 1, Appendix A, § III.A.7.5.1.

resources on compliance with this Final Rule.

3. Energy Schedule Requirement for Provision of Ancillary Services

a. NOPR Request for Comments

102. In the NOPR, the Commission stated that electric storage resources tend to be capable of faster start-up times and higher ramp rates than traditional synchronous generators and are therefore able to provide ramping, spinning, and regulating reserve services without already being online and running.[124] However, the Commission acknowledged that the RTOs/ISOs that co-optimize energy and ancillary services dispatch and pricing may condition eligibility to provide ancillary services on having an energy schedule.[125] The Commission therefore sought comment on whether the requirement to have an energy schedule to provide ancillary services could be adjusted so that electric storage resources and other technically-capable resources could participate in the ancillary service markets independent of offering energy to the RTO/ISO.

103. Specifically, the Commission sought comment on whether dispatch and pricing of energy and ancillary services would be internally consistent if a resource were not required to offer to provide energy in order to offer to provide ancillary services. Further, the Commission sought comment on whether the capability of resources to provide an ancillary service absent an energy schedule can be determined in the regular performance tests that the RTO/ISO conducts and whether a resource's start-up time and ramp capability are generally represented in bidding parameters and would adequately guarantee the resource's ability to provide other services absent energy market participation. Finally, the Commission sought comment on the extent of software changes necessary to factor the elimination of such an energy schedule requirement into the RTO/ISO co-optimization models.

b. Comments

104. A number of commenters agree that the RTOs/ISOs should base a market participant's eligibility to provide a particular ancillary service on its ability to provide services when called upon, rather than whether it is online and synchronized to the grid.[126] They argue that the requirement to have an energy schedule to provide ancillary services is no longer technically necessary. For example, Advanced Energy Economy and Efficient Holdings state that electric storage resources are able to provide services such as primary frequency response, even while they are charging and unable to supply energy. Altametric and Energy Storage Association explain that an electric storage resource's start-up time and ramp capability are generally represented in bidding parameters, adequately guaranteeing the resource's ability to provide other services absent energy market participation. Altametric adds that an RTO/ISO can validate a resource's ability to provide ancillary services through its regular performance, while Energy Storage Association, NRG, and Pacific Gas & Electric contend that periodic performance testing is sufficient. Beacon Power notes that regulation resources are already required to undergo performance testing in PJM, with no requirement that they participate in the energy market.

105. A few commenters address the benefits of removing any requirement to have an energy schedule to provide ancillary services.[127] Specifically, Efficient Holdings, Energy Storage Association, and Magnum argue that removing any such requirement would eliminate a barrier to some electric storage resources' ability to provide ancillary services because they are energy-limited, increasing competition. Similarly, Starwood Energy states that electric storage resources should be allowed to participate in the ancillary service markets regardless of whether they offer energy to the RTO/ISO.

106. Energy Storage Association and Research Scientists opine that it is feasible for RTOs/ISOs to remove any requirement to have an energy schedule to provide ancillary services.[128] Energy Storage Association and Research Scientists argue that, even if an electric storage resource is allowed to provide ancillary services without an energy schedule, dispatch and pricing of energy and ancillary services can be co-optimized and will be internally consistent. However, Research Scientists also note that whether an electric storage resource offers to provide energy may influence market outcomes, as an energy offer represents a resource's opportunity cost of providing ancillary services under the market clearing optimization algorithm. Energy Storage Association adds that, just as some resources currently provide only energy, RTOs/ISOs can manage resources that provide only ancillary services because they will receive enough information about electric storage resources' capability to provide ancillary services through their bidding parameters and through regular performance tests.

107. In contrast, EPSA/PJM Power Providers and NRG contend that, if the Commission requires each RTO/ISO to remove any requirement that a resource have an energy schedule to provide ancillary services, the Commission should require each resource that seeks to provide ancillary services to provide economic offers into the energy market.[129] They argue that such offers are necessary to allow for the co-optimization of energy and ancillary services markets and to price the provision of ancillary services.

108. While not opining on whether the Commission should require each RTO/ISO to remove any requirement to have an energy schedule to provide ancillary services from its tariff, MISO Transmission Owners comment on the ability of resources to provide ancillary services without an energy schedule.[130] MISO Transmission Owners claim that whether a resource can provide ancillary services without an energy schedule depends on the particular electric storage technology, the service being offered, and the ability of the resource to respond within the timeframe established for that service. Similarly, EPRI and Research Scientists assert that electric storage resources that transition from charge to discharge slowly (*e.g.,* pumped-hydro resources) are unlikely to be able to provide certain ancillary services without an energy schedule, while electric storage resources that transition from charge to discharge and change operating levels quickly can.[131]

109. While Xcel Energy Services agrees that resources do not necessarily need to be synchronized to the grid to provide ancillary services, it argues that RTOs/ISOs must establish response time requirements to ensure that all resources provide those services within an adequate timeframe.[132] Xcel Energy

[124] *See* NOPR at P 50.

[125] *See id.* P 51.

[126] *See, e.g.,* Advanced Energy Economy Comments at 26–27; Altametric Comments at 6; Beacon Power Comments at 3–4; Efficient Holdings Comments at 13–14; Energy Storage Association Comments at 10, 12–13; NRG Comments at 15–16; Pacific Gas & Electric Comments at 8.

[127] *See., e.g.,* Efficient Holdings Comments at 13–14; Energy Storage Association Comments at 12; Magnum Comments at 10; Starwood Energy Comments at 6.

[128] *See* Energy Storage Association Comments at 12–13; Research Scientists Comments at 5–6.

[129] *See* EPSA/PJM Power Providers Comments at 17; NRG Comments at 15–16.

[130] *See* MISO Transmission Owners Comments at 9.

[131] *See* EPRI Comments at 14–15; Research Scientists Comments at 5.

[132] *See* Xcel Energy Services Comments at 22.

Services further notes that to provide some services, such as voltage support, resources do not need to submit an energy offer. Xcel Energy Services concludes that the larger issue is the capability of co-optimization software to evaluate the option between dispatching an electric storage resource to charge or discharge.

110. MISO, PJM, and SPP do not opine on whether the Commission should require each RTO/ISO to remove any requirement that a resource have an energy schedule to provide ancillary services, although MISO and SPP present considerations for the Commission to evaluate should it move forward on this issue, each discuss the feasibility of removing any such requirement for some services.[133] For example, PJM notes that it already allows market participants to offer to provide ancillary services without a corresponding energy offer and that no further software changes are needed to effectuate this outcome.[134] Likewise, MISO notes that, under its Stored Energy Resource model, the Stored Energy Resource submits regulation offers but not energy offers, illustrating the potential for resources to provide ancillary services without an energy schedule. SPP states that it allows a resource that is not online or synchronized to provide supplemental reserves. SPP also explains that a resource that is not qualified to provide energy can participate in the regulation market; however, that resource would not be eligible to set the price in the energy market, and its output could not be substituted for contingency reserves.

111. While MISO agrees that electric storage resources that can start rapidly should not be required to be online and synchronized to provide ancillary services, it contends that an RTO must review and address its system limitations to ensure that it can handle such resources' fast start and ramp capabilities before removing any such requirement. According to MISO, reflecting an electric storage resource's start-up time and ramp capabilities in the clearing engine is feasible but would require extensive system and software changes. For an electric storage resource that is managing its own state of charge, MISO states that it would need the resource's energy schedule and dispatch range to ensure that it dispatches the resource to provide ancillary services within that resource's physical limits. MISO further contends, however, that if it were managing an electric storage resource's state of charge, it would need to receive offers for all ancillary services that the resource seeks to provide and that, absent an energy offer, the optimization model would need to assume that the resource is a price taker in the energy market if that maximizes its profit from providing ancillary services.

112. SPP asserts that any change to an energy schedule requirement for providing spinning reserve needs to involve the North American Electric Reliability Corporation (NERC) because NERC defines spinning reserves as a resource that is synchronized and spinning.

113. AES Companies argue that, rather than adopting any prescriptive requirement in a final rule, the Commission should allow each RTO/ISO to determine whether it can remove or modify any tariff provision or business practice that requires a resource to have an energy offer or schedule to provide a specific ancillary service, given their differing operational characteristics and needs.[135] That said, AES Companies note that some RTOs/ISOs permit demand response resources to provide certain ancillary services without providing energy and that it is important to remove barriers to the provision of essential reliability services. AES Companies also mention that periodic testing of resources is sufficient to determine their ability to provide ancillary services but that testing and measurement procedures may vary by technology.

114. R Street Institute asserts that, unless they have a must-offer energy obligation, electric storage resources should not have to submit an energy schedule to participate in ancillary service markets.[136] However, R Street Institute contends that, before requiring each RTO/ISO to remove any requirement that a resource must have an energy schedule to provide ancillary services, the Commission should weigh the costs of any software changes necessary to implement such a requirement against its projected benefits.

115. CAISO, ISO–NE, and NYISO state that the Commission should not require each RTO/ISO to remove any requirement that a resource have an energy offer or schedule to provide ancillary services.[137] They state that their markets cannot accommodate resources that seek to provide ancillary services without offering energy as well. Specifically, they contend that all other resource types must submit an energy offer or schedule to provide ancillary services because it is necessary to allow them to co-optimize their energy and ancillary services markets. They argue that, without such a requirement, an RTO/ISO may dispatch a resource to provide ancillary services when it would have been more economically efficient to dispatch the resource to provide energy or may not be able to determine which resource(s) that have cleared as reserves it would be most economically efficient to dispatch for energy when contingencies arise. They contend that removing this requirement would therefore decrease overall market efficiency, increasing costs to consumers and uplift costs.

116. In terms of the technical difficulties of removing the requirement that a resource have an energy schedule to provide ancillary services, EPRI notes that some RTOs/ISOs require zero-cost offers for certain ancillary services in the real-time market.[138] EPRI states that prices for these ancillary services are based on the opportunity costs that the marginal ancillary service provider incurs to provide ancillary services instead of energy. Energy Storage Association and EPRI contend that, without providing an energy offer, an electric storage resource will not have a lost opportunity cost.[139] EPRI notes that therefore the electric storage resource will not be able to set the price at a non-zero value when it is the marginal resource providing ancillary services.

117. Guannan He argues that there is no need for the Commission to require each RTO/ISO to remove any requirement that a resource have an energy schedule to provide ancillary services if electric storage resources specify through their energy schedules when they are online or offline.[140]

118. While Advanced Energy Economy and Electric Vehicle R&D Group argue that the Commission should require each RTO/ISO to remove any requirement that an electric storage resource have an energy schedule to provide ancillary services, they state that, if the Commission decides to retain the requirement, the Commission should make certain clarifications in the final rule or require each RTO/ISO to revise its existing market rules with respect to the provision of ancillary

[133] *See* MISO Comments at 12–14; PJM Comments at 17; SPP Comments at 8–9.

[134] *But see* NextEra Comments at 7, n.8 (asserting that this option is only available in PJM for regulation service).

[135] *See* AES Companies Comments at 17–19.

[136] *See* R Street Institute Comments at 4.

[137] *See* CAISO Comments at 7–8; ISO–NE Comments at 15–17; NYISO Comments at 7–9.

[138] *See* EPRI Comments at 15.

[139] *See* Energy Storage Association Comments at 12; EPRI Comments at 15;

[140] *See* Guannan He Comments at 1–2.

services.[141] Specifically, Advanced Energy Economy argues that the Commission should require each RTO/ISO to revise its tariff to allow an electric storage resource to account for its charge and discharge parameters. In addition, Advanced Energy Economy states that the Commission should provide assurances that an electric storage resource that manages its state of charge through energy offers will not be mitigated or deemed engaged in withholding. Electric Vehicle R&D Group argues that electric storage resources should be allowed to set their energy schedule to zero or a small negative number to compensate for losses.

c. Commission Determination

119. Upon consideration of the comments, we will not require each RTO/ISO to modify rules requiring resources to have an energy schedule to participate in the ancillary service markets. While some electric storage resources may be technically capable of providing ancillary services without an energy schedule and could represent those capabilities in their bidding parameters and performance tests, we are persuaded by commenters that requiring the RTOs/ISOs to adjust the requirement to have an energy schedule to provide ancillary services could result in less efficient dispatch, potentially increasing costs. Moreover, we recognize the importance of co-optimization in clearing and dispatch software and appreciate that the RTOs/ISOs have developed different, individual approaches to co-optimizing their energy and ancillary service markets. Upon consideration of the comments, we do not find, on a generic basis, that a requirement to have an energy schedule to participate in the ancillary service markets is necessarily an unreasonable requirement for the participation of electric storage resources in those markets because such a requirement may be necessary to support economically efficient dispatch within a particular RTO/ISO market.

120. However, we agree with commenters that some fast-responding electric storage resources are technically capable of providing ancillary services without an energy schedule. We also acknowledge that some RTO/ISO market rules already allow resources to provide some ancillary services, namely regulation, without the requirement to participate in the energy market. Such opportunities for participation in certain ancillary service markets without an energy schedule suggest that there may be instances (*i.e.,* for certain ancillary services in certain RTO/ISO markets) in which allowing a resource to provide an ancillary service without an energy schedule may enhance market efficiency. Therefore, we encourage each RTO/ISO to consider whether fast-responding electric storage resources may be able to provide certain ancillary services in its markets without an energy schedule.

4. NERC Definitions

a. NOPR Request for Comment

121. In the NOPR, the Commission noted that it appears that some of the Glossary of Terms definitions used in NERC reliability standards were created for synchronous generation.[142] Therefore, the Commission sought comment on whether and to what extent the Commission-approved NERC Glossary of Terms and associated reliability standards or regional reliability requirements may create barriers to the participation of electric storage resources or other non-synchronous technologies in the RTO/ISO markets.

b. Comments

122. Several commenters argue that the NERC reliability standards and regional reliability requirements do not present a barrier to electric storage resources participating in wholesale electric markets.[143] Both AES Companies and EEI note, however, that modifications to the reliability standards may be appropriate in the future. NERC argues that its reliability standards are technology neutral and provide the responsible entity, usually the balancing authority, with flexibility to meet their performance-based requirements.[144] Furthermore, Imperial Irrigation District and NERC point to an interpretation of regional Reliability Standard BAL–002–WECC–2 that acknowledges that non-traditional resources, including electric storage resources, are capable of meeting the operating reserves-spinning requirement of the regional standard.[145]

123. Other commenters contend that it may be appropriate to revise the NERC Glossary of Terms to ensure that the definitions reflect the physical and operational characteristics of electric storage resources and other non-synchronous technologies.[146] NESCOE contends that certain definitions in the NERC Glossary of Terms may limit electric storage resources' participation in the reserves markets, while Massachusetts State Entities assert that Northeast Power Coordinating Council rules, which Massachusetts State Entities do not specifically identify, may prohibit inverter-based resources, including electric storage resources, from providing spinning reserves. Exelon notes that the NERC definitions were written before the development of electric storage resources and if those definitions or reliability standards are being read to exclude certain resources, then those definitions or reliability standards should be carefully reviewed to determine whether the exclusionary language is necessary for purposes of reliability.

124. Tesla/SolarCity suggest that (1) NERC should modify the definitions of ancillary services in its Glossary of Terms to eliminate any apparent requirement that ancillary service providers must be ''generation'' or ''synchronized;'' (2) in its compliance filing, each RTO/ISO should identify any reliability standards that prevent it from making Commission-directed tariff changes to accommodate electric storage resource participation; and (3) the Commission should make clear in the final rule that reliability standards that were developed for or favor conventional generators without technical justification must be changed to allow the participation of all resources unless there are technical limitations.

125. EPRI discusses the following potential revision to the NERC Glossary of Terms. While EPRI notes that the NERC definition of Operating Reserve-Spinning includes the phrase ''generation synchronized to the system,'' according to EPRI, resources providing spinning/synchronized reserves do not necessarily need to be synchronous resources but rather must be able to respond as soon as they are directed to do so. EPRI states that it would be useful to discuss this clarification with NERC and industry. SPP also notes that a spinning reserve

[141] *See* Advanced Energy Economy Comments at 27; Electric Vehicle R&D Group Comments at 1.

[142] *See* NOPR at P 52.

[143] *See* AES Companies Comments at 24; CAISO Comments at 8; EEI Comments at 8; NERC Comments at 2.

[144] *See* NERC Comments at 4–5.

[145] *See* Imperial Irrigation District Comments at 4; NERC Comments at 6 (citing *N. Am. Elec. Reliability Corp.,* Docket No. RD17–3–000 (Jan. 24, 2017) (delegated letter order)).

[146] *See, e.g.,* ELCON Comments at 5, 9–10 (citing the NOPR's summary of comments that asserted, for example, that the NERC Glossary's definitions of Spinning Reserves and Operating Reserve-Spinning may be barriers to non-synchronous resources seeking to provide reserve products; *see, e.g.,* NOPR at P 44); EPRI Comments at 15–16; Exelon Comments at 7–8; Massachusetts State Entities Comments at 15–16; MISO Comments at 14; National Hydropower Association Comments at 8; NYISO Comments at 7; Tesla/SolarCity Comments at 12–14.

product, by definition, means the resource must be synchronized and spinning.[147]

c. Commission Determination

126. Upon consideration of the comments, we find that the Commission-approved NERC reliability standards, the associated Glossary of Terms, and regional reliability standards do not create barriers to the participation of electric storage resources or other non-synchronous technologies in the RTO/ISO markets. We find persuasive NERC's argument that its reliability standards are technology neutral and provide electric storage resources with flexibility to meet their performance-based requirements. Moreover, no commenter has demonstrated that the NERC Glossary of Terms and associated reliability standards or regional reliability requirements preclude electric storage resources or other non-synchronous technologies from providing the services that they are technically capable of providing in the RTO/ISO markets.

D. Participation in the RTO/ISO Markets as Supply and Demand

1. Eligibility To Participate as a Wholesale Seller and Wholesale Buyer

a. NOPR Proposal

127. In the NOPR, the Commission proposed to require each RTO/ISO to revise its tariff to ensure that electric storage resources can be dispatched and can set the wholesale market clearing price as both a wholesale seller and wholesale buyer, consistent with existing rules that govern when a resource can set the wholesale price.[148] The Commission also proposed that, for a resource using the proposed participation model for electric storage resources to be able to set prices in the RTO/ISO markets as either a wholesale seller or a wholesale buyer, it must be available to the RTO/ISO as a dispatchable resource.[149] This proposal included the requirements that the RTOs/ISOs accept wholesale bids from electric storage resources to buy energy so that the economic preferences of electric storage resources are fully integrated into the market, the electric storage resource can set the price as a load resource where market rules allow, and the electric storage resource can be available to the RTO/ISO as a dispatchable demand asset.[150] The Commission noted that these requirements must not prohibit electric storage resources from participating in the RTO/ISO markets as price takers, consistent with the existing rules for self-scheduled load resources. The Commission also proposed that resources using the participation model for electric storage resources be able to set the price in the capacity markets, where applicable.

128. Finally, the Commission sought comment on whether any existing RTO/ISO rules may unnecessarily limit the ability of resources using the participation model for electric storage resources to set prices in the RTO/ISO markets.[151]

b. Comments

i. Wholesale Seller/Wholesale Buyer

129. Numerous commenters agree with the Commission's proposal to require each RTO/ISO to permit electric storage resources to be able to be dispatched as both supply and demand and to set wholesale market clearing prices as both a wholesale seller and wholesale buyer.[152] Commenters state that this proposal appropriately recognizes the full bidirectional value of electric storage resources, their fast response times, and limited energy and allows for greater grid efficiency, greater competition, and downward pressure on wholesale prices and system costs.[153] Institute for Policy Integrity also argues that such participation could reduce peak energy costs by replacing inefficient thermal units, reduce price volatility by shifting load from peak to off-peak, improve overall reliability on the electric grid, and reduce the need for cost-intensive investment in electric transmission infrastructure.

130. Tesla/SolarCity add that, as more variable energy resources come online, the value of having dispatchable loads capable of setting market prices will become greater and this feature of the market will become increasingly valuable.[154] Research Scientists agree that the economic preferences of energy storage resources should be reflected in the market clearing as both load and supply, in line with other load resources in the grid.[155] Magnum supports the ability of electric storage resources to participate as a dispatchable load but not if it precludes the generation function of its technology from participating in market opportunities because the two functions can occur simultaneously.[156]

131. Several RTOs/ISOs, including CAISO, ISO–NE, NYISO, and SPP, also express general support for the Commission's proposals.[157] MISO agrees that a resource optimized through the market clearing process should be allowed to set wholesale prices but states that determining the rules and conditions under which electric storage resources should be cleared and optimized in the markets will require significant time and resources.[158]

132. MISO Transmission Owners caution that state laws may affect an electric storage resource's status as a seller or buyer, arguing that states and distribution utilities should retain authority to manage this aspect of electric storage resources in their areas.[159] MISO Transmission Owners also assert that it is technologically challenging to enforce a requirement for a behind-the-meter electric storage resource to buy electricity at wholesale. Xcel Energy Services conditions its support upon resources being dedicated wholesale resources that do not have the ability to arbitrage wholesale and retail rates.[160] EEI supports the proposal on the condition that the Commission clarify that an electric storage resource bidding into the wholesale markets that is interconnected to the transmission system must charge at wholesale rates, while an electric storage resource interconnected to the distribution system must pay any applicable charges under state jurisdictional tariffs for its use of state jurisdictional facilities.[161]

133. While Open Access Technology conditionally supports the NOPR proposal, it requests that the Commission clarify whether a storage resource in charging mode is considered as negative demand response (*i.e.,* load increase instead of load reduction).[162]

134. Several commenters state that electric storage resources should have the same ability as other resources to self-schedule within the requirements of the RTO/ISO and participate in the

[147] *See* SPP Comments at 8.

[148] *See* NOPR at P 81.

[149] *See id.* P 84.

[150] *See id.* P 81.

[151] *See id.* P 84.

[152] *See, e.g.,* Efficient Holdings Comments at 17; Imperial Irrigation District Comments at 10–11; National Hydropower Association Comments at 9; NYPA Comments at 11; R Street Institute Comments at 6; Tesla/SolarCity Comments at 15.

[153] *See, e.g.,* Avangrid Comments at 7; Energy Storage Association Comments at 6–7, 17, 18; Imperial Irrigation District Comments at 11; Institute for Policy Integrity Comments at 3–4; SPP Comments at 13.

[154] *See* Tesla/SolarCity Comments at 15.

[155] *See* Research Scientists Comments at 8.

[156] *See* Magnum Comments at 13.

[157] *See* CAISO Comments at 13; ISO–NE Comments at 21; NYISO Comments at 10; SPP Comments at 13.

[158] *See* MISO Comments at 7.

[159] *See* MISO Transmission Owners Comments at 11–12.

[160] *See* Xcel Energy Services Comments at 23.

[161] *See* EEI Comments at 12.

[162] *See* Open Access Technology Comments at 2.

RTO/ISO markets as a price taker.[163] Energy Storage Association further recommends that the Commission clarify that the option to self-schedule should apply to storage resources both as buyers and as sellers and not just as ''load resources.'' APPA/NRECA contend that, if electric storage resources are not permitted to participate as price takers on the same basis as any other self-scheduled resource, it will create a disincentive to load serving entity investment and utilization of electric storage resources, which will undermine the Commission's goals.

135. Dominion asserts that, in order to improve price transparency, the Commission should consider allowing a pumped-hydro resource to submit its dispatch cost to the RTO while preserving its right to self-schedule in the real-time market.[164] While MISO Transmission Owners generally support the Commission's proposal to allow electric storage resources to participate as a wholesale buyer and seller, they state that it is important to consider any unintended consequences regarding an electric storage resource owner's ability to self-schedule the unit if needed to meet load demand conditions and maintain power quality and reliability.[165] NYISO points out that self-schedule offers will not allow the resource to participate as a supply and demand resource simultaneously because self-schedule offers indicate the resource's desired schedule.[166] AES Companies argue that the Commission should not require the RTOs/ISOs to allow electric storage resources to be price takers; rather, this should be an RTO/ISO-specific decision because the markets are different and the decision to self-schedule may have unintended consequences and could skew market results.[167]

ii. Dispatchability

136. Some commenters support the Commission's proposal that an electric storage resource must be available to the RTO/ISO as a dispatchable resource to set prices in the RTO/ISO markets.[168] EPRI asserts that, assuming an energy storage resource is dispatchable with a range of output, it should have no limitations to setting the price as either a wholesale seller or a wholesale buyer when it is marginal.

137. SPP states that, while any resource type may set the price for any product that the resource is qualified to provide and offers to provide in the market, the resource must be dispatchable and must have available range to provide the system's marginal MW.[169]

iii. Limitations on Price Setting

138. Generally, the RTOs/ISOs do not believe that their rules limit the ability of an electric storage resource to set prices.[170] SPP adds that, other than dispatchability and range requirements described in the preceding section, it does not have restrictions that would unnecessarily limit the ability of any resource type, including electric storage resources, to set price. MISO states that it is unaware of any rules that limit the ability of pumped-hydro resources to set prices in its markets. MISO also states that stored energy resources provide only regulation and are price-takers for energy. MISO recommends studying the basic participation model(s) for electric storage resources in more detail before identifying any necessary adjustments to an RTO/ISO market's price-setting rules.

139. SoCal Edison and Xcel Energy Services state that they are not aware of any RTO/ISO rules that would unnecessarily limit the ability of storage resources to set market prices, except in some cases where RTO market software does not allow a resource at minimum output to set price.[171]

140. Some commenters argue that electric storage resources should be allowed to set prices if they meet certain requirements, including the minimum requirements for each service.[172] PJM Market Monitor argues that storage resources should be eligible to set price on the basis of dispatch if the storage resource meets all other relevant requirements and has the necessary telemetry and metering. Dominion supports the ability for electric storage resources to set prices in the energy market when applicable if (1) the current day-ahead market pricing rules applicable to pumped-hydro optimization are preserved and (2) the Commission directs each RTO/ISO to create a methodology to calculate accurate real-time offers and in situations where electric storage resources designate themselves dispatchable.

141. AES Companies assert that the individual RTOs/ISOs and their stakeholders should decide whether and how electric storage resources may set prices in the capacity markets because the capacity constructs in each differ.[173] Avangrid contends that electric storage resources should be able to set the capacity clearing price.[174] However, Avangrid notes that capacity constructs that are based on real-time performance (such as ISO–NE's Pay for Performance and PJM's Capacity Performance) may need to guard against the ability of electric storage resources to switch from generation to load during a capacity emergency because it could exacerbate the need for generating capacity. Avangrid suggests that these resources could be subjected to more severe penalties than a generator that performs less than its capacity commitment to guard against such concerns. Relatedly, SPP asks the Commission to clarify the effects on scarcity pricing when an electric storage resource moves its capacity instantly from charging to discharging, eliminating any scarcity.[175]

c. Commission Determination

142. In this Final Rule, we adopt the NOPR proposal and add section 35.28(g)(9)(i)(B) to the Commission's regulations to require each RTO/ISO to revise its tariff to ensure that a resource using the participation model for electric storage resources can be dispatched as supply and demand and can set the wholesale market clearing price as both a wholesale seller and wholesale buyer, consistent with rules that govern the conditions under which a resource can set the wholesale price. Consistent with the NOPR proposal, we find that, for a resource using the proposed participation model for electric storage resources to be able to set prices in the RTO/ISO markets as either a wholesale seller or a wholesale buyer, it must be available to the RTO/ISO as a dispatchable resource. Also, consistent with the NOPR, we require that (1) resources using the participation model for electric storage resources be able to set the price in the capacity markets, where applicable; (2) RTOs/ISOs must accept wholesale bids from resources using the participation model for electric storage resources to buy energy; and (3) resources using the

[163] *See, e.g.,* APPA/NRECA Comments at 15–16; Avangrid Comments at 7; Energy Storage Association Comments at 18; NYISO Comments at 10; Tesla/SolarCity Comments at 15.

[164] *See* Dominion Comments at 6.

[165] *See* MISO Transmission Owners Comments at 11.

[166] *See* NYISO Comments at 10.

[167] *See* AES Companies Comments at 25.

[168] *See, e.g.,* EPRI Comments at 24; Imperial Irrigation District Comments at 11; Starwood Energy Comments at 6.

[169] *See* SPP Comments at 15.

[170] *See, e.g.,* ISO–NE Comments at 21; MISO Comments at 18; PJM Comments at 18; SPP Comments at 15.

[171] *See* SoCal Edison Comments at 17; Xcel Energy Services Comments at 23.

[172] *See, e.g.,* Dominion Comments at 6; NYPA Comments at 11; PJM Market Monitor Comments at 7.

[173] *See* AES Companies Comments at 25.

[174] *See* Avangrid Comments at 8.

[175] *See* SPP Comments at 14.

participation model for electric storage resources must be allowed to participate in the RTO/ISO markets as price takers, consistent with the existing rules for self-scheduled resources.

143. Improving electric storage resources' opportunity to participate as both wholesale sellers of services and wholesale buyers of energy will improve market efficiency and, in turn, competition, by allowing the RTO/ISO to dispatch these resources in accordance with their most economically efficient use (*i.e.,* as supply when the market clearing price for energy is higher than their offer and as demand when the market clearing price is lower than their bid). Additionally, allowing electric storage resources to participate in the RTO/ISO markets as dispatchable load will allow these resources to set the market clearing price under certain circumstances, thus better reflecting the value of the marginal resource and ensuring that electric storage resources are dispatched in accordance with the highest value service that they are capable of providing during a set market interval. A wide range of commenters, including most RTOs/ISOs, generally support this requirement as one that will increase economic efficiency to the benefit of both electric storage resources and the RTO/ISO markets in which they will more fully be able to participate.

144. We reject AES Companies' assertion that an RTO/ISO must decide whether to allow electric storage resources to be price takers. None of the RTOs/ISOs have indicated that this need exists. We also find that AES Companies have not provided support for their assertion that the decision to self-schedule may have unintended consequences and could skew market results. To ensure consistent treatment in the RTO/ISO markets, we find that electric storage resources must maintain the same ability to self-schedule their resource as other market participants.

145. In response to EEI's, MISO Transmission Owners', and Xcel Energy Services' jurisdictional concerns, we find that the Commission has authority to require the RTOs/ISOs to permit any resource using the participation model for electric storage resources participating in the RTO/ISO markets to buy energy from those markets, consistent with the rules related to wholesale purchasers of energy in each RTO/ISO. As discussed in the Price for Charging Energy section below,[176] we find that the sale of electric energy from the grid that is used to charge electric storage resources for later resale into the energy or ancillary service markets constitutes a sale for resale. Therefore, to better facilitate these wholesale purchases and improve economic efficiency in the RTO/ISO markets, it is reasonable for the RTOs/ISOs to allow electric storage resources to choose to participate in the RTO/ISO markets as both supply and demand. This approach maximizes the ability of electric storage resources to participate as wholesale sellers and wholesale buyers in RTO/ISO markets, which will enhance competition and, in turn, helps to ensure these markets produce just and reasonable rates. Additionally, we note that we address EEI's concern about an electric storage resource's use of the distribution system in the Price for Charging Energy section below.[177]

146. We disagree with SPP that there is a need to clarify in this Final Rule the effects on scarcity pricing when an electric storage resource moves its capacity instantly from charging to discharging. Scarcity pricing rules vary between RTOs/ISOs and we do not have information on the record to consider a generic clarification for all RTOs/ISOs, nor do we find clarification is necessary to ensure that the reforms in this Final Rule are just and reasonable and can be implemented. In response to Avangrid, we find that it is not appropriate to require stricter penalties for electric storage resources during capacity emergencies. Avangrid has not shown why electric storage resources should be subject to stricter penalties than other resources. While we are not establishing a requirement for resources using the participation model for electric storage resources to pay stricter penalties during capacity emergencies, we note that each RTO/ISO is free to evaluate the potential impacts of electric storage resources during scarcity events and propose in a separate FPA section 205 filing [178] any market rules that it believes are necessary to account for the unique physical and operational characteristics of electric storage resources.

147. We also reject MISO's recommendation to study in more detail the basic participation model(s) for electric storage resources before identifying any necessary adjustments to an RTO/ISO market's price-setting rules. We believe that the flexibility that we provide each RTO/ISO to implement this Final Rule renders moot MISO's assertion that more study is necessary.

148. In response to Energy Storage Association's recommendation that the option to self-schedule should apply to electric storage resources both as buyers and as sellers, we clarify that the ability of electric storage resources to participate as price takers will not be limited to their participation as load. Electric storage resources should also be able to self-schedule when they participate in the RTO/ISO markets as a supply resource consistent with rules governing how other resources self-schedule. This requirement helps to ensure that electric storage resources are treated consistently with the ability of self-scheduled load resources and traditional generation resources to participate in the RTO/ISO markets.

149. Additionally, in response to Dominion's concerns regarding the ability of electric storage resources to set prices in the energy market, particularly as it relates to pumped-hydro resources and the preservation of existing rules related to their optimization, we clarify that we are not requiring the RTOs/ISOs to change their participation models for pumped-hydro resources in response to this Final Rule. However, we require each RTO/ISO to establish means by which all electric storage resources, including pumped-hydro resources, can participate as wholesale sellers and wholesale buyers in the RTO/ISO markets using a participation model for electric storage resources. This requirement ensures that the RTO/ISO markets value the participation of all electric storage resources as both supply and demand.

150. Additionally, in response to Open Access Technology, we clarify that we do not consider electric storage resources in charging mode to be negative demand response. This Final Rule requires an electric storage resource to be eligible to participate in the RTO/ISO markets as a wholesale buyer and for each RTO/ISO to be able to dispatch them as such. Such a mechanism would entail participation in the energy markets, not the provision of a new service, recognizing that electric storage resources may also be dispatched to consume electricity when they are providing certain ancillary services (such as frequency regulation).

2. Mechanisms To Prevent Conflicting Dispatch Instructions

a. NOPR Request for Comments

151. In the NOPR, the Commission preliminarily concluded that the proposed requirement to participate as a supply and demand resource simultaneously (*i.e.,* submit bids to buy and offers to sell during the same market interval) is necessary to maximize the value that electric storage resources can provide in the RTO/ISO

[176] *See infra* P 294.

[177] *See infra* P 301.

[178] *See* 16 U.S.C. 824d.

markets, allowing the markets to identify whether it is more economic to dispatch an electric storage resource as supply or demand during a given market interval.[179] The Commission stated that it expected that, through its bidding strategy, a resource using the electric storage resource participation model would be able to prevent any conflicting dispatch signals to itself. However, the Commission sought comment on whether there should be a mechanism that identifies bids and offers coming from the same resource to ensure the price for the offer to sell is not lower than the price for the bid to buy during the same market interval so that an RTO/ISO does not accept both the offer and bid of a resource using the electric storage resource participation model for that interval.

b. Comments

152. Regarding the issue of preventing conflicting dispatch signals, AES Companies, Efficient Holdings, and PJM Market Monitor agree with the Commission that a resource using the electric storage resource participation model would be able to prevent any conflicting dispatch signals itself through a bidding strategy and fuel management plan.[180]

153. In contrast, Bonneville, Imperial Irrigation District, and NRG argue that the Commission should not rely on an electric storage resource's bidding strategy to prevent conflicting dispatch signals to itself and argue that a screening mechanism in RTO/ISO software would be a more robust approach than relying on rational bids and offers coming from the same resource.[181] Xcel Energy Services agrees but seeks assurance that any RTO/ISO mechanism to prevent such conflicts would work and not create unintended consequences for market dispatch of the resource.[182] EPRI states that an RTO/ISO can likely put a fairly straightforward constraint within its security-constrained unit commitment or security-constrained economic dispatch model to prevent conflicting dispatch signals.[183] R Street Institute and Research Scientists believe that building logical checks into the market clearing software could avoid this problem.[184]

154. Avangrid, Imperial Irrigation District, and SoCal Edison agree with the Commission that the RTOs/ISOs should not allow an electric storage resource to submit a buy bid that is higher than its sell offer in the same market interval because there is no economic reason to do so.[185] Imperial Irrigation District and NRG argue that RTO/ISO software should ensure that, when an electric storage resource submits both supply and demand bids, the offer to sell is not lower than the price for the bid to buy during a single market interval.[186] SoCal Edison is also concerned that there may be an incentive for an electric storage resource to submit conflicting bids and offers in markets that allow some form of uplift payments.

155. CAISO states that its Non-Generator Resource participation model, which was designed with electric storage resources in mind, allows Non-Generator Resources to submit an economic bid that spans a negative to positive capacity range.[187] CAISO explains that this single bid curve avoids conflicting dispatch. MISO similarly states that it has a method for Demand Response Resources—Type II that could be implemented for electric storage resources to allow a smooth dispatch range between a negative minimum limit and a positive maximum limit.[188]

156. SPP agrees that the coordination of a single asset as both load and generation is important, stating that both the mechanism utilized and the rules should ensure that the offers for use as load and generation would be monotonically increasing.[189] However, SPP notes that non-LMP components (*e.g.,* start-up costs) may need specific consideration to avoid a situation where such costs are not considered in dispatch. ISO–NE does not believe any mechanism is necessary to avoid conflicting dispatch instructions, noting that to avoid this problem, starting in December 2018, it plans to use a single dispatch signal that reflects the net supply and demand dispatch.[190] ISO–NE adds that the Commission should not be overly prescriptive in this area, instead allowing each RTO/ISO to address these sorts of issues as necessary. NYISO requests that offers for simultaneous participation as supply and demand include an incremental cost construct that allows an electric storage resource's offer price for demand to be less than its offer price for supply and gives each RTO/ISO flexibility to determine an offer construct that best fits its software design.[191]

157. Consistent with the single bid curve approach suggested by some RTOs/ISOs, Energy Storage Association, and NextEra request that the Commission direct RTOs/ISOs to permit electric storage resources to enter an energy bid curve with price/quantity pairs for providing and withdrawing energy (bidding different quantities of positive or negative MW for different energy prices) in both day-ahead and real-time markets.[192]

158. Ohio Commission recommends that the market monitors review all buy bids and sell offers to confirm that a resource is appropriately providing a marginal cost-based bid and not exercising market power.[193] While EEI is not aware of this issue currently, it claims that it could arise as new technologies buy and sell in the same interval; therefore, it suggests that the Commission discuss this issue at a technical conference to determine if adequate monitoring mechanisms exist.[194]

159. Efficient Holdings, Energy Storage Association, and NYPA support requiring electric storage resources to participate simultaneously as generation and load to maximize the value they can provide and provide the RTO/ISO with more flexibility to operate its system.[195] Efficient Holdings contends that simultaneous buy and sell offers allow storage operators to absorb extra power when prices are low, thus lowering operators' fuel costs and adding greater flexibility to market operations and optimizing energy costs.

160. While Energy Storage Association argues that electric storage resources should be permitted to participate in the RTO/ISO markets simultaneously as generation and load, it argues that they should not have to register as, or be modeled as, two separate resources (*i.e.,* generation and load) because it would limit the flexibility of scheduling and dispatching

[179] *See* NOPR at P 83.

[180] *See* AES Companies Comments at 26; Efficient Holdings Comments at 17; PJM Market Monitor Comments at 8.

[181] *See* Bonneville Comments at 5; Imperial Irrigation District Comments at 11; NRG Comments at 14.

[182] *See* Xcel Energy Services Comments at 23.

[183] *See* EPRI Comments at 23–24.

[184] *See* R Street Institute Comments at 6; Research Scientists Comments at 8–9.

[185] *See* Avangrid Comments at 8; Imperial Irrigation District Comments at 11; SoCal Edison Comments at 17.

[186] *See* Imperial Irrigation District Comments at 11; NRG Comments at 14.

[187] *See* CAISO Comments at 14.

[188] *See* MISO Comments at 17.

[189] *See* SPP Comments at 15.

[190] *See* ISO–NE Comments at 22.

[191] *See* NYISO Comments at 10.

[192] *See* Energy Storage Association Comments at 17–18; NextEra Comments at 10, n.14.

[193] *See* Ohio Commission Comments at 8.

[194] *See* EEI Comments at 13.

[195] *See* Efficient Holdings Comments at 17; Energy Storage Association Comments at 18; NYPA Comments at 9.

the storage resource in several ways.[196] Energy Storage Association asserts that this would generally (1) only allow a resource to inject or withdraw energy on a bidding interval (*i.e.,* hourly) basis, rather than allowing switching between buying and selling energy on a dispatch interval (*i.e.,* five-minute) basis; and (2) include transition time for switching from one mode of operation to another, which newer electric storage resources do not require. Energy Storage Association believes that an electric storage resource should be able to both withdraw energy from, and provide energy to, the grid and switch between states from one (five-minute) dispatch interval to the next, so it can be dispatched seamlessly across its full range (*i.e.,* from positive to negative). Energy Storage Association contends that permitting resources to indicate their willingness to charge or discharge based on 5-minute pricing will allow RTOs/ISOs to more fully utilize the unique capabilities of electric storage resources.

161. In contrast, AES Companies argue that there is no reason to restrict an electric storage resource from both buying and selling in the same market interval because some electric storage technologies allow the resource owner to operate separate nodes independently.[197] Tesla/SolarCity argue that, while it is very likely that many electric storage resources will participate both as demand and supply resources in the same intervals during most times, the Commission should not require this because there are no efficiency gains and some optionality will be lost.[198]

c. Commission Determination

162. While we find that simultaneous participation of resources using the participation model for electric storage resources as supply and demand may enable more efficient use of those resources, we also find that each RTO/ISO must have in place market rules that prevent conflicting dispatch signals in the same market interval in order to avoid any operational uncertainties or reliability concerns that could arise. In addition, while we agree with commenters that conflicting dispatch instructions will be prevented if market participants accurately represent their economic preferences in their bids, we find that relying on the expected behavior of market participants is not sufficient to alleviate the related operational concerns. Therefore, to mitigate the potential occurrence of conflicting dispatch instructions and to implement the new requirement in section 35.28(g)(9)(i)(B) of the Commission's regulations, on compliance to this Final Rule, we require each RTO/ISO to either (1) demonstrate that its market design will not allow for conflicting supply offers and demand bids from the same resource for the same market interval or (2) modify its market rules to prevent conflicting supply offers and demand bids from the same resource for the same market interval.

163. Several approaches could address conflicting dispatch. We agree with commenters that allowing electric storage resources to represent their full economic range (both charging and discharging) in a single bid could avoid concerns with conflicting dispatch signals and give electric storage resources the flexibility to participate as supply, demand, or both through one bid. However, while we agree this approach could be effective at mitigating conflicting dispatch signals, there may be other reasonable approaches compatible with existing market designs in other RTOs/ISOs to prevent conflicting dispatch. For example, we agree with Bonneville, Imperial Irrigation District, and NRG that a screening mechanism in RTO/ISO software could also prevent conflicting dispatch. We also agree with NYISO that a cost construct that ensures that the price of offers to sell are not lower than the price for bids to buy may be reasonable. Therefore, we will not require a specific approach in this Final Rule but require that the approach chosen by each RTO/ISO mitigates the possibility of conflicting dispatch instructions. However, we disagree with the Ohio Commission that it could be the responsibility of the market monitors to review bids to address conflicting dispatch and clarify that the RTO/ISO is responsible for preventing conflicting dispatch.

164. In response to the comment suggesting resources using the participation model for electric storage resources should be able to enter an energy bid curve providing and withdrawing energy in both day-ahead and real-time markets, we clarify that resources using the participation model for electric storage resources should be able to submit offers to sell and bids to buy energy consistent with the opportunities available to other market participants in both the day-ahead and real-time markets. We also find a technical conference, as recommended by EEI, is unnecessary at this time given the existence of viable solutions to this issue identified by other commenters and given the flexibility that we provide each RTO/ISO and other market participants to address this issue.

165. Lastly, we clarify that, while each RTO/ISO should allow resources using the participation model for electric storage resources to participate as supply and demand simultaneously (*i.e.,* submit bids to buy and offers to sell during the same market interval), the RTOs/ISOs should not require resources using the participation model for electric storage resources to participate as supply and demand simultaneously.

3. Make-Whole Payments

a. NOPR Request for Comments

166. In the NOPR, the Commission noted that a resource using the proposed participation model for electric storage resources that elects to submit an economic bid as a wholesale buyer and participate as a dispatchable demand resource would still be able to self-schedule its charging and be a price taker.[199] However, the Commission noted that it is possible that the RTO/ISO could dispatch an electric storage resource as load when the wholesale price for energy is above the price of their bid to buy (a circumstance under which they would lose the opportunity to earn greater revenues as a supply resource). Therefore, to help alleviate any potential financial risk to electric storage resources when being dispatched as a demand resource, the Commission sought comments on whether the proposed participation model for electric storage resources should allow make-whole payments when a resource participating under this participation model is dispatched as load and the price of energy is higher than the resource's bid price.

b. Comments

167. Several commenters support allowing make-whole payments when an electric storage resource is dispatched as load and the price of energy is higher than the resource's bid price.[200] Avangrid, EEI, and ISO–NE state that electric storage resources should be treated comparably to other resources with regard to make-whole payments.[201] Avangrid states that, if the RTO/ISO uses electric storage resources as both generation and load, the reasoning for make-whole payments

[196] *See* Energy Storage Association Comments at 13, 18.

[197] *See* AES Companies Comments at 25–26.

[198] *See* Tesla/SolarCity Comments at 16.

[199] *See* NOPR at P 85.

[200] *See, e.g.,* CAISO Comments at 15; NRG Comments at 19; SoCal Edison Comments at 17–18; Tesla/SolarCity Comments at 17.

[201] *See* Avangrid Comments at 8; EEI Comments at 13; ISO–NE Comments at 21–22.

exists in either direction. California Energy Storage Alliance asks the Commission to require all electric storage participation models to include the ability to recover commitment costs and receive make-whole payments.[202] Trans Bay asks the Commission to clarify that the NOPR does not preclude electric storage resources from receiving any non-market payments, including make-whole payments.[203] While American Petroleum Institute does not oppose make-whole payments in principle, it argues these payments should not subsidize some technologies by mitigating the higher downside risk that should be managed by the owners of those resources.[204]

168. Several commenters suggest that the Commission should not set specific requirements for make-whole payments in this final rule but should provide the RTOs/ISOs flexibility to establish rules for make-whole payments, if appropriate.[205] Six Cities state that, if the Commission allows RTOs/ISOs to propose make-whole payments for electric storage resources, such payments should only be allowed in limited circumstances to prevent any undue preference for electric storage resources. Six Cities assert, if make-whole payments are allowed, they should be analogous to criteria for bid cost recovery within CAISO or other analogous payments.

169. Several commenters raise concerns about the complexity of requiring make-whole payments.[206] MISO requests that the Commission hold a series of technical conferences to address significant design and compensation issues. SoCal Edison contends that make-whole payments need to work in conjunction with other mechanisms (such as market power mitigation, temporal and product revenue netting, and specific bidding rules). Xcel Energy Services states that make-whole payments require further consideration to ensure electric storage resources are treated comparably to other resources and to avoid unnecessary uplift charges.

170. Some commenters assert that make-whole payments are not necessary in certain circumstances.[207] ELCON and PJM reason that make-whole payments are not necessary for electric storage resources when they are dispatched as load and the price of energy is higher than the resource's bid price. Similarly, Electric Vehicle R&D Group states that make-whole payments do not seem necessary. ELCON believes that the resource should bear the financial risk of uneconomic dispatch.

171. Similar to how self-committed resources may not be able to receive make-whole payments for start-up costs, EPRI cautions that each RTO/ISO should consider whether certain costs should be eligible for make-whole payments when an electric storage resource self-manages its state-of-charge.[208] MISO contends that the potential appropriateness of make-whole payments may depend on whether the state of charge is managed by an electric storage resource or optimized by the RTO.[209] NYPA argues that, if the system operator is given state of charge control over a storage resource, RTO/ISO tariffs must compensate the resource if and when it is dispatched out of economic merit order.[210] NYPA asserts that this compensation should apply to: (1) Electric storage resources that are dispatched as load when the wholesale price for energy is above the price of their bid to buy and (2) resources withheld from generating when their energy offer is infra-marginal.

172. Other commenters believe that the Commission should not require the RTO/ISO to provide make-whole payments to electric storage resources because they should be able to self-manage in a way that eliminates the need for make-whole payments and achieves better price formation.[211] Acknowledging that make-whole payments are one potential solution to mitigate potential financial shortfalls, AES Companies contend that changes to the optimization price determination and the granting of flexibility for electric storage resources to manage their fuel use is preferable to make-whole payments. PJM Market Monitor similarly argues that market participants should decide when it is economic to buy and sell rather than create rules through which the market operator could dispatch a storage resource in a way inconsistent with its economics and then compensate it through an uplift payment.

173. Given that PJM does not dispatch load increases, it explains that, before engaging in this practice, it would need to consult with stakeholders to analyze whether the benefits would justify the costs.[212] NYISO discourages creating price protections for electric storage resources when they are scheduled as demand because such treatment would not be comparable to the treatment of other resources that are scheduled as demand, noting that regional flexibility will provide the RTOs/ISOs with the opportunity to treat resources comparably.[213]

c. Commission Determination

174. Given the unique capability of electric storage resources to serve as both a supply of, and demand for, energy and to implement the new requirement in section 35.28(g)(9)(i)(B) of the Commission's regulations that resources using the participation model for electric storage resources be able to be dispatched and set the wholesale market clearing price as both a wholesale seller and wholesale buyer, we find that the participation model for electric storage resources must allow make-whole payments when a resource is dispatched as load and the wholesale price is higher than the resource's bid price and when it is dispatched as supply and the wholesale price is lower than the resource's offer price. Therefore, as part of this Final Rule, we require each RTO/ISO to revise its tariff to ensure that resources available for manual dispatch as a wholesale buyer and wholesale seller under the participation model for electric storage resources are held harmless for manual dispatch by being eligible for make-whole payments. Any such make-whole payments must be consistent with the rules for make-whole payments for other dispatchable resources. This requirement is necessary to ensure that electric storage resources are treated like dispatchable resources that participate in the RTO/ISO markets. Because the rules for make-whole payments vary by RTO/ISO and there are inherent complexities in implementing this requirement, we will not require a specific method of make-whole payments. Instead, each RTO/ISO will have the flexibility to establish a methodology under which resources using the participation model for electric storage resources can receive make-whole payments.

[202] *See* California Energy Storage Alliance Comments at 11.

[203] *See* Trans Bay Comments at 4.

[204] *See* American Petroleum Institute Comments at 6.

[205] *See* MISO Transmission Owners Comments at 12; Six Cities Comments at 7–8 (citing CAISO Tariff at § 11.8); SoCal Edison Comments at 18.

[206] *See* MISO Comments at 18–19; SoCal Edison Comments at 18; Xcel Energy Services Comments at 18.

[207] *See* ELCON Comments at 5–6; Electric Vehicle R&D Group Comments at 1; PJM Comments at 18–19.

[208] *See* EPRI Comments at 26.

[209] *See* MISO Comments at 18–19.

[210] *See* NYPA Comments at 12.

[211] *See* AES Companies Comments at 28; PJM Market Monitor Comments at 8.

[212] *See* PJM Comments at 18.

[213] *See* NYISO Comments at 10.

175. Recognizing that comprehensive market design changes could be necessary to implement this requirement, we believe that the compliance deadline and implementation schedule set forth in the Compliance Requirements section [214] should provide sufficient time for the each RTO/ISO to work with its stakeholders to establish the necessary market rules for make-whole payments. In addition, given the time provided for each RTO/ISO to work with its stakeholders on this issue, we decline to hold the technical conferences requested by MISO.

176. We disagree with commenters who suggest that make-whole payments are not necessary because electric storage resources should bear the risk of uneconomic dispatch. Modeling, software, and certain other limitations are inherent in the complexity of the electric system and the tools available to maintain reliable operations. Uplift, or make-whole, payments may be needed to ensure that resources committed and dispatched out-of-market are able to recover their operating costs. Electric storage resources participating in the RTO/ISO markets are subject to the same system conditions as other resources that may cause them to be dispatched out-of-market and unable to recover their operating costs. Therefore, resources using the electric storage resource participation model should be able to receive the same make-whole payments that other resources receive to remedy the problem. Not offering make-whole payments to resources using the electric storage resource participation model could create a barrier to their participation in the RTO/ISO markets and be inconsistent with the treatment of other market participants.

177. Additionally, while the NOPR did not propose a requirement regarding make-whole payments for resources using the participation model for electric storage resources that are manually dispatched as supply, we agree with commenters' concerns that, if a resource using the participation model for electric storage resources is available to be used by the RTO/ISO as both a supply and demand resource, then the RTO/ISO should provide make-whole payments for the resource in both directions. Therefore, we require each RTO/ISO to modify its tariff to allow a resource using the participation model for electric storage resources to be eligible for make-whole payments when acting as a supply resource consistent with the rules governing the eligibility of other supply resources to receive make-whole payments. This requirement will further ensure that resources using the participation model for electric storage resources are treated like other dispatchable resources in the RTO/ISO markets and help make resources using the participation model for electric storage resources available to grid operators to address any reliability concerns through manual dispatch. As for NYPA's suggestion to make electric storage resources whole when they are withheld from generating when their energy offer is infra-marginal, we find that such payments should only be provided to resources using the participation model for electric storage resources to the extent that such payments are already provided to other market participants.

178. Regarding state-of-charge management, we agree with commenters that, if the market participant is controlling its resource, and it has not been dispatched uneconomically by the RTO/ISO, then it would not be appropriate for the resource using the participation model for electric storage resources to receive make-whole payments. Similar to other market participants, make-whole payments should only be available to resources using the electric storage resource participation model if the system operator dispatches that resource in a way that is inconsistent with its bids to buy and offers to sell energy. We agree with commenters that self-management could be a means to minimize make-whole payments. As discussed in the State of Charge Management section,[215] in this Final Rule, we require each RTO/ISO to allow electric storage resources to self-manage their state of charge. However, to the extent that an RTO/ISO manually dispatches a resource using the participation model for electric storage resources, that resource must be able to recover their costs consistent with the manner in which other market participants are able to recover their costs if the RTO/ISO dispatches them uneconomically.

179. In response to NYISO and PJM, we note that one of the requirements of this Final Rule is that each RTO/ISO have the ability to dispatch electric storage resources as load.[216] Therefore, in response to PJM, it is necessary for each RTO/ISO to establish a methodology under which resources using the participation model for electric storage resources that participate as load are able to receive make-whole payments. Additionally, in response to NYISO, because electric storage resources must be able to be dispatched as load, their eligibility to receive make-whole payments when dispatched as load would need to be consistent with other dispatchable resources but would not need to be consistent with the eligibility of other load resources that are not dispatchable by the RTO/ISO.

E. Physical and Operational Characteristics of Electric Storage Resources

1. Requirement To Incorporate Bidding Parameters as Part of the Electric Storage Resource Participation Model

a. NOPR Proposal

180. In the NOPR, the Commission proposed to require each RTO/ISO to revise its tariff to include a participation model for electric storage resources that incorporates bidding parameters that reflect and account for the physical and operational characteristics of electric storage resources.[217] Specifically, the Commission proposed that the RTOs/ISOs establish state of charge, upper charge limit, lower charge limit, maximum energy charge rate, and maximum energy discharge rate as bidding parameters for the participation model for electric storage resources that participating resources must submit, as applicable.[218] The Commission also proposed that the participation model for electric storage resources include the following bidding parameters that market participants may submit, at their discretion, for their resource based on its physical constraints or desired operation: Minimum charge time, maximum charge time, minimum run time, and maximum run time.[219]

b. Comments

181. Several commenters support the NOPR proposal to require each RTO/ISO to establish bidding parameters that reflect and account for the physical and operational characteristics of electric storage resources because they assert it will support efficient procurement of resources in the RTO/ISO markets and reduce system costs.[220]

182. Other commenters support the NOPR proposal, subject to clarification.[221] EPRI contends that the

[214] *See infra* P 348.

[215] *See infra* P 253.

[216] *See supra* P 142.

[217] *See* NOPR at P 66.

[218] *See id.* P 67.

[219] *See id.* P 68.

[220] *See, e.g.,* Advanced Energy Economy Comments at 24–25; Energy Storage Association Comments at 14; IRC Comments at 5; MISO Comments at 6; NESCOE Comments at 11; NYISO Comments at 9; Ohio Commission Comments at 7; Starwood Energy Comments at 5.

[221] *See* Beacon Power Comments at 5; EPRI Comments at 16–17.

definitions of the bidding parameters proposed in the NOPR are ambiguous and asks the Commission to explicitly define them. Beacon Power asks the Commission to ensure that, when implementing the proposed bidding parameters, the RTOs/ISOs do not impose any arbitrary requirements that limit electric storage resources' participation in their markets (such as a minimum time period over which energy must be dispatchable continuously at full capacity).

183. Several commenters do not necessarily oppose the NOPR proposal that each RTO/ISO incorporate certain bidding parameters into its participation model for electric storage resources but request that the Commission grant each RTO/ISO flexibility on compliance with respect to the bidding parameters that it ultimately adopts.[222] NYISO, Pacific Gas & Electric, and PJM ask the Commission to give each RTO/ISO flexibility to develop bidding parameters that are tailored to its market and reliability needs and to determine how to best use those bidding parameters in its market. Magnum agrees and further contends that the Commission should not mandate that each RTO/ISO adopt bidding parameters for specific types of electric storage resources. Connecticut State Entities argue that bidding parameters should not be so prescriptive as to determine prematurely which electric storage resource technologies to deploy. Connecticut State Entities claim that overly prescriptive bidding parameters would constrain load-serving entities' ability to adopt least-cost solutions.

184. APPA/NRECA also argue for flexibility, stating that the Commission should allow each RTO/ISO to demonstrate on compliance that the proposed minimum bidding requirements would harm the participation of electric storage resources in its markets and to propose a superior alternative.[223] Similarly, Imperial Irrigation District asks the Commission to allow an RTO/ISO to decline to adopt a bidding parameter if it can demonstrate that it would be unnecessary or impractical.[224] R Street Institute states that, while the required and optional bidding parameters are reasonable, each RTO/ISO should incorporate the proposed optional bidding parameters in its software only if justified by forward cost/benefit analysis.[225]

185. Some commenters argue that certain of the physical and operational characteristics that the Commission proposed as bidding parameters in the NOPR are better represented through other means.[226] For example, ISO–NE argues that it is a misnomer to characterize state of charge as a bidding parameter because it is a physical characteristic that constantly changes in real time. Likewise, CAISO, IRC, and Pacific Gas & Electric assert that certain electric storage resource-specific characteristics (such as charging and discharging rates, charge limits, and minimum charge times) are physical characteristics that should be static and not subject to change through a resource's offer or bid. Pacific Gas & Electric notes that it may be better to include such physical and operational characteristics in each resource's data file, while CAISO suggests that they may be accounted for through other means besides bidding parameters.

186. A few commenters oppose any requirement that each RTO/ISO incorporate bidding parameters into its participation model for electric storage resources.[227] AES Companies contend that the proposed bidding parameters may artificially limit the performance of some electric storage technologies, while MISO Transmission Owners argue that they have the potential to limit the services that a resource can provide. AES Companies and MISO Transmission Owners argue that, in place of the NOPR proposal, the Commission should require each RTO/ISO to determine the parameters and data requirements necessary for it to efficiently dispatch a resource given the services offered and then set performance-based standards for each service. Both AES Companies and MISO Transmission Owners further suggest that each RTO/ISO should include these technology-specific bidding parameters in its business practice manuals rather than its tariff.

187. In addition, DER/Storage Developers contend that bidding parameters should be flexible and differ for different services.[228] DTE Electric/Consumers Energy assert that the proposed bidding parameters are not clear, may not be applicable to all resource types, and may not take full advantage of the value of the existing pumped-hydro resources. Therefore, DTE Electric/Consumers Energy asks the Commission to allow each RTO/ISO to work with its stakeholders to develop bidding parameters that accommodate all electric storage resources or hold a technical conference on the issue.

188. A few commenters opine on the ability of resources using the electric storage resource participation model to update their bidding parameters as those values change.[229] Energy Storage Association states that the Commission should require each RTO/ISO to allow a resource using the electric storage resource participation model to submit the state-of-charge bidding parameter in both the day-ahead and real-time markets. According to Energy Storage Association, allowing a resource using the electric storage resource participation model to update its state-of-charge bidding parameter in the real-time market will provide the RTO/ISO with better information about such a resource's limitations and availability in the next market interval. DER/Storage Developers contend that electric storage resources should be able to adjust their bidding parameters hourly to account for their state of charge. Similarly, Tesla/SolarCity assert that, to maintain feasibility of schedules and increase asset value, electric storage resources should be able to change their bidding parameters as their state of charge changes.

c. Commission Determination

189. Upon consideration of the comments, we will modify the NOPR proposal in this Final Rule to provide greater flexibility for each RTO/ISO to demonstrate that its participation model for electric storage resources accounts for the physical and operational characteristics of electric storage resources. As the Commission stated in the NOPR, requiring each RTO/ISO to revise its tariff to include a participation model for electric storage resources that incorporates bidding parameters that account for the physical and operational characteristics of electric storage resources will allow such resources to provide all of the services that they are technically capable of providing and allow the RTOs/ISOs to procure these services more efficiently.[230] We continue to believe that the lack of any means of accounting for the physical and operational characteristics of electric storage resources could present

[222] *See* Connecticut State Entities Comments at 6; Magnum Comments at 10–11; NYISO Comments at 9; PJM Comments at 10; Pacific Gas & Electric Comments at 9.

[223] *See* APPA/NRECA Comments at 14–15.

[224] *See* Imperial Irrigation District Comments at 9.

[225] *See* R Street Institute Comments at 5.

[226] *See* CAISO Comments at 10–11; IRC Comments at 5; ISO–NE Comments at 18; Pacific Gas & Electric Comments at 10.

[227] *See* AES Companies Comments at 5–6; MISO Transmission Owners Comments at 10–11.

[228] *See* DER/Storage Developers Comments at 4–5.

[229] *See* DER/Storage Developers Comments at 5; Energy Storage Association Comments at 15; Tesla/SolarCity Comments at 14–15.

[230] *See* NOPR at P 66.

barriers to the participation of these resources in the RTO/ISO markets, limiting competition and thereby potentially rendering the resulting rates unjust and unreasonable.

190. We are persuaded, however, by commenters' arguments that there may be other means of accounting for the physical and operational characteristics of electric storage resources than bidding parameters. For example, some of the bidding parameters that the Commission proposed in the NOPR may account for physical characteristics that do not change over time, such that an electric storage resource could report that information when registering as a market participant in an RTO/ISO without updating that information continually through its bidding parameters. However, we note that it may only be possible to represent some of the physical and operational characteristics (such as a forecasted State of Charge) through bidding parameters. Furthermore, we agree with commenters that greater regional flexibility than the Commission proposed in the NOPR is appropriate; different RTOs/ISOs may be able to more effectively account for the physical and operational characteristics of electric storage resources through different mechanisms given their unique market designs.

191. Therefore, we add section 35.28(g)(9)(i)(C) to the Commission's regulations to require each RTO/ISO to have tariff provisions providing a participation model for electric storage resources that accounts for the physical and operational characteristics of electric storage resources through bidding parameters or other means. In its compliance filing, each RTO/ISO must demonstrate how its proposed or existing tariff provisions account for the specific physical and operational characteristics of electric storage resources described below. We find that this requirement will improve the ability of electric storage resources to provide all of the services that they are technically capable of providing and allow the RTOs/ISOs to procure these services more efficiently, which will enhance competition and, in turn, help to ensure that the RTO/ISO markets produce just and reasonable rates.

192. Additionally, as discussed in further detail below, we will not require the RTOs/ISOs to make the submission of any information by the resource owner/operator mandatory. Instead, we provide flexibility to each RTO/ISO to determine whether it is mandatory for resources using the participation model for electric storage resources to submit information regarding their physical and operational characteristics, or whether resources using the participation model for electric storage resources should be allowed to submit such information at their discretion. This flexibility will allow each RTO/ISO to accept information from resources using the participation model for electric storage resources consistent with how it accepts information from other market participants. It also may help prevent resources using the participation model for electric storage resources from having to submit information that is not applicable given their physical, operational, or commercial circumstances.

193. With respect to commenters' request that the RTOs/ISOs should allow electric storage resources to update their bidding parameters, we find that, to the extent that an RTO/ISO adopts bidding parameters to account for the physical and operational characteristics set forth in this Final Rule, it must permit a resource using the participation model for electric storage resources to submit those bidding parameters in both the day-ahead and the real-time markets. To efficiently dispatch its system, an RTO/ISO must have accurate information about the physical and operational characteristics of the resources participating in its markets. Allowing a resource using the participation model for electric storage resources to provide updated information through any applicable bidding parameters, consistent with the opportunities that other market participants have to do so, will help to ensure that each RTO/ISO has the information necessary to efficiently dispatch its system, fully accounting for the physical and operational capabilities of the resources using the participation model for electric storage resources participating in its markets.

194. In the following subsections, we set forth the physical and operational characteristics for which each RTO's/ISO's participation model for electric storage resources must account, whether through bidding parameters or other means. We discuss these physical and operational characteristics in terms of the bidding parameters proposed in the NOPR, making clarifications as necessary. First, we discuss the physical and operational characteristics of electric storage resources associated with the bidding parameters that the Commission proposed a resource using an electric storage resource participation model must submit to the RTO/ISO, which were identified as the mandatory bidding parameters, including state of charge, upper and lower charge limits, and maximum charge and discharge rates. Second, we discuss the physical and operational characteristics of electric storage resources associated with the bidding parameters that the Commission proposed a resource using an electric storage resource participation model could submit to the RTO/ISO at the resource's discretion, which were identified as the optional bidding parameters, including maximum and minimum charge time and maximum and minimum run time. Finally, we address the physical and operational characteristics for which each RTO's/ISO's participation model for electric storage resources must account that are not associated with any bidding parameter proposed in the NOPR but instead were suggested by commenters and we believe are appropriate to adopt here.

2. State of Charge, Upper and Lower Charge Limits, and Maximum Charge and Discharge Rates

a. NOPR Proposal

195. In the NOPR, the Commission proposed that each RTO/ISO establish the following bidding parameters for the participation model for electric storage resources that participating resources must submit, as applicable: State of charge, upper charge limit, lower charge limit, maximum energy charge rate, and maximum energy discharge rate.[231] The Commission explained that the state-of-charge bidding parameter would allow resources using the participation model for electric storage resources to identify their forecasted state of charge at the end of a market interval, as defined by the RTO/ISO, while the upper and lower charge limits would prevent the operator from trying to give too much energy to or take too much energy from the resource. The Commission further stated that it expected that the state of charge would be telemetered in real time when the RTO/ISO is managing the state of charge so that the upper and lower charge limits are not exceeded. However, the Commission did not propose any specific telemetry requirements. Finally, the Commission explained that the maximum energy charge rate and maximum energy discharge rate would be used to indicate how quickly the resource can receive energy from or inject it back to the grid.

b. Comments

196. The Commission received a number of comments on the NOPR proposal requiring each RTO/ISO to establish state of charge, upper and lower charge limit, and maximum

[231] *See id.* P 67.

energy charge and discharge rate as mandatory bidding parameters for resources using the electric storage resource participation model. Below, we present the comments received with respect to three groups of the proposed bidding parameters: (1) State of Charge, (2) Upper and Lower Charge Limit, and (3) Maximum Energy Charge and Discharge Rate.

i. State of Charge

197. Several commenters support the proposed requirement that each RTO/ISO adopt a state-of-charge bidding parameter.[232] Advanced Energy Economy claims that many RTOs/ISOs do not have tariff provisions in place to account for the state of charge of electric storage resources, despite the fact that it is a defining characteristic of such resources.

198. Other commenters argue that the Commission should modify the NOPR proposal so that a resource using the electric storage resource participation model is not required to submit information for the state-of-charge bidding parameter to the RTO/ISO, at least under certain circumstances.[233] Specifically, CAISO, Energy Storage Association, NextEra, and NYPA ask the Commission to clarify that an electric storage resource is only required to use the state of charge bidding parameter if the resource owner has opted for the RTO/ISO to manage its state of charge. They argue that an electric storage resource that opts to manage its own state of charge would do so through its bidding strategy rather than the RTO/ISO market processes and that it is therefore unnecessary for such a resource to submit its state of charge to the RTO/ISO as a bidding parameter. SPP asserts that, to dispatch and clear the appropriate amount of resources, it must know the real-time state of charge for an electric storage resource for which it is managing state of charge.[234] However, SPP states that it does not require information on the state of charge of electric storage resources that are self-managing their state of charge.

199. While stating that it supports the NOPR proposal directing RTOs/ISOs to institute new electric storage resource-related bidding parameters, Energy Storage Association also explains that requiring electric storage resources that provide both retail and wholesale services to use the proposed bidding parameters could adversely affect their capability to provide retail service.[235] California Energy Storage Alliance and Stem contend that certain bidding parameters, including state of charge, may be difficult or infeasible for some electric storage resources to provide.[236] Thus, California Energy Storage Alliance, National Hydropower Association, and Stem argue that it should be optional for an electric storage resource to provide its state of charge to the RTO/ISO.[237]

200. Pacific Gas & Electric supports the inclusion of a bidding parameter that a resource using the electric storage resource participation model can use in the day-ahead markets to indicate its state of charge at the beginning of the operating day.[238] However, Pacific Gas & Electric opposes any requirement for each RTO/ISO to adopt an hourly or real-time state-of-charge bidding parameter. Pacific Gas & Electric claims that such a requirement could enable market manipulation by allowing resources to indicate that they are unavailable to provide energy to the market without reporting an outage. To the extent that a resource using the electric storage resource participation model desires to update its state of charge more frequently, Pacific Gas & Electric contends that it should manage its own state of charge through its market bidding.

201. ISO–NE opposes the NOPR proposal for a State of Charge bidding parameter and argues that it is a misnomer to characterize state of charge as a bidding parameter because it is a physical characteristic that constantly changes in real time.[239] Thus, ISO–NE asserts that the Commission should not require state of charge as a day-ahead or real-time bidding parameter, nor require any optimization of this type of parameter in the day-ahead or real-time energy market. ISO–NE contends that, instead, the Commission should allow RTOs/ISOs to develop methods to acquire communication of a resource's current state of charge, use the state of charge data, and potentially require market participants to manage their state of charge using their energy market supply offers and demand bids.

202. AES Companies explain that, for certain electric storage technologies, dispatching the resource based on a state-of-charge or upper or lower charge limit bidding parameter could lead to its under-utilization.[240] AES Companies add that the proposed state-of-charge bidding parameter does not reflect the availability of the resource or the sophisticated software used to optimize the resource's useful life. Moreover, AES Companies assert that, if a resource is deployed in a manner that violates its optimal state of charge management, then the associated costs should be included in market offers and the decision to offer must be at the asset owner's discretion.

203. Research Scientists explain that, to make use of the full flexibility of electric storage resources, a fixed state-of-charge target may not be ideal because it limits the dispatch flexibility in real-time operations.[241] Research Scientists argue that state-of-charge range is a better strategy to enable the use of an electric storage resource to address unexpected system deviations in real time.

204. In addition, a few commenters, including those that support the NOPR proposal, take issue with the Commission's statement that the state-of-charge bidding parameter will allow resources using the participation model for electric storage resources to identify their forecasted state of charge at the end of a market interval.[242] Beacon Power contends that any state-of-charge bidding parameters should reflect an actual state of charge at any point in time, rather than a forecasted state of charge, which would be difficult for the resource or RTO/ISO to predict. Pacific Gas & Electric argues that allowing an electric storage resource to target a particular state of charge at the end of a market interval could enable manipulation in circumstances in which the RTO/ISO is managing a resource's state of charge because the RTO/ISO would have to dispatch the resource as necessary to achieve its specified state of charge regardless of whether such dispatch were economic.

205. Energy Storage Association clarifies that CAISO's tariff allows electric storage resources to submit a forecasted starting state-of-charge value

[232] *See, e.g.,* Advanced Energy Economy Comments at 24–25; Massachusetts State Entities Comments at 15; NESCOE Comments at 11; Ohio Commission Comments at 7; Tesla/SolarCity Comments at 14.

[233] *See* CAISO Comments at 11–12; Energy Storage Association Comments at 14–15; NextEra Comments at 9; NYPA Comments at 9.

[234] *See* SPP Comments at 10.

[235] *See* Energy Storage Association Comments at 14. Energy Storage Association's statement applies equally to the proposed Upper and Lower Charge Limit and Maximum Energy Charge and Discharge Rate bidding parameters.

[236] *See* California Energy Storage Alliance Comments at 6–7; Stem Comments at 15–16.

[237] *See* California Energy Storage Alliance Comments at 6–7; National Hydropower Association Comments at 8–9; Stem Comments at 15–16. California Energy Storage Alliance's and Stem's statements apply equally to the proposed Upper and Lower Charge Limit and Maximum Energy Charge and Discharge Rate bidding parameters.

[238] *See* Pacific Gas & Electric Comments at 8–9.

[239] *See* ISO–NE Comments at 18.

[240] *See* AES Companies Comments at 20–22.

[241] *See* Research Scientists Comments at 7.

[242] *See* Beacon Power Comments at 6; Pacific Gas & Electric Comments at 9.

for the day-ahead market, not for the end of a market interval.[243] NextEra agrees and asks the Commission to clarify that the state-of-charge bidding parameter is not limited to the resource owner's forecasted state of charge at the end of the market interval.[244] Similarly, Research Scientists request clarification on whether the state-of-charge bidding parameter provides an electric storage resource's desired state of charge at the beginning or end of a market interval.[245] EPRI clarifies that it understands that the state of charge is the level of energy that an electric storage resource has available at present or anticipates to have at the start of the market interval.[246]

206. Finally, several commenters opine on the Commission's statement in the NOPR that, when the RTO/ISO is managing the state of charge, it expects that the state of charge would be telemetered in real time.[247] ISO–NE states that an electric storage resource's state of charge should be telemetered in real time, arguing that this data is essential for reliable and efficient system operation. IRC agrees that electric storage resources should provide information about their state of charge to the RTO/ISO, stating that the state of charge must be telemetered to the RTO/ISO in real time if other resources are required to be telemetered. Xcel Energy Services argues that RTOs/ISOs should have the capability to monitor state of charge so that they can verify that an electric storage resource could provide ancillary services if called upon to do so. Beacon Power asserts that an electric storage resource (whether or not the RTO/ISO is managing its state of charge) should be required to notify the RTO/ISO of its state of charge on a timely basis.

207. In contrast, Energy Storage Association also contends that the Commission should require each RTO/ISO to institute a capability to continually monitor an electric storage resource's state of charge but should only perform such monitoring when an electric storage resource submits its state of charge as a bidding parameter.[248] Energy Storage Association contends that monitoring such a resource's state of charge will allow the RTO/ISO to better optimize the scheduling and dispatch of the resource.

ii. Upper and Lower Charge Limit

208. ISO–NE, Massachusetts State Entities, and NESCOE support the proposed requirement that each RTO/ISO establish upper charge limit and lower charge limit as bidding parameters for resources using the electric storage resource participation model.[249] NYPA supports the proposed bidding parameters conditional on the Commission clarifying in this Final Rule that an electric storage resource managing its own state of charge is not required to submit information on its upper and lower charge limit.[250] EPRI states that it interprets the upper charge limit as the maximum amount of power the electric storage resource can withdraw at any given instant and the lower charge limit as the minimum amount of power the electric storage resource can withdraw at any instant in time.[251]

iii. Maximum Energy Charge and Discharge Rate

209. Several commenters support the proposed requirement that each RTO/ISO establish maximum energy charge rate and maximum energy discharge rate as bidding parameters for the participation model for electric storage resources.[252] However, NextEra also states that electric storage resources can have different charge and discharge rates depending on their current state of charge and thus requests that the Commission clarify that it does not propose to require a single, static charge or discharge rate for an electric storage resource's entire operating range.[253] NYPA and Pacific Gas & Electric argue that maximum charge and discharge rates should be optional bidding parameters, at least when an electric storage resource is managing its own state of charge.[254]

210. Finally, EPRI requests clarification of the Commission's definitions for maximum energy charge and discharge rate.[255] EPRI notes that it understands that ''maximum energy charge rate'' is the speed at which an electric storage resource can change its withdrawn power amount. EPRI also states that it understands that ''maximum energy discharge rate'' is the speed at which an electric storage resource can change its injected power amount, which is identical to the current ramp rates that generators provide.

c. Commission Determination

211. To implement the new requirement in section 35.28(g)(9)(i)(C) of the Commission's regulations, in this Final Rule, we adopt the NOPR proposal, with the modifications discussed below, to require each RTO/ISO to revise its tariff to include a participation model for electric storage resources that accounts for the following physical and operational characteristics of such resources: State of Charge, Minimum State of Charge, Maximum State of Charge, Minimum Charge Limit and Maximum Charge Limit. As discussed above in the Requirement to Incorporate Bidding Parameters as Part of the Electric Storage Resource Participation Model section,[256] each RTO's/ISO's participation model for electric storage resources must account for these physical and operational characteristics, whether through bidding parameters or other means. To the extent that an RTO/ISO proposes to comply with this requirement through its existing bidding parameters or other existing market mechanisms, it must demonstrate in its compliance filing how its existing market rules already account for these characteristics of electric storage resources.

212. Upon consideration of the comments, however, we will modify the proposed requirement that a resource using an RTO's/ISO's participation model for electric storage resources must submit information concerning these physical and operational characteristics to the RTO/ISO. As commenters state, not all of these physical and operational characteristics are applicable to all electric storage resources, particularly when a resource is managing its own state of charge and when the resource is providing multiple services. We agree that the physical and operational characteristics adopted in this Final Rule may need to acknowledge commercial obligations in addition to physical and operational limitations. Thus, we find that an RTO/ISO should have flexibility in how a resource using a participation model for electric storage resources will be allowed to represent its physical, operational, and commercial circumstances. This flexibility will

[243] *See* Energy Storage Association Comments at 14–15.

[244] *See* NextEra Comments at 9.

[245] *See* Research Scientists Comments at 7.

[246] *See* EPRI Comments at 17.

[247] *See* Beacon Power Comments at 6; IRC Comments at 5; ISO–NE Comments at 18; Xcel Energy Services Comments at 19.

[248] *See* Energy Storage Association Comments at 15–16.

[249] *See* ISO–NE Comments at 17; Massachusetts State Entities Comments at 15; NESCOE Comments at 11.

[250] *See* NYPA Comments at 9.

[251] *See* EPRI Comments at 17.

[252] *See, e.g.,* IRC Comments at 5–6; ISO–NE Comments at 17; Massachusetts State Entities Comments at 15; NESCOE Comments at 11; NextEra Comments at 9; Ohio Commission Comments at 7.

[253] *See* NextEra Comments at 10.

[254] *See* NYPA Comments at 9; Pacific Gas & Electric Comments at 9.

[255] *See* EPRI Comments at 17.

[256] *See supra* P 191.

allow an RTO/ISO to determine, consistent with how it treats other resources, whether it is mandatory for resources using the participation model for electric storage resources to submit information regarding these physical and operational characteristics, or whether resources using the participation model for electric storage resources should be allowed to submit this information at their discretion.

213. In addition, we clarify the meaning of these proposed physical and operational characteristics of electric storage resources, as commenters request. First, we clarify that State of Charge represents the amount of energy stored in proportion to the limit on the amount of energy that can be stored, typically expressed as a percentage. Moreover, we agree with EPRI and other commenters that the State of Charge as a bidding parameter is the level of energy that an electric storage resource is anticipated to have available at the *start* of the market interval rather than the end. As noted above in the Requirement to Incorporate Bidding Parameters as Part of the Electric Storage Resource Participation Model section,[257] we require each RTO/ISO to allow a resource using the participation model for electric storage resources to submit its State of Charge in both day-ahead and real-time markets. We find that this requirement will provide the RTOs/ISOs with more accurate market information regarding the resource's actual state of charge and prevent the RTO/ISO from needing to make assumptions about the state of charge of an electric storage resource, which is particularly important if the resource did not receive an award in the previous market interval. Moreover, it provides the electric storage resource owner/operator with a usable bidding parameter to reflect the actual operating conditions of the resource, providing more certainty to the RTO/ISO about the capabilities of the resource.

214. Additionally, while the NOPR indicated the Commission's expectation that the state of charge of a resource using the electric storage resource participation model would be telemetered in real time when the RTO/ISO manages that resource's state of charge, as discussed further below, we provide each RTO/ISO the flexibility to propose telemetry requirements for such resources in their compliance filings. This flexibility will allow the RTOs/ISOs to implement the requirements of this Final Rule consistent with the telemetry requirements for different services and other market participants in each RTO/ISO. For example, telemetry may be necessary if an electric storage resource is participating exclusively in the frequency regulation market but less important if that resource is providing capacity or energy to the RTOs/ISOs.

215. Second, we clarify that the upper and lower charge limits discussed in the NOPR represent the minimum and maximum state of charge of an electric storage resource. Because they are state of charge values, we will refer to these values in this Final Rule as the Maximum and Minimum State of Charge. More specifically, the Maximum State of Charge represents the state of charge that should not be exceeded (*i.e.,* gone above) when the electric storage resource is receiving electric energy from the grid, while the Minimum State of Charge represents the state of charge that should not be exceeded (*i.e.,* gone below) when an electric storage resource is injecting electric energy onto the grid. These values will allow a resource using the participation model for electric storage resources to place limits on the degree to which the RTO/ISO can charge or discharge the resource, ensuring that it is operated within its design limitations and preventing excessive wear and tear. These values may be either static values based on manufacturer specifications or dynamic values depending on the operational characteristics of the resource (*e.g.,* if it is providing multiple services and needs to reserve part of its state of charge for another service).

216. Finally, we clarify that the maximum charge and discharge rates discussed in the NOPR represent the operating limits of an electric storage resource. As such, we refer to them in this Final Rule as Maximum Charge Limit and Maximum Discharge Limit. Specifically, we clarify that the Maximum Charge Limit for a resource using the electric storage resource participation model is the maximum MW quantity of electric energy that it can receive from the grid, and the Maximum Discharge Limit is the maximum MW quantity that the resource can inject onto the grid. The Maximum Discharge Limit is analogous to, and could potentially be represented by, the economic maximum that traditional generation resources can generally submit with their offers. Having both a Maximum Charge Limit and Maximum Discharge Limit ensures that RTO/ISO modeling and dispatch can account for the capabilities of resources using the participation model for electric storage resources to both receive and inject electric energy in accordance with their maximum physical capabilities in both directions.

3. Minimum Charge Time, Maximum Charge Time, Minimum Run Time, and Maximum Run Time

a. NOPR Proposal

217. In the NOPR, the Commission proposed to require that each RTO/ISO include in its participation model for electric storage resources the following bidding parameters that market participants may submit, at their discretion, for their resource based on its physical constraints or desired operation: minimum charge time, maximum charge time, minimum run time, and maximum run time.[258]

b. Comments

218. Energy Storage Association, NESCOE, Open Access Technology, and SPP support the NOPR proposal.[259] Specifically, Energy Storage Association and NESCOE contend that establishing these optional bidding parameters that reflect the physical and operational characteristics of electric storage resources may allow RTOs/ISOs to more efficiently dispatch all of the resources (including electric storage resources) that participate in their markets, thereby reducing system costs. Magnum supports the NOPR proposal given that the proposed bidding parameters are optional for resources using the electric storage resource participation model to submit; however, Magnum argues that these requirements should not require an electric storage resource to be a ''must run'' facility.[260]

219. CAISO and ISO–NE oppose the NOPR proposal.[261] CAISO does not agree that minimum charge time, maximum charge time, minimum run time, and maximum run time should be bidding parameters because (1) they represent the physical characteristics of a particular electric storage resource and (2) other resources (such as pumped-hydro resources) are not permitted to change their physical operating characteristics through a bid. According to ISO–NE, these bidding parameters are not necessary for all electric storage resources to participate in the RTO/ISO markets nor to clear these markets or

[257] *See supra* P 193.

[258] *See* NOPR at P 68. The Commission acknowledged that some of these optional bidding parameters may not be necessary for resources participating under the proposed participation model for electric storage resources that provide certain information to the RTO/ISO through telemetry. *Id.* n.130.

[259] *See* Energy Storage Association Comments at 14; NESCOE Comments at 11–12; Open Access Technology Comments at 2; SPP Comments at 12.

[260] Magnum Comments at 12.

[261] *See* CAISO Comments at 10–11; ISO–NE Comments at 19.

operate the power system. ISO–NE adds that these additional bidding parameters may increase the complexity of implementing the final rule's requirements but provide little value. Thus, ISO–NE requests that the Commission allow each RTO/ISO to determine whether and how to implement these parameters in the future based on their experience working with different types of electric storage technologies.

c. Commission Determination

220. To implement the new requirement in section 35.28(g)(9)(i)(C) of the Commission's regulations, in this Final Rule, we modify the NOPR proposal, with the clarification provided below, to require each RTO/ISO to revise its tariff to include a participation model for electric storage resources that accounts for the following physical and operational characteristics of such resources: Minimum Charge Time, Maximum Charge Time, Minimum Run Time, and Maximum Run Time. As discussed above in the Requirement to Incorporate Bidding Parameters as Part of the Electric Storage Resource Participation Model section,[262] each RTO's/ISO's participation model for electric storage resources must account for these physical and operational characteristics, whether through bidding parameters or other means. We do not adopt the component of the NOPR proposal to require the RTO/ISO to allow market participants to submit this information at their discretion. Instead, consistent with the discussion above, we provide flexibility to each RTO/ISO to determine, consistent with how it treats other resources, whether it is mandatory for resources using the participation model for electric storage resources to submit information regarding these physical and operational characteristics, or whether resources using the participation model for electric storage resources should be allowed to submit this information at their discretion. Additionally, to the extent that an RTO/ISO proposes to comply with this requirement through its existing bidding parameters or other existing market mechanisms, it must demonstrate in its compliance filing how its existing market rules account for these characteristics of electric storage resources.

221. We find that it is necessary for a resource using an RTO's/ISO's participation model for electric storage resources to be able to provide information concerning these physical and operational characteristics to the RTO/ISO because, like traditional generation resources, it may only be economic for the resource to operate if it is guaranteed to do so for minimum amount of time. Additionally, unlike traditional generation resources, it is physically impossible for an electric storage resource to charge or discharge energy for longer than their state of charge would allow.

222. However, we clarify the NOPR proposal, further explaining the meaning of these physical and operational characteristics. First, we clarify that Minimum Charge Time represents the shortest duration that a resource using the participation model for electric storage resources is able to be dispatched by the RTO/ISO to receive electric energy from the grid. For example, it may only be possible for resources with slower transition speeds (such as pumped-hydro resources) to receive electric energy from the grid if it can do so for some minimum period of time (*e.g.,* for one hour). Minimum Charge Time is similar to the Minimum Run Time for traditional generation resources but represents the minimum time the resource can receive electric energy from the grid, rather than provide electric energy to the grid.

223. We further clarify that Maximum Charge Time represents the maximum duration that a resource using the participation model for electric storage resources is able to be dispatched by the RTO/ISO to receive electric energy from the grid (*e.g.,* for four hours). If the RTO/ISO is not managing the state of charge of the electric storage resource in real time, then this parameter will prevent it from dispatching the resource to charge for a duration that would exceed the resource's Maximum State of Charge. It also provides useful information about how long the electric storage resource can be relied upon to receive energy from the grid if the system operator needs to dispatch it to do so.

224. Finally, we clarify that Minimum Run Time and Maximum Run Time are the minimum and maximum amounts of time that a resource using the participation model for electric storage resources is able to discharge electric energy. Maximum Run Time reflects the maximum amount of time that a resource using the participation model for electric storage resources is able to inject electric energy to the grid due to physical or operational constraints, such as its state of charge or potential obligations to provide other services. Similarly, Minimum Run Time allows the resource to identify the minimum amount of time the resource is physically able to discharge electric energy onto the grid. Minimum Run Time already exists in the RTOs/ISOs to prevent excessive wear and tear on traditional generation resources due to starting and stopping a resource too frequently and to ensure they are able to recover the costs of starting. To the extent that an RTO/ISO already accounts for this characteristic of the participation model for electric storage resources through its existing bidding parameters or other means, it must demonstrate in its compliance filing how its existing market rules do so.

4. Additional Physical and Operational Characteristics

a. Comments

225. In addition to the bidding parameters that the Commission proposed in the NOPR, a number of commenters identify physical and operational characteristics that they argue the Commission should also require each RTO/ISO to incorporate into its participation model for electric storage resources.[263] For example, EPRI contends that, to the extent that the Upper and Lower Charge Limit bidding parameters proposed in the NOPR do not represent the maximum and minimum amount of energy that an electric storage resource can store, the Commission should adopt additional bidding parameters in the final rule to capture this information. According to EPRI, this information is necessary for an RTO/ISO to manage an electric storage resource's state of charge within that resource's limits.

226. Several commenters support the concept of a bidding parameter(s) that reflects the time that an electric storage resource needs to transition from charging to discharging and from discharging to charging. NYPA asserts that an electric storage resource may also need a bidding parameter that reflects any ramp rate for those transitions. Relatedly, EPRI explains that energy storage resources that cannot transition from charging to discharging (and vice versa) instantaneously may require minimum charge level as a bidding parameter. EPRI further explains that software models may also require that the values for maximum energy charge and discharge rates (ramp rates) bidding parameters to be the same for these resources.

227. Some commenters propose bidding parameters to reflect any limits on an electric storage resource's

[262] *See supra* P 191.

[263] *See* EPRI Comments at 7–8, 17–18; NRG Comments at 9, 15; NYPA Comments at 9; Pacific Gas & Electric Comments at 9.

operations.[264] California Energy Storage Alliance and Pacific Gas & Electric suggest that the Commission could adopt through-put limit as a bidding parameter. California Energy Storage Alliance claims that such a bidding parameter is necessary because cycling multiple times a day can cause excessive wear and tear to electric storage resources. NYISO Indicated Transmission Owners suggest maximum and minimum allowable charge and maximum daily charging and discharging cycles as bidding parameters. NYPA argues that bidding parameters should reflect the unique operating costs of electric storage resources (such as wear and tear, lost opportunity costs, and efficiency losses). Research Scientists assert that, to contribute to their economic viability, bidding parameters for most electrochemical energy storage technologies should represent their power limits, efficiency/losses, and degradation.

228. Other commenters propose various additional bidding parameters, including charge and discharge price, maximum consumption for dispatch asset-related demand, minimum time between discharge cycles for demand response resources,[265] minimum energy charge and discharge rate, self-discharge rate,[266] round-trip efficiency (*i.e.,* the ratio of how much energy is lost from charge to discharge),[267] and separate ramp rates for energy and reserves,[268] as well as bidding parameters that reflect electric storage resources' ability to respond to transients with automatic voltage regulation, power system stability, and generator droop.[269]

b. Commission Determination

229. Upon consideration of the comments, and to implement the new requirement in section 35.28(g)(9)(i)(C) of the Commission's regulations, we require each RTO/ISO to revise its tariff to incorporate a participation model for electric storage resources that accounts for the following physical and operational characteristics that were not proposed in the NOPR: Minimum Discharge Limit, Minimum Charge Limit, Discharge Ramp Rate, and Charge Ramp Rate. Each RTO's/ISO's participation model for electric storage resources must account for these physical and operational characteristics, whether through bidding parameters or other means. Consistent with the discussion above, we provide flexibility to each RTO/ISO to determine, consistent with how it treats other resources, whether it is mandatory for resources using the participation model for electric storage resources to submit information regarding these physical and operational characteristics, or whether resources using the participation model for electric storage resources should be allowed to submit this information at their discretion. To the extent that an RTO/ISO proposes to comply with this requirement through its existing bidding parameters or other existing market mechanisms, it must demonstrate in its compliance filing how its existing market rules account for these characteristics of electric storage resources.

230. We find that requiring each RTO's/ISO's electric storage resource participation model to account for these physical and operational characteristics is necessary to improve the ability of electric storage resources to provide all of the services that they are technically capable of providing and to allow the RTOs/ISOs to procure these services more efficiently, which will enhance competition and, in turn, help to ensure that the RTO/ISO markets produce just and reasonable rates.

231. First, we are persuaded by EPRI's suggestion that some electric storage resources may need to identify their minimum operating limits when they are charging or discharging. Specifically, an electric storage resource may need to identify its Minimum Discharge Limit, which represents the minimum MW output level that the resource can inject onto the grid, and its Minimum Charge Limit, which represents the minimum MW level that the resource can receive from the grid.

232. Like traditional generation resources, some electric storage resources may not be able to inject energy onto the grid below a minimum MW output level due to the physical capabilities of individual turbines or the power electronic of the system. Also like traditional generators, we find that resources using the participation model for electric storage resources should be able to represent such a minimum value in the RTO/ISO markets. Because electric storage resources are also able to receive electric energy from the grid, there may be a Minimum Charge Limit in MWs that they are able to receive from the grid as well due to similar physical constraints of the resource or its power electronics.

233. Therefore, while the Commission did not propose in the NOPR to require each RTO's/ISO's electric storage resource participation model to account for the Minimum Charge Limit or Minimum Discharge Limit of a resource using the electric storage resource participation model, in this Final Rule, we require each RTO/ISO to revise its tariff to account for these physical characteristics as part of its participation model for electric storage resources.

234. In addition, we agree with EPRI that the speed at which electric storage resources can move from zero output to full output, or its Maximum Discharge Limit, is the same as the current ramp rates provided by traditional generation resources. However, we find that it is important to ensure that electric storage resources are able to represent this physical characteristic consistent with how other market participants are able to do so. Therefore, for purposes of this Final Rule, we refer to this parameter as the Discharge Ramp Rate and require each RTO/ISO to account for this physical characteristic in its participation model for electric storage resources by either making existing ramp rate parameters available to resources using the participation model for electric storage resources or by other means. The unique consideration for electric storage resources is their ability to both charge and discharge energy and to transition from one operational state to the other. Therefore, in addition to a Discharge Ramp Rate, we require each RTO/ISO to account for a Charge Ramp Rate in its participation models for electric storage resources. The Charge Ramp Rate represents the speed at which an electric storage resource can move from zero output to fully charging, or the resource's Maximum Charge Limit. While electric storage resources are often designed to charge and discharge at the same speeds, that is not always the case, and there may be other physical or operational reasons that resources using the participation model for electric storage resources need to differentiate their Charge Ramp Rate from the Discharge Ramp Rate. Therefore, in this Final Rule, we require each RTO/ISO to revise its tariff to account for these characteristics as part of its participation model for electric storage resources.

235. We do not find it necessary to require each RTO/ISO to account for the other physical and operational characteristics of electric storage resources that commenters suggest in its participation model for electric storage

[264] *See* California Energy Storage Alliance Comments at 13; NYISO Indicated Transmission Owners Comments at 6; NYPA Comments at 9–10; Pacific Gas & Electric Comments at 9; Research Scientists Comments at 6–7.

[265] *See* NYISO Indicated Transmission Owners Comments at 6.

[266] *See* Pacific Gas & Electric Comments at 9.

[267] *See* EPRI Comments at 17–18.

[268] *See* Dominion Comments at 6–7.

[269] *See* Magnum Comments at 11.

resources. However, we recognize that, given the different market structures of the RTOs/ISOs, there may be additional physical and operational characteristics of electric storage resources that each RTO/ISO wishes to reflect in its participation model for such resources to allow it to more efficiently dispatch its system. Thus, we will allow each RTO/ISO to propose in its compliance filing bidding parameters or other means to account for physical and operational characteristics of electric storage resources besides those set forth in this Final Rule. To the extent that an RTO/ISO includes such a proposal in its compliance filing, the RTO/ISO must demonstrate that such bidding parameters or other mechanisms do not impose barriers to the participation of electric storage resources in its markets.

5. Summary of Physical and Operational Characteristics of Electric Storage Resources

236. For ease of reference, the following chart summarizes the physical and operational characteristics of electric storage resources for which each RTO's/ISO's participation model for electric storage resources must account:

Physical or operational characteristic	Definition
State of Charge	State of Charge represents the amount of energy stored in proportion to the limit on the amount of energy that can be stored, typically expressed as a percentage. It represents the forecasted starting State of Charge for the market interval being offered into.
Maximum State of Charge	Maximum State of Charge represents a State of Charge value that should not be exceeded (*i.e.*, gone above) when a resource using the participation model for electric storage resources is receiving electric energy from the grid (*e.g.*, 95% State of Charge).
Minimum State of Charge	Minimum State of Charge represents a State of Charge value that should not be exceeded (*i.e.*, gone below) when a resource using the participation model for electric storage resources is injecting electric energy to the grid (*e.g.*, 5% State of Charge).
Maximum Charge Limit	Maximum Charge Limit represents the maximum MW quantity of electric energy that a resource using the participation model for electric storage resources can receive from the grid.
Maximum Discharge Limit	Maximum Discharge Limit represents the maximum MW quantity that a resource using the participation model for electric storage resources can inject to the grid.
Minimum Charge Time	Minimum Charge Time represents the shortest duration that a resource using the participation model for electric storage resources is able to be dispatched by the RTO/ISO to receive electric energy from the grid (*e.g.*, one hour).
Maximum Charge Time	Maximum Charge Time represents the maximum duration that a resource using the participation model for electric storage resources is able to be dispatched by the RTO/ISO to receive electric energy from the grid (*e.g.*, four hours).
Minimum Run Time	Minimum Run Time represents the minimum amount of time that a resource using the participation model for electric storage resources is able to inject electric energy to the grid (*e.g.*, one hour).
Maximum Run Time	Maximum Run Time represents the maximum amount of time that a resource using the participation model for electric storage resources is able to inject electric energy to the grid (*e.g.*, four hours).
Minimum Discharge Limit	The minimum MW output level that a resource using the participation model for electric storage resources can inject onto the grid.
Minimum Charge Limit	The minimum MW level that a resource using the participation model for electric storage resources can receive from the grid.
Discharge Ramp Rate	The speed at which a resource using the participation model for electric storage resources can move from zero output to its Maximum Discharge Limit.
Charge Ramp Rate	The speed at which a resource using the participation model for electric storage resources can move from zero output to its Maximum Charge Limit.

F. State of Charge Management

1. NOPR Proposal

237. In the NOPR, the Commission proposed to require each RTO/ISO to allow electric storage resources to self-manage their state of charge and upper and lower charge limits.[270] The Commission stated that an electric storage resource that self-manages its state of charge is subject to any penalties for deviating from a dispatch schedule to the extent the resource manages its state of charge by deviating from the dispatch schedule.[271] However, the Commission sought comment on whether there are conditions under which an RTO/ISO should not allow an electric storage resource to manage its state of charge and upper and lower charge limits.

[270] *See* NOPR at P 69.

[271] *See id.* P 70.

2. Comments

238. Numerous commenters support the NOPR proposal to require each RTO/ISO to allow electric storage resources to self-manage their state of charge and upper and lower charge limits.[272] Some commenters assert that the proposal will allow for more efficient use of electric storage resources and will extend their useful lives.[273] Other commenters state that permitting an electric storage resource to manage its state of charge would allow the asset owner to optimize the operations of its resource.[274] Tesla/SolarCity point to CAISO's tariff for Non-Generator Resources to self-manage energy limits and state-of-charge in real time as a good model.[275]

239. Several commenters, however, urge the Commission to go farther than the NOPR proposal, stating that an electric storage resource should always, or almost always, be responsible for managing its own state of charge. Most RTOs/ISOs, PJM Market Monitor, and Xcel Energy Services argue that the RTO/ISO should not be responsible for managing an electric storage resource's

[272] *See, e.g.,* Beacon Power Comments at 6; DTE Electric/Consumers Energy Comments at 4–5; EEI Comments at 10; Energy Storage Association Comments at 16–17; IRC Comments at 5; Microgrid Resources Coalition Comments at 7; NESCOE Comments at 11; Pacific Gas & Electric Comments at 8; Research Scientists Comments at 7–8.

[273] *See* AES Companies Comments at 22; Electric Vehicle R&D Group Comments at 1.

[274] *See* Avangrid Comments at 6; Energy Storage Association Comments at 16; Imperial Irrigation District Comments at 10; NRG Comments at 18; NYPA Comments at 10.

[275] *See* Tesla/SolarCity Comments at 14–15 (citing *California Indep. Sys. Operator Corp.,* 156 FERC ¶ 61,110 at P1).

state of charge.[276] For example, IRC argues that the RTOs/ISOs should only be responsible for following reasonable operating parameters provided by the electric storage resource owner.[277] Generally, commenters state that it would be challenging for the RTO/ISO to manage a storage resource's state of charge, RTOs/ISOs traditionally do not manage how resources participate in the market, RTOs/ISOs should not be put in the position of managing market risk for or making business judgments on behalf of market participants, and electric storage resources should manage their own state of charge through their market offers, updates to market offers, and decisions to remove their resource from market dispatch.[278]

240. Other commenters argue that, to the extent the Commission permits an RTO/ISO to manage an electric storage resource's state of charge, that RTO/ISO should be required to meet certain conditions.[279] For example, AES Companies argue the related software development and administrative costs of RTO/ISO management of a resource's state of charge should be allocated only to those resources requesting the state-of-charge management service from the RTO/ISO. In contrast, Microgrid Resources Coalition contends that, if an RTO/ISO seeks to manage the state of charge or readiness of an electric storage resource, it should compensate the resource for that privilege.[280] NRG asserts that to the extent an RTO/ISO manages an electric storage resource's state of charge, it will have to include complex bidding parameters to ensure that the resource could meet any retail obligations that it has assumed.[281] MISO Transmission Owners state that an RTO/ISO that manages an electric storage resource's state of charge must do so in accordance with the criteria that the resource owner establishes.[282]

241. Imperial Irrigation District asserts that the RTO/ISO should manage an electric storage resource's state of charge only if the resource owner agrees.[283] Relatedly, NYPA argues that, if an RTO/ISO is managing an electric storage resource's state of charge, that resource should be permitted to withdraw from RTO/ISO control without penalty if it believes it is under-recovering revenues due to the RTO's/ISO's directives.[284] NYPA contends that several RTOs/ISOs have considered or implemented performance incentive structures and including electric storage resources in those market designs could provide the proper market incentive for such resources to be available when they are most needed, instead of having the RTO/ISO manage a resource's state of charge.

242. Other commenters suggest that there are certain circumstances when RTO/ISO state of charge management is beneficial and that each RTO/ISO should be permitted to manage an electric storage resource's state of charge in certain circumstances.[285] SPP asserts that RTOs/ISOs should manage the state of charge of regulation resources but that electric storage resources that qualify to provide other services should manage their own states of charge.[286] CAISO notes that, under its existing market rules, it manages the state of charge for some electric storage resources and allows others to manage their own state of charge. Specifically, CAISO notes that, for resources that seek to provide regulation, it can optimize a resource's state of charge, allowing a resource to offer its full capacity as regulation consistent with continuous energy requirements for that service. ISO–NE states that it recognizes that it may be necessary at times for an RTO/ISO to posture resources, including electric storage resources, to ensure reliability.

243. EPRI states that it may be appropriate for the RTO/ISO to manage a storage resource's state of charge to ensure that sufficient regulating capability is available from the resource, noting that this has already occurred in some RTOs/ISOs. EPRI adds that RTO/ISO management of state of charge could lead to more efficient and more reliable operations and better mitigation of day-ahead forecast uncertainty because the RTO/ISO has better knowledge of system conditions. Research Scientists argue that, while it may be technically challenging to achieve, in principle, the RTO/ISO is in the best position to manage energy storage scheduling and state of charge in order to minimize system costs.

244. EEI and Exelon assert that, if an electric storage resource is used to address reliability-related transmission needs or relieve congestion as a transmission asset, the RTO/ISO must have functional control over dispatch, including the timing and amount of energy that may be injected into or withdrawn from the transmission system and the amount of energy that must be made available for injection or withdrawal at the direction of the RTO/ISO to fulfill the resource's transmission function.[287] Exelon states that the RTO/ISO could release control of the electric storage resource when it is not needed for such services, noting that the RTO/ISO may still have to determine the level of energy to be available at all times from resources that provide blackstart service. In contrast, AES Companies claim that, because advanced software is used to optimize a lithium array's life, state of charge should still be managed by the owner of a storage resource used as a transmission asset under the RTO's/ISO's functional control.[288]

245. EEI and Xcel Energy Services suggest that, given the lack of clarity about the proposal for state of charge management, a technical conference may be warranted to better explain the state of charge management concept and better ascertain the issues that need to be evaluated in determining how state of charge should be managed.[289] EEI states that this technical conference should address the management of multiple payment streams for electric storage resources that are both receiving cost-based rates and participating in the RTO/ISO markets because such a resource must be able to fulfill both the obligations that it assumes in the market and as a transmission asset. MISO also argues that further study is needed to comprehend the reliability and economic outcomes of different approaches to state-of-charge management for electric storage resources, noting that it must have an effective way to ensure that an electric storage resource managing its state of charge has enough stored energy to allow it to provide the services that it clears the market to provide.[290]

246. Altametric and Bonneville assert that an RTO/ISO may need to directly manage the state of charge and upper and lower charge limits of electric storage resources during an abnormal

[276] *See* IRC Comments at 5; ISO–NE Comments at 20; PJM Comments at 10; PJM Market Monitor Comments at 4.

[277] *See* IRC Comments at 5.

[278] *See* AES Companies Comments at 23; PJM Comments at 10; PJM Market Monitor Comments at 4; Xcel Energy Services Comments at 17–18.

[279] *See* AES Companies Comments at 23.

[280] *See* Microgrid Resources Coalition Comments at 7–8.

[281] *See* NRG Comments at 18.

[282] *See* MISO Transmission Owners Comments at 11.

[283] *See* Imperial Irrigation District Comments at 10.

[284] *See* NYPA Comments at 10–11.

[285] *See* CAISO Comments at 10–11; EPRI Comments at 21–22 (citing *https://ncreview.org/smart_grid/pjms-frequency-regulation-market-and-the-changing-nature-of-energy-storage-gtm-squared/45256*); ISO–NE Comments at n.23; Research Scientists Comments at 7; SPP Comments at 11, 12.

[286] *See* SPP Comments at 11, 12.

[287] *See* EEI Comments at 11; Exelon Comments at 8–9, n.4.

[288] *See* AES Companies Comments at 21.

[289] *See* EEI Comments at 10–11; Xcel Energy Services Comments at 18.

[290] *See* MISO Comments at 15–16.

condition or system emergency to preserve system reliability.[291] Bonneville encourages the Commission to allow the RTOs/ISOs to identify these reliability-based conditions. City of New York contends that, while there may be limited circumstances under which an RTO/ISO is better suited than the asset owner to manage an electric storage resource's state of charge and upper and lower charge limits, the scope of an RTO's/ISO's authority to do so should be established consistent with their limited experience with such resources, while changing over time as they gain additional experience.[292]

247. Some commenters argue that the Commission should require each RTO/ISO to offer state-of-charge management to electric storage resources.[293] NYISO Indicated Transmission Owners state that, because electric storage resources can be used to support local or bulk electric system reliability, the Commission should ensure that electric storage resource owners can voluntarily elect to cede control of their resources' state of charge to either an RTO/ISO or distribution utility. Dominion stresses the importance of pumped-hydro resources' ability to opt for PJM to optimize their pumping and dispatch in the day-ahead market when these facilities provide PJM with their starting and ending storage levels for the day, along with other resource-specific operating parameters and suggests expanding this ability to other electric storage resources.

248. To enable them to provide their full capabilities to the market in a continual manner, Energy Storage Association asks the Commission require each RTO/ISO to allow an electric storage resource to opt to have the RTO/ISO manage its state of charge.[294] Energy Storage Association contends that, at a minimum, an active state-of-charge management mechanism should be available for electric storage resources providing services that need operational decisions faster than bidding intervals (*e.g.,* frequency regulation) and state of charge cannot be predicted or managed through bidding alone. Energy Storage Association notes that CAISO, MISO, and NYISO offer state of charge management for electric storage resources providing frequency regulation service and argues that these practices should be expanded to all RTOs/ISOs and be available for resources of any duration, not just short-duration storage resources providing frequency regulation.

249. Xcel Energy Services contends that issues associated with managing state of charge may impact opportunity costs included in offers and raise concerns regarding economic withholding of resources from the market and market monitors may need to develop new monitoring tools and exhibit flexibility in evaluating offer opportunity costs when evaluating behavior of storage resources in the market.[295] R Street Institute posits that economic withholding may be difficult to detect, given that electric storage resources' offers reflect their opportunity costs (rather than physical marginal costs) and that these resources will likely supply energy when prices are high and the market is most vulnerable to the exercise of market power.[296] R Street Institute explains that physical withholding detection will prove challenging due to the complexity and heterogeneity of physical characteristics of electric storage resources. Therefore, R Street Institute asks the Commission to seek comment on how electric storage resources may engage in economic or physical withholding.

250. With respect to the Commission's statement in the NOPR that an electric storage resource that self-manages its state of charge is subject to any penalties for deviating from a dispatch schedule to the extent the resource manages its state of charge by doing so, several commenters agree that, if an electric storage resource self-manages its state of charge and does not perform when obligated to do so, the resource should incur non-performance penalties.[297] EPRI asserts that potential penalties will help incentivize energy storage resources that self-manage their state of charge to ensure that their state-of-charge constraints are met. EPRI adds, however, that the RTO/ISO may not have sufficient information about whether an electric storage resource that is providing spinning/synchronized reserve can meet its obligation to provide energy unless the RTO/ISO must call on that resource, making it more difficult to penalize such a resource for noncompliance unless an event has occurred.

3. Commission Determination

251. Upon consideration of the comments, we agree with commenters that resource owners/operators using the participation model for electric storage resources must be able to manage the state of charge of their resources. Consistent with the NOPR, we find that each RTO/ISO must permit electric storage resources to manage their state of charge because it allows these resources to optimize their operations to provide all of the wholesale services that they are technically capable of providing, similar to the operational flexibility that traditional generation resources have to manage the wholesale services that they offer. We find that, while the RTOs/ISOs may be in a better position to effectively manage the state of charge for a resource using the participation model for electric storage resources that, for example, exclusively provides frequency regulation service, some electric storage resources may be able to provide multiple services or services to another entity outside of the RTO/ISO markets.

252. We therefore agree with commenters that resources using the participation model for electric storage resources must have the ability to self-manage their state of charge and it is often desirable to allow them to do so. Providing this flexibility will allow resource owners/operators to ensure their own Minimum and Maximum States of Charge are not violated,[298] which will help prevent excessive wear and tear on the resource and help maintain its technical capabilities to provide services in the RTO/ISO markets. Additionally, depending on the telemetry rules adopted by each RTO/ISO, ensuring that a resource owner/operator is able to manage its own state of charge may also limit the need for the RTO/ISO to telemeter the resource in real time to ensure that the Minimum and Maximum States of Charge are not violated. For these reasons, we find that a sufficient record exists in this proceeding to make these determinations without the need for additional process or a technical conference, as some commenters propose.

253. Therefore, we require each RTO/ISO to allow resources using the participation model for electric storage resources to self-manage their state of

[291] *See* Altametric Comments at 6; Bonneville Comments at 5.

[292] *See* City of New York Comments at 7.

[293] *See* Dominion Comments at 5; NYISO Indicated Transmission Owners Comments at 6.

[294] *See* Energy Storage Association Comments at 6, 17, n.24.

[295] *See* Xcel Energy Services Comments at 18, n.27.

[296] *See* R Street Institute Comments at 6.

[297] *See, e.g.,* Energy Storage Association Comments at 17; EPRI Comments at 23; ISO–NE Comments at 20; Ohio Commission Comments at 7; Xcel Energy Services Comments at 22.

[298] *See supra* P 215. Consistent with the changes in terminology adopted in the State of Charge, Upper and Lower Charge Limits, and Maximum Charge and Discharge Rates section, we are using the terms Maximum State of Charge and Minimum State of Charge instead of Upper Charge Limit and Lower Charge Limit.

charge. We also find here that a resource using the participation model for electric storage resources that self-manages its state of charge will be subject to any applicable penalties for deviating from a dispatch schedule to the extent that the resource deviates from the dispatch schedule in managing its state of charge.[299] We also clarify that, to the extent that the provision of a particular wholesale service, such as frequency regulation, requires a resource providing that service to follow a dispatch signal that has the effect of maintaining the resource's ability to provide the service, an electric storage resource that is managing its own state of charge would still be required to follow such a dispatch signal, just as all other resources providing that same service.

254. Additionally, we clarify that the RTOs/ISOs are not required as part of this Final Rule to manage the state of charge for resources using the participation model for electric storage resources.[300] However, if an RTO/ISO already has a mechanism to manage a resource's state of charge (such as regulation energy management in CAISO or pumped-hydro resource operation in PJM), then we require the RTO/ISO to make the use of such mechanism optional so that an electric storage resource owner/operator is able to manage its own state of charge if it elects to do so. Where an electric storage resource has the option to allow the RTO/ISO to manage its state of charge, we clarify that the electric storage resource is the default manager of the resource's state of charge.

255. In response to the concerns about the ability of the RTOs/ISOs to use electric storage resources to address any reliability challenges and to know that the resources have an adequate state of charge to perform the service to which they have committed, we note that the RTO/ISO should be able to dispatch a resources using the participation model for electric storage resources in the same manner as any other market participant. Nothing in this Final Rule precludes an RTO/ISO from establishing telemetry or other communication requirements necessary to determine the capabilities of the electric storage resource in real time. We believe that this flexibility will ensure sufficient visibility of a resource using the participation model for electric storage resources to safeguard operational reliability and market integrity. We reiterate that self-managing electric storage resources, just like all market participants, are subject to any non-performance penalties in the RTO/ISO tariff, thus incentivizing them to ensure that they have sufficient energy available to meet their obligations.

256. As for commenters' concerns about economic and physical withholding, we agree that the energy limitations of electric storage resources will need to be factored into their market offers and that misrepresenting those limitations could constitute manipulation if an electric storage resource has an obligation to participate in an RTO/ISO market. However, as discussed in the Ability to De-Rate Capacity to Meet Minimum Run-Time Requirements section above, in this Final Rule, we require each RTO/ISO to demonstrate how its existing market rules provide a means for energy-limited resources, including electric storage resources, to provide capacity.[301] This may include ways for energy-limited resources, such as electric storage resources, to represent their energy limitations through their offer prices, which, if allowed by the RTO/ISO, would not constitute economic withholding. Also, as discussed above, we find that electric storage resources de-rating to provide capacity or other services are not engaging in physical withholding if they are de-rating to meet minimum run-time requirements.

257. However, there may still be concerns that electric storage resources managing their own state of charge could be doing so inconsistent with the physical and operational characteristics of the resource, which may create a need to ensure those resources are not withholding services or otherwise violating its dispatch in a way inconsistent with its physical capabilities. Therefore, we note that, as with other resources, market monitors have the ability to review the bids from electric storage resources to detect economic or physical withholding. Additionally, if an RTO/ISO determines that additional rules are needed to ensure electric storage resources are not managing their state of charge in a way that could manipulate market outcomes through withholding, then the RTO/ISO could propose such rules in response to this Final Rule or through a separate FPA section 205 filing.[302]

G. Minimum Size Requirement

1. NOPR Proposal

258. In the NOPR, the Commission proposed to require each RTO/ISO to revise its tariff to include a participation model for electric storage resources that establishes a minimum size requirement for participation in the RTO/ISO markets that does not exceed 100 kW.[303]

2. Comments

259. Several commenters agree with the proposed 100 kW minimum size requirement for electric storage resources.[304] Many of these commenters argue that there is no justification for the minimum size requirement to be any higher. Minnesota Energy Storage Alliance asserts that large minimum size requirements have and continue to pose a barrier to electric storage resource development in Minnesota.[305] Energy Storage Association and Tesla/SolarCity note that most or all of the RTOs/ISOs currently allow at least some type of resource to participate in their markets at a size of 100 kW, including PJM, which allows participation by 100 kW electric storage resources.[306] Massachusetts State Entities and NESCOE state that the proposal would be technically feasible in ISO–NE and will not compromise the efficiency of market dispatch.[307] Massachusetts State Entities note that the 100kV threshold is consistent with the results of a pilot program in which ISO–NE reduced the minimum size requirement to participate in its frequency regulation market to 100 kW and found that resources smaller than one MW were technically capable of providing the service. However, Tesla/SolarCity request that the Commission clarify that the 100 kW minimum size requirement applies not only to individual electric storage resources but also can be met through the aggregation of smaller electric storage resources.

260. Energy Storage Association asserts that electric storage resources less than 1 MW in size can provide the same services and the same flexibility,

[299] *See* NOPR at P 70.

[300] We note that, while the RTOs/ISOs must permit resources to manage their own state of charge, the RTOs/ISOs may provide an option for the RTO/ISO to manage an electric storage resource's state of charge for any particular service or circumstance as they deem appropriate in their markets with consent of the electric storage resource.

[301] *See supra* P 100.

[302] *See* 16 U.S.C. 824d.

[303] *See* NOPR at P 94. The Commission used the term ''minimum size requirement'' to collectively describe minimum capacity requirements to qualify to use a given participation model, ''minimum offer requirements'' for offers to sell services in the RTO/ISO markets, and ''minimum bid requirements'' for bids to buy energy in these markets. *Id.* n.148.

[304] *See, e.g.,* Avangrid Comments at 8; Energy Storage Association Comments at 23; Massachusetts State Entities Comments at 16–17; NYISO Comments at 10; PJM Market Monitor Comments at 9; Tesla/SolarCity Comments at 17–18.

[305] *See* Minnesota Energy Storage Alliance Comments at 3–4.

[306] *See* Energy Storage Association Comments at 7, 23–24; Tesla/SolarCity Comments at 17–18.

[307] *See* NESCOE Comments at 12.

reliability, and cost reduction benefits as larger electric storage resources.[308] NYISO Indicated Transmission Owners do not oppose the NOPR proposal.[309]

261. Other commenters support the concept of a minimum size requirement but have reservations about the 100 kW value that the Commission proposed in the NOPR.[310] Eagle Crest agrees that a minimum size requirement is appropriate but takes no position with respect to what that requirement should be. Relatedly, Public Interest Organizations and R Street Institute contend that lowering the minimum size requirement will reduce barriers to the participation of electric storage resources but state that the NOPR proposal does not address the arbitrariness of choosing a particular minimum size. R Street Institute argues that no economic rational justifies the RTOs/ISOs adopting different minimum size requirements. While R Street Institute states that the NOPR correctly identifies the need to balance the benefits of lowering minimum size requirements with the ability of market clearing software to model and dispatch smaller resources, it argues that it is unclear how the NOPR proposal balances these benefits and costs. While the National Hydropower Association notes that it is concerned with market participation limitations based on project size, it believes that the NOPR proposal is compatible with existing and future pumped-hydro resources interconnected to the transmission system.

262. Other commenters oppose the NOPR proposal.[311] CAISO explains that it requires resources to have a capacity of at least 500 kW to participate in its energy and ancillary service markets, while initial offer segments must be no less than 100 kW/kWh. While CAISO agrees with the Commission that its software could model or dispatch a resource with a capacity of 100 kW, CAISO is concerned that the 100 kW minimum size requirement would also apply to distributed energy resources and requiring CAISO to clear congestion on its grid with thousands of resources with capacities in the range of 100 kW will reduce the efficiency and performance of its market software. Therefore, CAISO asks the Commission to allow each RTO/ISO to set its minimum size requirement up to 500 kW for installed capacity, with a minimum offer requirement of up to 100 kW/kWh offered into the market and for the initial offer segment. CAISO states that a 500 kW minimum size requirement is consistent with the minimum size requirement that it applies to generators. CAISO further states that the Commission could direct each RTO/ISO to explain how electric storage resources smaller than 500 kW may participate in their markets (*e.g.,* through aggregation models or as demand response resources).

263. ISO–NE argues that imposing a 100 kW minimum size requirement could force it to change the minimum size requirement for all resources in its markets due to its product-based market design. ISO–NE asks the Commission to permit ISO–NE to work with transmission organizations and utility distribution companies in the regions to set minimum size requirements. ISO–NE contends that it must assess whether such an outcome would increase the costs or time needed for implementation. ISO–NE asserts that the proposed 100 kW minimum size requirement might increase costs and the time needed for implementation for the region's transmission organizations and distribution utilities because smaller resources are more likely to be interconnected to the distribution system and these transmission organizations and distribution utilities would have to install metering and adopt accounting procedures to measure the consumption and output of these resources.

264. AES Companies, EEI, MISO Transmission Owners, Pacific Gas & Electric, and SoCal Edison argue that the Commission should allow each RTO/ISO to establish its own minimum size requirements for electric storage resources based on its unique circumstances.[312] EEI argues that it could allow so many electric storage resources to participate in the RTO/ISO markets that the RTOs/ISOs will be unable to evaluate these resources, distribution utilities will be unable to model these resources and implement infrastructure upgrades, and the implementation costs incurred to facilitate their participation will exceed the benefits of that participation. While AES Companies support the concept of a minimum size requirement, they contend that 100 kW is significantly below the minimum size requirement for many distribution utilities and may be challenging for some of the RTOs/ISOs to implement (given their diverse operating characteristics and supporting software systems). Likewise, MISO Transmission Owners state that 100 kW is very low, especially for distribution utilities. Pacific Gas & Electric contends that the Commission should allow each RTO/ISO to establish different minimum size requirements for the different services that electric storage resources can provide (*e.g.,* energy or ancillary services) and the different participation models that they can use to participate in the RTO/ISO market. Pacific Gas & Electric asserts that the appropriate minimum size requirement(s) may be based on the opportunities for aggregation of electric storage resources.

265. AES Companies, EEI, MISO Transmission Owners, and Pacific Gas & Electric contend that the minimum size requirement for an electric storage resource to participate in an RTO/ISO market should take into account the point at which electric storage resources will interconnect to the system (*i.e.,* the transmission or distribution system) and how it will be operated relative to other generation interconnected to the distribution system.[313] AES Companies assert that the Commission does not have the authority to set minimum size requirements for distribution utilities and the 100 kW proposed minimum size requirement conflicts with existing state tariffs and operating principles. Thus, AES Companies and MISO Transmission Owners ask the Commission to allow each distribution utility (with its retail regulators) and each RTO/ISO (with its stakeholders) to establish its own minimum size requirement for distribution-interconnected and behind-the-meter electric storage resources and transmission-interconnected electric storage resources, respectively.

266. Alternatively, MISO Transmission Owners state that a one MW minimum size requirement is more practical and appropriate due to administrative and settlement burdens on the RTOs/ISOs, while a 500 kW minimum size requirement may be appropriate for supporting innovation in immature technologies and markets through pilot projects.[314] In contrast, while acknowledging that smaller electric storage resources can be

[308] *See* Energy Storage Association Comments at 24.

[309] *See* NYISO Indicated Transmission Owners Comments at 7.

[310] *See* Eagle Crest Comments at 7; National Hydropower Association Comments at 9, n.9; Public Interest Organizations Comments at 18; R Street Institute Comments at 7.

[311] *See* CAISO Comments at 16–19; ISO–NE Comments at 23.

[312] *See* EEI Comments at 13–14; AES Companies Comments at 7, 28–29; MISO Transmission Owners Comments at 13–14; Pacific Gas & Electric Comments at 10–11; SoCal Edison Comments at 15–16.

[313] *See* AES Companies Comments at 7, 28–29; EEI Comments at 14; MISO Transmission Owners Comments at 13; Pacific Gas & Electric Comments at 11.

[314] *See* MISO Transmission Owners Comments at 13–14.

aggregated to meet minimum size requirements, SoCal Edison argues that a one MW minimum size requirement may be too large because electric storage resources with a capacity of one MW or more that are interconnected to the distribution system could create operational challenges for distribution operators.[315] Altametric recommends a minimum power output size of 500 kW from no charge to full charge with a minimum limit of 100 kWh.[316] Xcel Energy Services contends that electric storage resources should have to meet the same minimum size requirements like other, larger resources.[317]

267. A few commenters raise the potential impact of the NOPR proposal on the software that RTOs/ISOs use to clear their markets.[318] MISO claims that a minimum size requirement that is too small could result in more very small electric storage resources participating in MISO's markets than its current operational and market systems and software may be capable of tracking, processing, and settling. Similarly, Pacific Gas & Electric and Xcel Energy Services suggest considering whether the market-clearing software is capable of managing the dispatch of many small resources when determining minimum size requirements. MISO warns that its market systems may require significant upgrades to accommodate the potentially large number of electric storage resources and the multiplicity of variables associated with their transactions. MISO also claims that its State Estimator (which it uses to track energy for real-time dispatch and performance measurement) may not have the ability to estimate the status of 100 kW resources. Minnesota Energy Storage Alliance states that, while it defers to the RTOs'/ISOs' comments on the software upgrades needed to implement the proposed minimum size requirement and the associated costs, it would like to see MISO modify its markets to allow for the participation of smaller resources.

268. MISO Transmission Owners claim that any new rule would effectively direct investment in software and/or infrastructure upgrades over other priorities that have been established based on customer need and that the Commission must balance prioritization of electric storage resource participation against other important system improvements and maintenance.[319] MISO Transmission Owners assert that this concern is valid and timely because many distribution companies are implementing large-scale, advanced metering infrastructure deployment plans. Xcel Energy Services also argues that any administrative costs that result from the growth in the number of small resources participating in the RTO/ISO markets should be borne by those resources.[320] EPRI suggests further study on two issues: (1) Whether RTO/ISO market-clearing software will be capable of identifying the optimal dispatch of resources within existing market timelines when there are more resources participating in the RTO/ISO markets and (2) whether small electric storage resources will be dispatched arbitrarily given that small resources that could reduce total production costs might not be dispatched, even though they would reduce production costs, because the market-clearing software has stopped looking for a better dispatch solution.[321]

269. Finally, Open Access Technology recommends that the Commission clarify the minimum size of a price-quantity pair that an electric storage resource can include in its offer because RTO/ISO market rules generally allow for an offer curve that consists of up to ten price-quantity pairs (*i.e.,* whether an electric storage resource can submit a price-quantity pair for less than 100 kW in its offer).[322]

3. Commission Determination

270. In this Final Rule, we adopt the NOPR proposal and add section 35.28(g)(9)(i)(D) to the Commission's regulations to require each RTO/ISO to revise its tariff to include a participation model for electric storage resources that establishes a minimum size requirement for participation in the RTO/ISO markets that does not exceed 100 kW. This minimum size requirement includes all minimum capacity requirements, minimum offer to sell requirements, and minimum bid to buy requirements for resources participating in these markets under the participation model for electric storage resources.

271. Electric storage resources are generally smaller than traditional generation resources and are often in the 100 kW to 1 MW range.[323] In many cases, existing minimum size requirements were created prior the emergence of new, smaller resources such as electric storage resources that are technically capable of participating in the RTO/ISO markets. We find that RTO/ISO market rules may create barriers to electric storage resource participation in those markets based on minimum size requirements that may have been designed for different types of resources.[324] Therefore, as discussed below, we conclude that requiring the RTOs/ISOs to establish a minimum size requirement not to exceed 100 kW for the participation model for electric storage resources balances the benefits of increased competition with the potential need to update RTO/ISO market clearing software to effectively model and dispatch smaller resources.

272. While some commenters argue that RTO/ISO modeling and dispatch software may be unable to accommodate a large number of smaller resources, the record shows that all RTOs/ISOs are already accommodating the participation of smaller resources in their markets. For example, the record shows that all RTOs/ISOs already have the modeling and dispatch software capabilities to accommodate the participation of resources that are as small as 100 kW. Specifically, both PJM and SPP have a minimum size requirement of 100 kW for all resources, and all of the RTOs/ISOs have at least one participation model that allows resources as small as 100 kW to participate in their markets.[325] In response to ISO–NE's claim that its product-based market design does not permit such size requirements, we point to varying minimum size requirements for existing participation models in ISO–NE (*e.g.,* 1 MW for generators and 100 kW for demand response).

273. Further, we are not persuaded by commenters who argue that different minimum size requirements may be needed based on the service being provided, the location and concentration of electric storage resources, or where the electric storage resources are interconnected. Commenters have failed to demonstrate how minimum size requirements should be varied based on the manner in which electric storage resources are operated or based on the location of these resources. Additionally, in response to

[315] *See* SoCal Edison Comments at 15.

[316] *See* Altametric Comments at 7.

[317] *See* Xcel Energy Services Comments at 23.

[318] *See* Minnesota Energy Storage Alliance Comments at 4; MISO Comments at 8–9; Pacific Gas & Electric Comments at 11; Xcel Energy Services Comments at 23.

[319] *See* MISO Transmission Owners Comments at 14.

[320] *See* Xcel Energy Services Comments at 23.

[321] *See* EPRI Comments at 26–27.

[322] *See* Open Access Technology Comments at 3.

[323] *See* NOPR at nn.146–147 (citing Sandia Report at 29, Figure 19 (Positioning of Energy Storage Technologies); U.S. Department of Energy, *Grid Energy Storage* at 12 (Dec. 2013) (stating that most storage systems are in the 10 kW to 10 MW range, with the largest proportion of those resources in the 100 kW to 1 MW range)).

[324] *See id.* P 86.

[325] *See* CAISO Data Request Response at 10–11; ISO–NE Data Request Response at 13–14; MISO Data Request Response at 10; NYISO Data Request Response at 9; PJM Data Request Response at 10; SPP Data Request Response at 5.

commenters that suggest that the Commission does not have the authority to set minimum size requirements for distribution utilities, we clarify that we are not setting minimum size requirements for distribution utilities in this Final Rule. Rather, we are requiring each RTO/ISO to establish a minimum size requirement for resources participating in its markets. Therefore, we find that minimum size requirements do not need to be resource-specific or location-specific. We note that existing participation models in the RTOs/ISOs have standard minimum size requirements for all resources that elect to use them.

274. Moreover, in response to concerns about potential impacts on the distribution systems and related costs, we note that numerous 100 kW minimum size requirements already exist, and there are resources located on the distribution system that are already participating in the RTO/ISO markets. Establishing a standard minimum size requirement for resources using the participation model for electric storage resources may potentially result in more resources on the distribution systems participating in the RTO/ISO markets. However, it does not change the responsibilities of the RTOs/ISOs or the distribution utilities, and it does not change the ability of distribution utilities to allocate any costs that they incur in operating and maintaining their respective power systems.

275. With respect to CAISO's and MISO's concern that they may need to upgrade their software to manage the potentially large number of resources using the participation model for electric storage resources under the proposed minimum size requirement, as discussed in the Compliance Requirements section,[326] we find that we are providing the RTOs/ISOs with adequate time to develop the requisite tariff language and update their modeling and dispatch software to comply with this Final Rule and are factoring into the effective date of this Final Rule the burden of implementing the requirements herein. We are not persuaded that more than 365 days after the RTOs/ISOs submit their compliance filings will be necessary to implement the reforms in this Final Rule. We are also not concerned about the potential availability of software solutions as multiple RTOs/ISOs already provide a minimum size requirement of 100 kW for all resources and have not expressed similar concerns regarding the minimum size requirement. While establishing a minimum size requirement of 100 kW for the participation model for electric storage resources will result in some smaller resources entering the markets in the near term, we do not expect an immediate influx of these smaller resources or any resulting inability to model and dispatch them. However, we recognize this finding is based on the fact that there are currently fewer 100 kW resources than there may be in the future. Therefore, in the future, we will consider requests to increase the minimum size requirement to the extent an RTO/ISO can show that it is experiencing difficulty calculating efficient market results and there is not a viable software solution for improving such calculations.

276. In response to Open Access Technology's request for clarification of the number of allowed price-quantity bid segments for a 100 kW resource using the participation model for electric storage resources, we reiterate our requirement that the minimum size requirement applies to all minimum capacity requirements, minimum offer to sell requirements, and minimum bid to buy requirements. We note that, under this requirement, an RTO/ISO could allow offer and/or bid quantities smaller than 100 kW, as CAISO indicates it does.[327] An RTO/ISO could also allow minimum offer and/or bid quantities equal to 100 kW, as PJM indicates it does.[328] However, this requirement would not permit an RTO/ISO to require a resource using the electric storage resource participation model to submit offer and/or bid quantities larger than 100 kW.

H. Energy Used To Charge Electric Storage Resources

1. Price for Charging Energy

a. NOPR Proposal

277. In the NOPR, the Commission stated that it has found that the sale of energy from the grid that is used to charge electric storage resources for later resale into the energy or ancillary service markets constitutes a sale for resale in interstate commerce.[329] As such, the Commission stated that the just and reasonable rate for that wholesale sale of energy used to charge the electric storage resource is the RTO/ISO market's wholesale price for energy or LMP. The Commission thus proposed to require each RTO/ISO to revise its tariff to specify that the sale of energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets must be at the wholesale LMP.

b. Comments

278. Many commenters support the NOPR proposal that the sale of energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets must be at the wholesale LMP.[330] MISO notes that the proposed wholesale LMP requirement aligns with MISO's current market design for Stored Energy Resources and Demand Response Resources.[331] National Hydropower Association agrees with the NOPR's characterization of charging and discharging as wholesale transactions,[332] while NYISO Indicated Transmission Owners do not oppose the NOPR proposal.[333]

279. A few commenters support the NOPR proposal in principle but condition their support.[334] ISO–NE agrees with the general principle of paying LMP for charging energy that is later resold into the wholesale market; however, ISO–NE notes that implementing the NOPR proposal may be complicated and will depend on the participation of the region's transmission organizations and distribution utilities. While Alevo supports the NOPR proposal, it states that, because electric storage resources that are participating in ancillary service markets (such as the market for frequency regulation) are responding to the grid operator's needs, requiring them to settle energy to provide such services would be inappropriate and a barrier to their participation.

280. Other commenters assert that certain electric storage resources should not be permitted to purchase charging energy at LMP unless they meet certain

[326] *See infra* P 348.

[327] CAISO states the minimum participation requirement for electric storage resource energy bids is 10 kW. CAISO Data Request Response at 16.

[328] PJM states the 100 kW is both the minimum capacity requirement and also the minimum incremental offer amount. PJM Data Request Response at 10 (citing PJM Tariff, Attachment DD, section 5.6).

[329] *See* NOPR at P 100 (citing *Norton Energy Storage, L.L.C.,* 95 FERC ¶ 61,476, at 62,701–02 (2001) (*Norton Energy Storage*); *PJM Interconnection, L.L.C.,* 132 FERC ¶ 61,203 (2010)).

[330] *See, e.g.,* AES Companies Comments at 6, 8; American Petroleum Institute Comments at 12; APPA/NRECA Comments at 41; California Energy Storage Alliance Comments at 8; EEI Comments at 15; ELCON Comments at 6; ISO–NE Comments at 23–24; Mensah Comments at 2; NextEra Comments at 10; Ohio Commission Comments at 7; TAPS Comments at 28.

[331] *See* MISO Comments at 9.

[332] *See* National Hydropower Association Comments at 10.

[333] *See* NYISO Indicated Transmission Owners Comments at 7.

[334] *See* Alevo Comments at 10–11; ISO–NE Comments at 23–24.

conditions.[335] According to Avangrid, NRG, and Pacific Gas & Electric, a behind-the-meter electric storage resource should not be eligible to pay LMP for its charging energy unless it has implemented the metering, accounting, and data protocols necessary to distinguish its wholesale and retail activities. NRG contends that, otherwise, a behind-the-meter electric storage resource should pay the retail rate for its charging energy.

281. Similarly, Xcel Energy Services goes farther, contending that, given the practical impossibility of determining what charging energy will be used to provide wholesale services and what charging energy will be used to provide retail services, the default rate for distributed electric storage resources should be the retail rate.[336] Xcel Energy Services further claims that, by paying the wholesale LMP, a distributed electric storage resource owner can bypass capacity and infrastructure costs, thus depriving the distribution utility of revenues to meet its obligation to serve.

282. APPA/NRECA, FirstLight, and TAPS argue that, instead of requiring RTOs/ISOs and distribution utilities to develop and administer elaborate metering and accounting schemes, which some argue may not be possible, storage resources must elect to participate in either wholesale or retail markets, but not in both.[337] FirstLight adds that introducing the ability to toggle between retail and wholesale rates may create incentives to shift the liability of bad decisions in the wholesale market to the retail supplier by discharging to meet retail load.

283. Some commenters ask the Commission to clarify that the Commission's regulations will not require an electric storage resource that is participating in an RTO/ISO market to pay the wholesale LMP for the charging energy that it uses to provide wholesale services.[338] For example, Energy Storage Association asks the Commission to clarify that RTOs/ISOs may not compel electric storage resources providing wholesale services to purchase their charging energy from wholesale markets because they may be able to charge from a co-located generator. Similarly, AES Companies state that electric storage resources should be permitted to purchase charging energy for providing wholesale services from the wholesale markets and from other sources, such as generators not registered in an RTO/ISO. AES Companies also assert that electric storage resources should be permitted to self-supply from other assets (such as co-located behind-the-meter solar). AES Companies argue that flexibility in procurement will provide a more competitive framework for electric storage devices, which would lower cost to consumers. MISO Transmission Owners contend that requiring electric storage resources to purchase the charging energy that they use to provide wholesale services would result in inequitable treatment because synchronous generators have the opportunity to buy fuels from many sources.

284. While Stem contends that all charging energy that an electric storage resource located in front of a retail meter is a sale for resale, it asserts that the only charging energy for a behind-the-meter electric storage resource that is a sale for resale is charging energy that it used to net inject energy back onto the grid.[339] Stem argues that a behind-the-meter electric storage resource should not have to pay the wholesale rate for any of its charging energy because the resource may then have to pay twice for its charging energy if the local distribution utility does not ''net out'' that charging energy from the host customer's retail bill.

285. In contrast, APPA/NRECA ask that the Commission require that electric storage resources pay wholesale LMP for all charging energy used to provide wholesale services.[340] APPA/NRECA argue that, otherwise, electric storage resources could engage in arbitrage between the volatile wholesale markets and regulated retail markets, likely shifting costs to the distribution utility's other customers. Similarly, NYISO contends that all energy that an electric storage resource consumes at a wholesale rate must be sold back to the grid at a wholesale rate.[341] Stem asks the Commission to clarify that all energy used to charge front-of-meter electric storage resource is a sale for resale and thus the resource must pay the wholesale LMP for energy withdrawn from the grid to charge the resource.[342]

286. Several commenters raise jurisdictional concerns with respect to the application of the NOPR proposal's requirement that the sale of energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets must be at the wholesale LMP to electric storage resources interconnected to the distribution system or located behind a retail customer's meter. Specifically, commenters argue that applying the NOPR proposal to such resources raises issues related to regulatory oversight and may interfere with the exclusive right of state regulators to set retail rates and terms of service.[343] EEI asserts that electric storage resources should charge at the retail rate when seeking to participate in the retail markets and requests that the Commission indicate that charging at LMP rates does not confer exclusive jurisdiction over electric storage resources to the Commission. IRC requests that the Commission work with the states to address jurisdiction issues given that it may be unclear whether charging energy will be used to provide wholesale or retail services when it is being absorbed. MISO Transmission Owners recommend that any final rule recognize that state or localities have jurisdiction over rate setting and provide flexibility in the rates at which an electric storage resource that is interconnected to a distribution system may buy and sell electricity.

287. MISO Transmission Owners further contend that electric storage resources located behind the meter should pay any retail rate applicable to them under state law for charging energy.[344] Pacific Gas & Electric argues that the local regulatory authority must determine that an electric storage resource's consumption is not a retail transaction before that resource is eligible to pay LMP for that consumption.[345] AES Companies argue that the Commission does not have authority to require behind-the-meter resources under state jurisdiction (outside of retail choice states) to pay LMP.[346]

288. Microgrid Resources Coalition believes that LMP rates are the more economically efficient result for charging behind-the-meter resources but agrees that ''retail rates are legally appropriate.'' [347] Specifically, Microgrid Resources Coalition contends that, in retail choice jurisdictions, large customers can typically arrange to pay LMP and a retail supplier could also

[335] *See* Avangrid Comments at 9; NRG Comments at 16–17; Pacific Gas & Electric Comments at 13.

[336] *See* Xcel Energy Services Comments at 13–14.

[337] *See* APPA/NRECA Comments at 42; FirstLight Comments at 12; TAPS Comments at 28.

[338] *See, e.g.,* AES Companies Comments at 7–9, 30; DER/Storage Developers Comments at 5; Energy Storage Association Comments at 7, 20; MISO Transmission Owners Comments at 15; Stem Comments at 10–11.

[339] *See* Stem Comments at 11.

[340] *See* APPA/NRECA Comments at 42.

[341] *See* NYISO Comments at 10–11.

[342] *See* Stem Comments at 10.

[343] *See, e.g.,* AES Companies Comments at 7; EEI Comments at 12, 15; IRC Comments at 2–3; MISO Transmission Owners Comments at 15.

[344] *See* MISO Transmission Owners Comments at 6, 14–15.

[345] *See* Pacific Gas & Electric Comments at 12.

[346] *See* AES Companies Comments at 6, 29.

[347] *See* Microgrid Resources Coalition Comments at 13.

agree to pass through to the customer the economic consequences of a demand bid by the supplier on the customer's behalf. ELCON similarly states that an electric storage resource should be able to register as an energy service company in an applicable state and buy energy or capacity at the prevailing LMPs from an organized market and resell to direct access retail customers but that, without Commission regulation, concerns may arise regarding anti-competitive behavior and potential for double-recovery of costs.[348]

289. Several commenters address specific components of gross load for electric storage resources.[349] California Energy Storage Alliance, Energy Storage Association, and NextEra request that the Commission clarify that efficiency losses experienced between charging and discharging an electric storage resource should be settled at the wholesale LMP. In addition, California Energy Storage Alliance argues that loads that are unavoidable to the production or conversion of energy drawn from the grid or are integral to the optimal production or conversion of energy drawn from the grid represent efficiency losses and that these directly integrated loads should be counted as charging energy to provide wholesale services. Energy Storage Association and NextEra further state that some electric storage resources have thermal management components that are integral to, or internalized within, the storage medium and the sale of the energy that these systems use should be considered wholesale transactions and thus priced at LMP. EEI suggests the Commission should discuss the definition of charging energy at a technical conference to determine whether all ancillary loads of a battery installation should be considered wholesale or only the specific load associated with charging the battery.

290. Other commenters disagree that electric storage resources should pay wholesale LMP for these energy uses.[350] IRC requests that the Commission work with states to address the jurisdictional issues surrounding injection and charging functions (such as energy losses, thermal regulation, and station power) to avoid future litigation. California Commission states that the energy consumption of behind-the-meter electric storage resources that will charge at a wholesale rate raises jurisdictional issues, particularly since station power is a retail service. Likewise, Six Cities and Xcel Energy Services assert that the sale of power purchased to operate generating facilities (*i.e.,* station power) must be at retail rates. Six Cities argue that distribution utilities (subject to the oversight of their local regulatory authorities) should have the flexibility to identify measures needed to properly distinguish between station power and charging energy.

291. Several commenters are concerned about the NOPR proposal's potential financial impacts on distribution utilities.[351] EEI and NYISO Indicated Transmission Owners argue that resources located on distribution systems must pay any applicable charges covered under state jurisdictional tariffs in order to adequately reflect their use of, and cost to, state-jurisdictional facilities. Likewise, MISO Transmission Owners ask the Commission to clarify how utilities and ratepayers will be compensated for allowing electric storage resources to use the distribution system to provide wholesale services. TAPS requests that the Commission clarify that distribution-interconnected electric storage resources should be subject to distribution utility tariffs and rates for delivery of energy between the RTO grid and their point of interconnection to the distribution system. Six Cities request confirmation that distribution utilities or their local regulatory authorities retain jurisdiction to determine how to manage the cost, reliability, operational, and interconnection impacts to the distribution system of any electric storage resource.[352]

292. As a separate issue, Energy Storage Association and NextEra suggest that energy stored for re-delivery to the grid should not be subject to the transmission charges that apply to load.[353] NextEra explains that electric storage resources participating in the RTO/ISO markets are dispatched by the RTO/ISO for a wholesale service and the withdrawal of energy from the transmission network under RTO/ISO control is part the wholesale service, particularly with respect to regulation service. Similarly, NRG asks the Commission to clarify that an electric storage resource will receive and pay the applicable nodal LMP, and not the zonal price, for its wholesale transactions.[354] To the extent that the Commission finds that any transmission charges apply to electric storage resources, NextEra states that those charges should apply only to station power.

293. In contrast, Open Access Technology argues that, if the NOPR assumes that both consumption (when charging) and generation (when discharging) from an electric storage resource are measured at the wholesale pricing node upstream of the physical location of the storage resource in the distribution feeder, then the Commission should make this assumption explicit given the effect of distribution system losses on these measurements.[355] American Petroleum Institute also contends that the price signals that distribution-interconnected resources receive for wholesale market participation should account for congestion, losses, and voltage considerations on the distribution system, which current market models do not take into account.[356]

c. Commission Determination

294. In this Final Rule, we adopt the NOPR proposal and add section 35.28(g)(9)(ii) to the Commission's regulations to require that the sale of electric energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets be at the wholesale LMP. The Commission is modifying this provision to apply regardless of whether the electric storage resource is using the participation model for electric storage resources or another participation model to participate in the RTO/ISO markets, as long as the resource meets the definition of an electric storage resource set forth in this Final Rule. The Commission has found that the sale of energy from the grid that is used to charge electric storage resources for later resale into the energy or ancillary service markets constitutes a sale for resale in interstate commerce.[357] As

[348] *See* ELCON Comments at 7.

[349] *See* California Energy Storage Alliance Comments at 8–9; EEI Comments at 12; Energy Storage Association Comments at 7, 19–20, n.30; NextEra Comments at 10–11.

[350] *See* California Commission Comments at 5; IRC Comments at 2–3 Six Cities Comments at 5 (citing *PJM Interconnection, L.L.C.,* 94 FERC ¶ 61,251, at 61,891 (2001)); Xcel Energy Services Comments at 12.

[351] *See* EEI Comments at 12, 14, 15; MISO Transmission Owners Comments at 7, 17; NYISO Indicated Transmission Owners Comments at 7–8; TAPS Comments at 29.

[352] *See* Six Cities Comments at 3–4.

[353] *See* Energy Storage Association Comments at 7, 20; NextEra Comments at 11.

[354] *See* NRG Comments at 16.

[355] *See* Open Access Technology Comments at 3.

[356] *See* American Petroleum Institute Comments at 13.

[357] *See Norton Energy Storage,* 95 FERC ¶ 61,476 at 62,701–02 (citations omitted) (''[T]he use of compressed air as a medium for the storage of energy in an energy storage facility is a new technology. However, we find that a compressed air energy storage facility is analogous to a [pumped-hydro resource], in that compressed air is used in a conversion/storage cycle just as water is used in a [pumped-hydro resource] in the conversion/

Continued

such, the just and reasonable rate for that wholesale sale of energy used to charge that electric storage resource is the RTO/ISO market's wholesale LMP, regardless of whether the electric storage resource uses the participation model for electric storage resources.

295. In response to Alevo's concerns that the requirement may not be appropriate for electric storage resources that are participating in ancillary service markets, we reiterate that the sale of electric energy from the grid that is used to charge an electric storage resource for later resale into ancillary service markets constitutes a sale for resale in interstate commerce and therefore the just and reasonable rate is the wholesale LMP. Electric storage resources that are participating in RTO/ISO frequency regulation markets are already settled at wholesale LMP for their net energy at the end of a market interval, consistent with our requirements for charging energy here.

296. Additionally, in response to NRG's concern, we clarify that an electric storage resource's wholesale energy purchases should take place at the applicable nodal LMP, and not the zonal price. Using the applicable nodal LMP will prevent any potential arbitrage between nodal and zonal prices and allows for consistent evaluation of a resource's impacts on the energy, congestion, and loss components of LMP when it is both receiving and injecting energy.

297. We disagree with Energy Storage Association and NextEra that transmission charges that apply to load should not apply to electric storage resources. When an electric storage resource is charging to resell energy at a later time, then its behavior is similar to other load-serving entities, and we find that applicable transmission charges should apply. However, it may be possible for different transmission charges to apply to load resources located at a single node (such as pumped-hydro resources) that are paying a nodal price for energy and load resources that are located across multiple nodes (such as load-serving entities) that are paying a zonal price for energy. Therefore, to the extent that load resources located at a single node pay different transmission charges than load resources located across multiple nodes, then we require each RTO/ISO to apply those transmission charges for single-node resources to electric storage resources that are located at a single pricing node, as long as, as discussed in the next paragraph, they are not being dispatched to provide an ancillary service by an RTO/ISO.

298. In response to the concern that transmission charges should not apply when an electric storage resources is dispatched by an RTO/ISO, we find that electric storage resources that are dispatched to consume electricity to provide a service in the RTO/ISO markets (such as frequency regulation or a downward ramping service) should not pay the same transmission charges as load during the provision of that service. We find that this would be consistent with the treatment afforded traditional generation resources that provide ancillary services, because they are not charged for their impacts on the transmission system when they reduce their output to provide a service such as frequency regulation down. Therefore, we find that electric storage resources should not be charged transmission charges when they are dispatched by an RTO/ISO to provide a service because (1) their physical impacts on the bulk power system are comparable to traditional generators providing the same service and (2) assessing transmission charges when they are dispatched to provide a service would create a disincentive for them to provide the service.

299. In response to concerns about an electric storage resources being compelled to purchase all of its energy for future use from the RTO/ISO markets, we clarify that we impose no such requirement. Our finding regarding charging energy does not address payment of the retail rate for energy or charging a device off of co-located generation resources, as suggested by commenters. Also, while this finding requires each RTO/ISO to allow electric storage resources to be able to pay the wholesale LMP for their charging energy, it does not address whether they can pay some other rate, such as a retail rate or charging off of co-located generation. Finally, like other market participants that purchase energy from the RTO/ISO markets, an electric storage resource that pays the wholesale LMP for charging energy may enter into bilateral financial transactions to hedge the purchase of that energy.

300. We disagree with commenters who argue that the requirement to pay LMP for charging energy should only apply to electric storage resources that are interconnected to the transmission system. As discussed above, this Final Rule applies to electric storage resources that are capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid, irrespective of where the resource is interconnected. The sale of charging energy to an electric storage resource that the resource then resells into the RTO/ISO markets is a sale for resale in interstate commerce and thus subject to the Commission's jurisdiction.[358]

301. With respect to concerns about electric storage resources' use of the distribution system, we note that, in *PJM Interconnection LLC,* the Commission permitted a distribution utility to assess a wholesale distribution charge to an electric storage resource participating in the PJM markets.[359] Consistent with this precedent, we find that it may be appropriate, on a case-by-case basis, for distribution utilities to assess a charge on electric storage resources similar to those assessed to the market participant in that proceeding.

302. With respect to efficiency losses, consistent with *Norton Energy Storage,* we find that efficiency losses are charging energy and therefore not a component of station power load.[360] Accordingly, the charging energy lost to conversion inefficiencies should also be settled at the wholesale LMP as long as those efficiency losses are an unavoidable component of the conversion, storage, and discharge process that is used to resell energy back to the RTO/ISO markets and are not a component of what an RTO/ISO

storage cycle. . . . [T]he Commission views the pumping energy not as being consumed, but rather as being converted and stored, as water in the upper reservoir, for later re-conversion . . . back to electric energy. It is this conversion/storage cycle that distinguishes energy storage facilities, whether [pumped-hydro resources] or compressed air energy storage facilities, from facilities that consume electricity (in the form of station power or otherwise). The fact that pumping energy or compression energy is not consumed means that the provision of such energy is not a sale for end use that this Commission cannot regulate. Rather, based on Norton's representations in its petition, we find that deliveries of compression energy to the Norton energy storage facility as part of energy exchange transactions employing the conversion/storage cycle are wholesale transactions subject to our exclusive authority under the FPA.''). *See also PJM Interconnection, L.L.C.,* 132 FERC ¶ 61,203 at 62,053 (''Like pumping energy and compression energy, the energy used to charge Energy Storage Resources will be stored for later delivery and not used for operating the electric equipment on the site of a generation facility or associated buildings as Station Power is used.'').

[358] *See Norton Energy Storage,* 95 FERC ¶ 61,476 at 62,701–02; *see also PJM Interconnection,* L.L.C., 132 FERC ¶ 61,203 at P 7.

[359] *See PJM Interconnection LLC,* 149 FERC ¶ 61,185 at P 12 (wholesale distribution charge that ComEd will assess to Energy Vault is a weighted average carrying charge that is applied on a case-by-case basis, depending on the distribution facilities expected to be used in providing wholesale distribution service), *order on reh'g,* 151 FERC ¶ 61,231 at PP 16–18.

[360] *See Norton Energy Storage,* L.L.C., 95 FERC ¶ 61,476 at 62,702 (stating that ''[t]he fact that pumping energy or compression energy is not consumed means that the provision of such energy is not a sale for end use that this Commission cannot regulate.'').

considers onsite load. With respect to directly integrated and other ancillary loads, we provide the RTOs/ISOs flexibility to determine whether they are a component of charging energy or a component of station power.

2. Metering and Accounting Practices for Charging Energy

a. NOPR Proposal

303. In the NOPR, the Commission sought comment on whether metering and accounting practices designed to delineate between wholesale and retail activities would need to be established in the RTO/ISO tariffs to facilitate compliance with the proposed requirement that the sale of energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets must be at the wholesale LMP or whether it is possible to determine the end use for energy used to charge an electric storage resource under existing requirements.[361]

b. Comments

304. As discussed above, commenters agree that electric storage resources providing retail services should not charge at the wholesale rate and discharge to serve a retail customer,[362] and many commenters assert that metering and accounting practices designed to delineate between wholesale and retail activities are necessary to prevent such an outcome.[363] Stem contends that the energy used to charge a behind-the-meter electric storage resource is considered a sale for resale only up to the amount that is injected onto the grid for wholesale purposes, which requires each RTO/ISO to establish metering and accounting practices that separate wholesale from retail activity.[364] Independent Energy Producers Association argues that the Commission must address how to distinguish and measure wholesale and retail activities to ensure transparency in both markets and to prevent double-counting.[365] Electric Vehicle R&D Group asks the Commission to propose different methods for reconciliation of wholesale and retail activities for behind-the-meter electric storage resources, giving RTOs/ISOs options from which to choose.[366]

305. Some commenters encourage the Commission to provide flexibility to the RTOs/ISOs with respect to metering and accounting practices to distinguish wholesale and retail activities.[367] Pacific Gas & Electric recommends that the Commission provide each RTO/ISO with flexibility to establish hardware and software requirements for telemetry and metering that account for its system characteristics, market rules, and utility tariffs. Six Cities contend that distribution utilities or their local regulatory authorities should retain their own metering standards and technical requirements for resources interconnecting to the distribution system and any flexibility that the Commission provides with respect to metering in the final rule should not compromise the accuracy of settlements or impose additional costs on the distribution system.

306. Minnesota Energy Storage Alliance contends that the Commission should not adopt explicit metering arrangements but instead should set forth requirements that metering solutions must meet to adequately delineate between wholesale and retail activities and allow the industry to develop those solutions at the lowest cost possible.[368] Minnesota Energy Storage Alliance states that it is necessary to establish adequate accounting process to track and verify costs associated with operating an electric storage resource that can delineate between wholesale and retail transactions. AES Companies argue that any criterion for accounting methodologies and data collection criterion for electric storage resources, including recognition of state jurisdiction, should be documented in the RTO/ISO business practice manuals rather than the tariff, so timely changes can occur as technology and regulation evolve.[369]

307. Many commenters are concerned, however, that requiring the establishment of metering and accounting practices designed to delineate between wholesale and retail activities raises jurisdictional issues.[370] CAISO argues that the Commission should permit RTOs/ISOs to develop the rules governing these practices in collaboration with their stakeholders to help prevent cross-jurisdictional disputes. MISO states that it is unclear to what extent MISO's current tariff and processes can make jurisdictional distinctions between wholesale and retail activities and that new rules are therefore necessary.

308. PJM believes that it is important for the Commission, working with the states, to provide guidance in the final rule on issues including, but not limited to, the rate treatment for energy used to charge behind-the-meter electric storage resources and for front-of-the meter electric storage resources that occasionally serve retail load through a separate connection to a retail customer and the ability of RTOs/ISOs to develop requirements associated with metering, visibility, and dispatchability of distributed electric storage resources. With respect to the issue of how to account for the energy used to charge an electric storage resource that is located in front of the retail meter but occasionally provides retail services, PJM recommends that the RTO/ISO track what energy is used for retail services (*i.e.,* any net load), like RTOs/ISOs do today for station power. With respect to the issue of how to account for energy used to charge a behind-the-meter electric storage resource, PJM argues that RTOs/ISOs and their stakeholders should not be put in the position of resolving purely legal and regulatory issues.

309. Massachusetts State Entities question whether the NOPR appropriately addresses states' concerns regarding the ability of behind-the-meter storage resources to charge at a wholesale rate and discharge to serve a retail customer to avoid paying a retail rate.[371] Massachusetts State Entities and NARUC ask the Commission to clarify the appropriate metering and accounting practices that can be used to delineate between wholesale and retail uses.[372] Massachusetts State Entities argue that the Commission should clarify whether an electric storage resource providing both wholesale and retail services must have separate metering both upstream and downstream of the resource. Open Access Technology similarly requests that the Commission clarify whether a storage resource in charging mode is expected to be separately metered and settled from the load of the premises in

[361] *See* NOPR at P 102.

[362] *See, e.g.,* California Municipals Comments at 4; FirstLight Comments at 12; PJM Market Monitor Comments at 9; SoCal Edison Comments at 9, 13; TAPS Comments at 30–31; Tesla/SolarCity Comments at 19.

[363] *See, e.g.,* American Petroleum Institute Comments at 12–13; Mensah Comments at 2; MISO Comments at 19; Six Cities Comments at 4–5; SoCal Edison Comments at 9, 13; Tesla/SolarCity Comments at 19.

[364] *See* Stem Comments at 10.

[365] *See* Independent Energy Producers Association Comments at 7.

[366] *See* Electric Vehicle R&D Group Comments at 1–2.

[367] *See* Pacific Gas & Electric Comments at 13; Six Cities Comments at 3.

[368] *See* Minnesota Energy Storage Alliance Comments at 5–6.

[369] *See* AES Companies Comments at 30–31.

[370] *See* CAISO Comments at 20; MISO Comments at 19; PJM Comments at 7, 13–15.

[371] *See* Massachusetts State Entities Comments at 10.

[372] *See* Massachusetts State Entities Comments at 9–10; NARUC Comments at 7.

which it is located.[373] Relatedly, Organization of MISO States contends that, because state statutes may prohibit retail customers from purchasing energy directly from the wholesale market, a distribution-interconnected electric storage resource must have a separate meter to participate in the wholesale market, unless a single meter is explicitly allowed by the relevant electric retail regulatory authority.[374]

310. A few commenters emphasize the importance of distribution utilities to the successful implementation of any metering and accounting practices.[375] ISO–NE states that it has no way to ensure compliance with a requirement that behind-the-meter sales for resale are metered and reported to ISO–NE for settlement without the cooperation of each distribution utility. Mensah argues that metering and accounting practices should be coordinated with the local distribution utility to avoid any duplicate metering requirements and to ensure proper accounting is performed based on the collection, availability, and sharing of metered data points at different intervals with all parties.

311. Some commenters are concerned that there may not be a feasible or practical way to delineate between wholesale and retail activities, especially when there are multiple devices and retail load behind the same meter.[376] MISO Transmission Owners argue that, when an electric storage resource is located behind a retail customer's electric meter, it may be impractical, prohibitively expensive, or even impossible to distinguish between use of the resource (*i.e.,* charging and discharging) and the customer's other electric loads. FirstLight claims that an RTO/ISO cannot in practice distinguish between charging energy that will be used to provide a wholesale service and charging energy that will be used to provide a retail service, especially given that an electric storage resource may charge at different times and use its capacity to provide different services. Avangrid claims that, even if behind-the-meter retail load, distributed energy resources (including energy storage), and generation are separately metered, ownership and reconciliation of the data to produce results suitable for retail billing and wholesale settlement in a timely manner may be impractically complex and likely subject to both state and federal regulation.

312. Likewise, TAPS contends that for distribution-interconnected electric storage resources, even revenue-quality metering, might be insufficient to distinguish between the wholesale and retail activities of an electric storage resource behind the same meter as distributed generation and/or load.[377] TAPS further states that any accounting practices would have to track two separate energy level balances, one for wholesale activities and one for retail activities. According to TAPS, in each interval, discharge from the retail balance must be limited to the retail customer's consumption in that interval (or perhaps sales to the distribution utility) and discharge from the wholesale balance must be reconciled with sales to the RTO. Given these complexities, TAPS recommends that electric storage resources should not be able to provide services at both wholesale and retail.

313. SoCal Edison asserts that current net metering configurations and accounting practices cannot separate which generation is used by the customer and which is offered for wholesale use and that it is insufficient to have a policy that prevents mixing wholesale and retail with instruction to RTOs/ISOs to develop the provisions as necessary.[378] Pacific Gas & Electric agrees that the needed metering and accounting requirements do not exist today, stating that RTOs/ISOs will have to develop such requirements with their local regulatory authorities.[379]

314. According to AES Companies, whether existing metering and accounting practices will allow an RTO/ISO to distinguish between wholesale and retail transactions depends on the RTO/ISO, the electric storage technology in question, and the state jurisdiction.[380] AES Companies contend that there are often state-mandated accounting procedures that involve more than the individual electric storage resource that render it impossible to separate parasitic load/charging (station power/state-of-charge management) when behind-the-meter and distribution-interconnected electric storage resources are selling excess capacity into the wholesale ancillary services markets. AES Companies add that, for older electric storage resources or those that are already in service, the operating software may not provide a sufficient level of detail to distinguish between wholesale and retail transactions.

315. In contrast, several commenters suggest that metering and accounting practices can be developed to discern between wholesale and retail activities.[381] Tesla/SolarCity recommend that the Commission specify that behind-the-meter resources participating in wholesale markets have appropriate metering that RTOs/ISOs can use for settlement purpose to distinguish between wholesale energy uses and retail energy uses. Tesla/SolarCity point to CAISO's Metering Generation Output for Proxy Demand Resources as a good example that relies on direct metering and not synthetic baselines to distinguish between wholesale and retail applications for behind-the-meter energy storage resources.

316. CAISO explains its existing metering and accounting practices can distinguish between wholesale and retail activities.[382] CAISO notes that a behind-the-meter resource participating through its Non-Generator Resource model must separately meter its output and consumption and report that meter data to CAISO for settlement purposes, which is settled at the wholesale rate. CAISO adds that this meter data can be used to adjust the end-use customer meter data to ensure that it reflects only the end-use load. In contrast, CAISO notes that a behind-the-meter resource participating under CAISO's Proxy Demand Resource model only settles with CAISO for intervals in which it has submitted a bid and received a schedule or dispatch instruction to discharge energy to reduce load as a demand response resource, such that its energy consumption for charging is a portion of the end-use retail load.

317. ISO–NE argues that the Commission should require individual customers or resources that are directly settled in the wholesale market either as a load or a generator (or both as in the case of electric storage resource) to directly install revenue-quality interval metering; otherwise, it will be unclear what energy the rest of the customers or resources in that meter domain (*i.e.,* defined areas of a transmission or distribution owner's network for purposes of load measurement) have consumed.[383] For behind-the-meter resources, ISO–NE argues that submetering must be in place so that the distribution utility can report

[373] *See* Open Access Technology Comments at 2.

[374] *See* Organization of MISO States Comments at 3–4.

[375] *See* ISO–NE Comments at 27; Mensah Comments at 2.

[376] *See, e.g.,* Avangrid Comments at 15; FirstLight Comments at 9–12; MISO Transmission Owners Comments at 15–16; NARUC Comments at 7, n.18; TAPS Comments at 28.

[377] *See* TAPS Comments at 31–32.

[378] *See* SoCal Edison Comments at 13.

[379] *See* Pacific Gas & Electric Comments at 13.

[380] *See* AES Companies Comments at 30.

[381] *See, e.g.,* Energy Storage Association Comments at 22; Mensah Comments at 2; Minnesota Energy Storage Alliance Comments at 5–6; Tesla/SolarCity Comments at 19–20.

[382] *See* CAISO Comments at 20–21.

[383] *See* ISO–NE Comments at 24–27, 29.

information to ISO–NE for settlement purposes and can itself determine net retail consumption for billing purposes. According to ISO–NE, the distribution utility must develop the necessary accounting practices and ensure that the appropriate metering is installed, tested, and routinely read to ensure that behind-the-meter electric storage resources are not charged at both the wholesale and retail rate for their charging energy and are not paid at both the wholesale and retail rate for discharging. ISO–NE emphasizes that the Commission should not adopt requirements that could result in a material potential for double charging or double paying electric storage resources and should acknowledge that affected distribution utilities must have the necessary infrastructure, standards, and practices to support wholesale settlements of behind-the-meter electric storage resources before it can address these concerns.

318. ISO–NE contends that an alternative approach to direct metering is allowing a customer with an electric storage resource or other distributed energy resource to participate directly in the wholesale market and be charged or credited at wholesale prices for its entire net load as measured from its retail delivery point. ISO–NE argues that the advantage of this approach is that only one meter, located at the customer's delivery point, is needed to measure net consumption; no sub-metering would be required. However, ISO–NE notes that, if this approach resulted in greater participation of distributed electric storage resources, it could require advanced metering infrastructure and software to manage settlement.

319. Other commenters state that direct metering is necessary to allow an RTO/ISO to distinguish between wholesale and retail services.[384] Although perhaps inadequate for distribution-interconnected electric storage resources, TAPS contends that revenue-quality metering will be needed. Maryland and New Jersey Commissions state that it is important to install specialized metering devices and telemetry to distinguish the intended uses of energy used to charge a behind-the-meter electric storage resource, which will help to ensure that these resources do not receive inappropriate compensation or avoid paying retail rates. PJM Market Monitor recommends that generation and storage facilities that seek to buy or sell at wholesale LMP locate in front of the retail meter and require them to have their own meters and telemetry that would link them to the RTO/ISO.

320. Some commenters comment on technical aspects of developing metering and accounting practices to distinguish between wholesale and retail activities.[385] IRC and ISO–NE contend that rules are needed to address circumstances in which the use of stored energy is unclear at the time of charging. Stem asks the Commission to affirm that metering and accounting practices established by the RTO/ISO for behind-the-meter electric storage resources that inject energy onto the grid would be for the sole purpose of proper settlement of wholesale sale of energy to electric storage resources without implications for a host customer's retail bill.

321. Duke Energy believes that the Commission should encourage RTOs/ISOs to develop measurement and verification requirements to examine a resource's performance against its scheduled output.[386] FirstLight suggests that the RTO/ISO may be able to correct problems after-the-fact with telemetered state of charge for each storage asset location.[387] Finally, Minnesota Energy Storage Alliance asks the Commission to contemplate the appropriateness of adapting the Uniform System of Accounts to handle costs associated with charging electricity used for retail services when those resources are also providing wholesale services, which the Commission declined to do under a SoCal Edison request for clarification under Order No. 784.[388]

c. Commission Determination

322. Upon consideration of the comments, and to help implement the new requirement in section 35.28(g)(9)(ii) of the Commission's regulations, we require each RTO/ISO to implement metering and accounting practices as needed to address the complexities of implementing the requirement that the sale of electric energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets be at the wholesale LMP. To help accomplish this, we require each RTO/ISO to directly meter electric storage resources, so all the energy entering and exiting the resources is measured by that meter. However, we recognize some electric storage resources (such as those located on a distribution system or behind a customer meter) may be subject to other metering requirements that could be used in lieu of a direct metering requirement by an RTO/ISO. Therefore, the Commission will consider, in the individual RTO/ISO compliance filings, alternative proposals that may not entail direct metering but nonetheless address the complexities of implementing the requirement that the sale of electric energy from the RTO/ISO markets to a resource using the participation model for electric storage resources that the resource then resells back to those markets be at the wholesale LMP.

323. We are not persuaded by commenters who argue that developing metering practices that distinguish between wholesale and retail activity is impractically complex. CAISO provides two examples of how it has achieved market rules that accurately account for wholesale and retail activities by using direct metering. Additionally, retail metering infrastructure, which is subject to state jurisdiction, may be able to work in concert with the RTO/ISO requirements to lower the overall metering costs for electric storage resources. Therefore, we provide each RTO/ISO with the flexibility to propose in its compliance filing other reasonable metering solutions that may help reduce costs for developers.

324. Developing new accounting practices for electric storage resources in response to this requirement will be complex, but we nonetheless find that they are feasible to develop. We recognize that it may be beneficial for each RTO/ISO to coordinate accounting requirements in cooperation with the distribution utilities and relevant electric retail regulatory authorities in its footprint to help identify workable accounting solutions for distribution-interconnected or behind-the-meter electric storage resources to participate in the RTO/ISO markets. While the data obtained from directly metering a resource may be adequate to establish the necessary accounting practices, there may also be other reasonable approaches to address these concerns depending on local retail regulatory requirements, such as allowing the customer to be a direct wholesale market participant as suggested by ISO–NE. We also find that metering and accounting rules may need to differ based on whether the resource is located on the transmission system, the distribution system, or behind the meter. These unique considerations underscore the need to provide the RTOs/ISOs flexibility to comply with this requirement.

[384] *See* Maryland and New Jersey Commissions Comments at 4; PJM Market Monitor Comments at 9; TAPS Comments at 30–31.

[385] *See* IRC Comments at 3; ISO–NE Comments at 27; Stem Comments at 10.

[386] *See* Duke Energy Comments at 4.

[387] *See* FirstLight Comments at 12.

[388] *See* Minnesota Energy Storage Alliance Comments at 6.

325. We are not persuaded by APPA/NRECA's and TAPS' suggestion that electric storage resources must choose to participate in either wholesale or retail markets due to the complexity of the metering and accounting practices. It is possible for electric storage resources that are selling retail services also to be technically capable of providing wholesale services, and it would adversely affect competition in the RTO/ISO markets if these technically capable resources were excluded from participation.

326. With respect to Stem's concerns regarding double payment for the same charging energy, we find that resources using the participation model for electric storage resources should not be required to pay both the wholesale and retail price for the same charging energy because it would create market inefficiencies due to the double payment. Therefore, we require each RTO/ISO to prevent resources using the participation model for electric storage resources from paying twice for the same charging energy. To the extent that the host distribution utility is unable—due to a lack of the necessary metering infrastructure and accounting practices—or unwilling to net out any energy purchases associated with a resource using the participation model for electric storage resources' wholesale charging activities from the host customer's retail bill, the RTO/ISO would be prevented from charging that resource using the participation model for electric storage resources electric wholesale rates for the charging energy for which it is already paying retail rates.

327. We decline Stem's request to clarify that metering and accounting practices established by the RTO/ISO for behind-the-meter electric storage resources that inject energy onto the grid would be for the sole purpose of proper settlement of wholesale sale of energy to electric storage resources without implications for a host customer's retail bill. We also decline Stem's request that metering and accounting practices established by the RTOs/ISOs be for the sole purpose of proper settlement of wholesale sale of energy. We recognize that each RTO/ISO may need to coordinate these metering and accounting practices with the distribution utilities and relevant electric retail regulatory authorities. Therefore, we will not place limitations on the extent to which the hardware being used to collect information or the information itself can be shared as this may help reduce costs for the electric storage resources and burdens on RTOs/ISOs, distribution utilities, or relevant electric retail regulatory authorities.

328. With respect to Minnesota Energy Storage Alliance's request to modify the Uniform System of Accounts, we are not persuaded that it is necessary to address costs associated with charging energy used for retail-level services when those resources are also participating in the RTO/ISO markets. Account 555.1 Power Purchased for Storage Operations, which was created in Order No. 784,[389] already allows for the reporting of power purchased and stored for resale and any services provided by an electric storage resource, whether wholesale or retail, would be considered a resale.[390] Accordingly, to the extent that a given electric storage resource subject to the Uniform System of Accounts is approved by relevant authorities to provide both retail and wholesale services, the cost of the charging energy used for providing both retail and wholesale services can already be accommodated by Account 555.1.

I. Issues Outside the Scope of This Final Rule

1. Comments

329. Some commenters raise issues that were not addressed in the NOPR. Many raised issues with respect to compensation or cost recovery under a Policy Statement that the Commission issued in January 2017.[391] Other commenters raised issues with respect to expanding the scope of the rule to apply to resources outside of the RTOs/ISOs;[392] whether to revise RTO/ISO interconnection procedures for electric storage resources;[393] price formation or additional services the Commission should require the RTOs/ISOs to develop;[394] market-based rates;[395] co-optimization models;[396] how the RTO/ISO dispute resolution processes apply to electric storage resources and other new market entrants;[397] whether to incorporate electric storage resources into transmission planning;[398] whether the RTOs/ISOs should modify their unit commitment or settlement periods[399] and other settlement rules;[400] RTO/ISO governance issues;[401] removing barriers to other types of resources;[402] varying compensation based on resource characteristics;[403] requiring the RTOs/ISOs to compensate resources for providing certain non-market services that they are not compensated for providing today;[404] addressing issues in specific RTO/ISO markets;[405] modifications to existing energy management systems communications infrastructure;[406] whether to allow shaping of capacity and energy offers to reflect a resource's capabilities;[407] the submission of multiple bid stacks;[408] and bids for dispatchable load coupled with offers for generation at a later time.[409]

330. Commenters also raise issues related to the reform of existing wholesale services to change their technical requirements and product definitions;[410] exploring whether the RTOs/ISOs are appropriately valuing market services (such as frequency regulation service);[411] and requiring a reverse demand response or load increase product.[412]

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[389] *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies,* Order No. 784, FERC Stats. & Regs. ¶ 31,349 (2013), *order on clarification,* Order No. 784–A, 146 FERC ¶ 61,114 (2014).

[390] *See* 18 CFR Pt. 101.

[391] *See Utilization of Electric Storage Resources for Multiple Services When Receiving Cost-Based Rate Recovery,* 158 FERC ¶ 61,051 (2017). *See, e.g.,* APPA/NRECA Comments at 4–5; EPSA/PJM Power Providers Comments at 13–16; 10; FirstLight Comments at 1–2, 4–5; Pacific Gas & Electric Comments at 14.

[392] *See, e.g.,* AWEA Comments at 6; SEIA Comments at 13–15.

[393] *See, e.g.,* AWEA Comments at 8; Organization of MISO States Comments at 2–3; Power Applications Comments at 8.

[394] *See, e.g.,* Brookfield Renewable Comments at 2–4; NRG Comments at 19; NYISO Indicated Transmission Owners Comments at 4–5; Organization of MISO States Comments at 3; Tesla/SolarCity Comments at 8–10.

[395] *See* AWEA Comments at 6.

[396] *See* Mosaic Power Comments at 4.

[397] *See* SEIA Comments at 8–10.

[398] *See* National Hydropower Association Comments at 5–6.

[399] *See, e.g.,* AWEA Comments at 7; NextEra Comments at 7–8; Research Scientists Comments, Att. 2 at 280, Att. 12 at 290.

[400] *See* Guannan He Comments at 1–4.

[401] *See* E4TheFuture Comments, Att. at 2.

[402] *See* AWEA Comments at 4–5.

[403] *See* Energy Storage Association Comments at 19, 27–28.

[404] *See, e.g.,* Advanced Energy Economy Comments at 29–31; AES Companies Comments at 16; National Hydropower Association Comments at 7–8; San Diego Water Comments at 3–4.

[405] *See* Advanced Microgrid Solutions Comments at 11–13; Advanced Rail Energy Storage Comments at 4–7; Advanced Energy Management Comments at 31–33.

[406] *See* Power Applications Comments at 8.

[407] *See* Fluidic Comments at 4–5.

[408] *See* California Energy Storage Alliance Comments at 12–13.

[409] *See* Eagle Crest Comments at 6.

[410] *See* Alevo Comments at 8–10; Energy Storage Association Comments at 9; NextEra Comments at 6–9; R Street Institute Comments at 5.

[411] *See, e.g.,* Brookfield Renewable Comments at 2–4; National Hydropower Association Comments at 7–8; NYPA Comments at 4–5; San Diego Water Comments at 3–4.

[412] *See* National Hydropower Association Comments at 11.

2. Commission Determination

331. We find that the NOPR did not propose reforms related to these issues raised by commenters. Therefore, these issues are outside the scope of this proceeding and will not be addressed here.

V. Compliance Requirements

A. NOPR Proposal

332. In the NOPR, the Commission proposed to require each RTO/ISO to submit a compliance filing to demonstrate that it satisfies the proposed requirements set forth in the Final Rule within six months of the date the Final Rule in this proceeding is published in the **Federal Register**.[413] The Commission stated that, while it believed that six months would be sufficient for each RTO/ISO to develop and submit its compliance filing, it recognized that implementation of the reforms proposed therein could take more time due to the changes that may be necessary to each RTO's/ISO's modeling and dispatch software. Therefore, the Commission proposed to allow 12 months from the date of the compliance filing for implementation of the proposed reforms to become effective.

333. In the NOPR, the Commission sought comment from the RTOs/ISOs on the changes that would be required to implement the proposed participation model for electric storage resources and the associated costs as well as how those costs could be minimized.[414] The Commission sought comment on the time and resources that would be necessary for the RTOs/ISOs to incorporate these bidding parameters, including the optional bidding parameters, into their modeling and dispatch software.[415] The Commission sought comment on the proposed deadline for each RTO/ISO to submit its compliance filing, as well as the proposed deadline for each RTO's/ISO's implementation of the proposed reforms to become effective.[416] Specifically, the Commission sought comment on whether the proposed compliance and implementation timeline would allow sufficient time for each RTO/ISO to implement changes to its technological systems and business processes in response to a Final Rule. The Commission also sought comment on whether the RTOs/ISOs would require more or less time to implement certain reforms versus others.

334. The Commission stated that, to the extent that any RTO/ISO believes that it already complies with any of the requirements adopted in a Final Rule in this proceeding, the RTO/ISO would be required to demonstrate how it complies in the filing due within six months of the date any Final Rule in this proceeding is published in the **Federal Register**.[417] The Commission also stated that the proposed implementation deadline would apply only to the extent that an RTO/ISO does not already comply with the reforms proposed in this NOPR.

B. Comments

335. A few commenters support the timeline proposed in the NOPR.[418] For example, Energy Storage Association and NRG support the Commission's proposed implementation timeline. Public Interest Organizations also support finalizing the proposed rules as scheduled but adds that, if more time is needed, the Commission should allow the RTOs/ISOs more time to develop their compliance filings.

336. Other commenters, such as the RTOs/ISOs, generally express concerns about the feasibility of the Commission's proposed timelines.[419] NYISO argues that the proposed filing deadline of six months after a final rule and another six months for implementation do not appear to be feasible. Based on the comprehensive review of electric storage resource participation that NYISO is conducting in its own region, it asserts that the compliance deadline should not be before the end of 2018 and implementation should not be required until the end of 2021. MISO requests that the Commission give it time to understand the system impacts of various integration options, noting, for example, that changing the minimum size to 100 kW could tax systems beyond current capabilities. SPP points out that the proposed participation model for electric storage resources will require extensive changes to software, the tariff, and market protocols.

337. PJM and ISO–NE state that the timeline depends upon the magnitude of the required changes. PJM states that it can implement the necessary system changes in approximately 12 months at a cost of under $1 million if (1) the final rule is limited to changes in PJM's real-time energy market and to offers to sell energy and (2) if PJM does not need to manage electric storage resources' state of charge. However, PJM asserts that, if more extensive system changes are necessary to comply, the cost could be significantly higher and will likely take more time to implement. PJM also states that, given the timing of PJM's upcoming implementations of 5-minute settlements and hourly offers, it could not realistically begin working on the necessary system changes until at least early 2018. ISO–NE states that the changes contemplated in the NOPR are substantial but that the time and resources needed to comply with the final rule depend on the specific final provisions. ISO–NE argues that, if the Commission accepts ISO–NE's suggestions to (1) only require implementation of state of charge in real time as an information communication requirement (for example, via telemetered information), (2) not require implementation of the proposed voluntary bidding parameters, and (3) require participants to manage their own bidding parameters (except when reliability needs dictate otherwise), then the implementation effort will be substantially shorter and easier.

338. Some commenters also point out that, in order to comply with the rule, the RTOs/ISOs will need to change more than just their market rules. For example, AES Companies, Energy Storage Association, and EPRI note that the RTOs/ISOs will need to make changes to their software.[420] AES Companies also note that RTOs/ISOs will have to adjust their business practice manuals to comply.

339. Multiple commenters argue that the Commission should take a phased approach to its proposed compliance and implementation timelines.[421] For example, NextEra suggests that the Commission finalize proposed reforms related to both the electric storage resource and distributed energy resource aggregation resources, while extending the distributed energy resource aggregation requirements to

[413] NOPR at P 159.

[414] *See id.* P 32.

[415] *See id.* P 71.

[416] *See id.* P 160.

[417] *See id.* P 161.

[418] *See* Energy Storage Association Comments at 26–27; NRG Comments at 21–22; Public Interest Organizations Comments at n.14

[419] ISO–NE Comments at 21; MISO Comments at 10; NYISO Comments at 21; PJM Comments at 17 (citing *PJM Interconnection, L.L.C.,* Order No. 825 Compliance Filing, Docket No. ER17–775–000, at 2 (Jan. 11, 2017)); SPP Comments at 5. PJM states that it will propose an effective date for implementing hourly offers by March 6, 2017, which it expects to be sometime around November 1, 2017. PJM Comments at n.23 (citing *PJM Interconnection, L.L.C.,* 158 FERC ¶ 61,133, at P 126 (2017).

[420] AES Companies Comments at 5, 14–15; Energy Storage Association Comments at n.8, 26–27; EPRI Comments 2–3.

[421] *See* FirstLight Comments at 14; MISO Comments at 11; NextEra Comments at 4–6.

allow further time to work through issues. NextEra states that the Commission could stage compliance deadlines with electric storage resource tariff revisions being submitted within six months of a final rule and aggregation tariff revisions being due 12 months after a final rule. NextEra asserts that, if the Commission determines additional consideration needs to be given to the aggregation-related issues, the Commission should finalize the storage related revisions now.

340. MISO suggests that the Commission allow RTOs/ISOs to integrate electric storage resources using a phased approach. MISO explains that electric storage resources can be accommodated in the short term through the RTO's/ISO's existing system or with relatively manageable modifications but argues that, in the long-term, the further integration of electric storage resources should be pursued through joint study of an RTO's/ISO's market design and system enhancements. FirstLight also argues that, because the proposal includes changes to RTO/ISO bidding, dispatch, pricing and settlement software, the Commission should allow each RTO/ISO to address the phasing of market development and implementation efforts related to any final rule.

341. Several other commenters argue that the Commission should allow the RTOs/ISOs to develop their own implementation schedules.[422] CAISO, IRC, NYISO Indicated Transmission Owners, and PJM argue that the Commission should permit each affected RTO/ISO to propose an implementation schedule for various aspects of the final rule. CAISO states that it does not oppose the Commission setting a compliance and implementation timeframe but suggests that a better approach would be to direct the RTO/ISOs to establish independent timelines in their compliance filings. PJM states that allowing RTOs/ISOs to propose implementation schedules is preferable to the Commission setting firm deadlines that may lead to requests for waivers. IRC recommends that the final rule should require each RTO/ISO to file an implementation plan and schedule with the Commission within 180 days. IRC states that the implementation plan and schedule should be subject to notice and comment and not necessarily limited to 12 months.

342. NYISO Indicated Transmission Owners state that the Commission should not set unrealistic goals for the participation of distributed energy resource aggregations in wholesale markets before the grid has the needed technological capabilities.[423] Therefore, NYISO Indicated Transmission Owners oppose the Commission's proposal to make the compliance filing due in six months with full implementation 12 months thereafter. Instead, NYISO Indicated Transmission Owners request that each RTO/ISO be allowed to utilize the stakeholder process to establish a timeline for implementation.

343. Xcel Energy Services also expresses concerns that the implementation timeline is too aggressive, stating that that Commission should further evaluate whether the technological capability exists to fully implement the NOPR requirements and, if not, what timeline is needed to ensure that such functionality can be developed.[424] Xcel Energy Services contends that the requirements of the NOPR and the implementation timeline must be tailored to fit within achievable technological capabilities. Xcel Energy Services states that the RTOs/ISOs and their stakeholders should be permitted to propose alternate implementation timelines that allow higher priority regional projects to move forward before the software updates needed under the NOPR.

344. In contrast to other commenters, Advanced Microgrid Solutions argues that the proposed compliance and implementation timeline will take 18 months and therefore not promptly end unduly discriminatory rules and practices and will impose on-going burdens on the storage industry.[425] Advanced Microgrid Solutions argues that compliance plans should be filed within 90 days and specify the earliest possible implementation date for each compliance action.

345. Multiple entities discuss the proposed bidding parameters, including state of charge, in relation to the proposed timeline for compliance.[426] MISO states that managing state of charge would require costly investments and upgrades, noting that in some cases it may not be technically feasible for large volumes of electric storage resources. CAISO states that it will require at least 24 months to design and incorporate bidding parameters that account for all physical operating parameters (such as state of charge) into its modeling and dispatch software, which would require stakeholder discussions, market design work, and implementation testing. CAISO further explains that this directive would be inconsistent with how CAISO models other resources in its markets and asks that the Commission direct RTOs/ISOs to account for the physical operating constraints of resource in their market modeling and dispatch software and require them to explain how they do so.

346. AES Companies similarly explain that time, resources, and capital costs can be minimized if all energy storage resources managed their own state of charge. EPRI notes that, assuming that the Commission does not require the RTOs/ISOs to manage state-of-charge of electric storage resources (which some already do), there would only be minimal changes to the bidding interface, market clearing, or settlement software. EPRI states that the large change absent RTOs/ISOs having to manage state of charge will be allowing electric storage resources to offer as an injector and withdrawer of energy in the same market interval but for the market clearing software to only allow acceptance of one or the other. Tesla/SolarCity state that bidding parameters should reflect storage resources state of charge and be included in the unit commitment and economic dispatch optimization algorithms of each RTO/ISO. Tesla/SolarCity believe that storage resources should manage their own state of charge or have the choice between relying on RTO/ISO estimates or self-managing. In contrast to other commenters, Tesla/SolarCity assert that the time and resources necessary to incorporate these bidding parameters into the dispatch software should be minimal and are justified given the increased efficiency of markets and operations.

347. NEPOOL raises regional issues.[427] NEPOOL encourages the Commission to ensure that any final rule includes sufficient flexibility to allow the region to implement the requirements while also achieving the other regional priorities in ISO–NE's Work Plan for 2017–2018. Specifically, NEPOOL urges that the final rule take into account market rules that are currently being implemented in the region to eliminate barriers to the entry of electric storage resources into wholesale markets.

C. Commission Determination

348. Upon consideration of the comments, we find that it is reasonable

[422] *See* CAISO Comments at 53; IRC Comments at 11–12; NYISO Indicated Transmission Owners Comments at 20; PJM Comments at 30.

[423] *See* NYISO Indicated Transmission Owners Comments at 20.

[424] *See* Xcel Energy Services Comments at 16–17.

[425] *See* Advanced Microgrid Solutions Comments at 13.

[426] *See* AES Companies Comments at 23; CAISO Comments at 12; EPRI Comments at 12; MISO Comments at 10; Tesla/SolarCity Comments at 15.

[427] *See* NEPOOL Comments at 5.

to provide the RTOs/ISOs additional time to submit their proposed tariff revisions in response to the Final Rule, given that the changes could require significant work on the part of the RTOs/ISOs. We find that shorter timeframes proposed by commenters such as Advanced Microgrid Solutions would not provide the RTO/ISOs with sufficient time to implement the required reforms. Taking into account that the Commission is not implementing the distributed energy resource aggregation reforms at this time, we require each RTO/ISO to file the tariff changes needed to implement the requirements of this Final Rule within 270 days of the publication date of this Final Rule in the **Federal Register**. We will continue to allow each RTO/ISO a further 365 days from that date to implement the tariff provisions.

349. We find that, given the modifications and clarifications to the NOPR we make in this Final Rule and the record in this proceeding in support of the reforms we finalize here, our implementation schedule is reasonable. Commenters highlight that managing state of charge will complicate or delay implementation, and we note that we are not requiring the RTOs/ISOs to manage state of charge. Further, some commenters also provide feedback on the implementation of the entire NOPR and indicate that implementing only the storage components would expedite compliance and implementation. We are not establishing any requirements for distributed energy resource aggregations as part of this Final Rule. Given the additional time we are providing for each RTO/ISO to file proposed tariff revisions to comply with this Final Rule, we believe that the compliance and implementation schedule that we establish in this Final Rule is appropriate. As a consequence, we are not persuaded that more than 365 days after the RTOs/ISOs are required to submit their proposed tariff revisions will be necessary to implement the reforms in this Final Rule; therefore, we decline to adopt commenters' other proposed recommendations, such as allowing the RTO/ISOs to develop their own implementation schedules. We disagree with Xcel Energy Services' argument that the Commission needs to further evaluate whether the technological capability exists to fully implement the NOPR requirements, especially as we are not finalizing in this Final Rule the distributed energy resource aggregation reforms proposed in the NOPR.

350. Additionally, we note that many of the RTOs/ISOs already have rules in place to enable the participation of electric storage resources in their markets. To the extent that an RTO/ISO proposes to comply with certain requirements of this Final Rule using existing market rules, it must demonstrate on compliance how its existing market rules meet the requirements of this Final Rule. We expect that the additional time that we are providing for the RTOs/ISOs to make their compliance filings, along with the ability of the RTOs/ISOs to use existing tariff provisions to demonstrate compliance with aspects of the Final Rule, will mean that the RTOs/ISOs can meet the deadlines that we are establishing here. Finally, we also note that, throughout this Final Rule, we are allowing regional flexibility to the extent possible. We believe that this flexibility will assist the RTOs/ISOs in meeting the compliance and implementation deadlines.

VI. Information Collection Statement

351. The collection of information contained in this Final Rule is being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[428] OMB's regulations,[429] in turn, require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

Public Reporting Burden: In this Final Rule, we are not adopting any of the proposed reforms in the NOPR related to distributed energy resource aggregations and are modifying some of the requirements related to the participation model for electric storage resources. Thus, we are revising the estimated public reporting burden and cost from the NOPR[430] based on these changes. The estimated burden and cost for the requirements contained in this Final Rule follow.

FERC–516H, AS IMPLEMENTED IN THE FINAL RULE IN DOCKET NO. RM16–23–000[431]

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden (hours) and cost per response	Total annual burden hours and total annual cost	Cost per respondent ($)
	(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = (5)	(5) ÷ (1)
One-Time Tariff Filing[432]	[433] 6	1	6	1,500 hrs; $115,500	9,000 hrs; $693,000	$115,500

Title: FERC–516H, Electric Rate Schedules and Tariff Filings (in Final Rule in Docket Nos. RM16–23–000 and AD16–20–000).

Action: Proposed information collection.

OMB Control No.: To be determined.

Respondents for This Rulemaking: RTOs and ISOs.

Frequency of Information: One-time.

[428] *See* 44 U.S.C. 3507(d).

[429] 5 CFR pt. 1320.

[430] The burden estimates for the NOPR in Docket No. RM16–23–000 were submitted to OMB under FERC–516 (OMB Control No. 1902–0096, in ICR 201611–1902–005). There is another unrelated item affecting FERC–516 which will also be pending OMB review. Because only one item per OMB Control No. can be pending OMB review at a time, the reporting requirements in this Final Rule in RM16–23–000 will be submitted to OMB under a new collection number, FERC–516H.

[431] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2016 posted by the Bureau of Labor Statistics (BLS) for the Utilities sector (at *http://www.bls.gov/oes/current/naics2_22.htm*) and benefits information for September 2017 (issued 12/15/2017, at *https://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are: (a) Legal (code 23–0000), $143.68; (b) Computer and mathematical (code 15–0000), $60.70; (c) Computer and information systems manager (code 11–3021), $100.68; (d) Information security analyst (code 15–1122), $66.34; (e) Auditing and accounting (code 13–2011), $53.00; (f) Information and record clerk (code 43–4199), $39.14; (g) Electrical Engineer (code 17–2071), $68.12; (h) Economist (code 19–3011), $77.96; and (i) Management (code 11–0000), $81.52. The average hourly cost (salary plus benefits), weighting all of these skill sets evenly, is $76.79. The Commission rounds it to $77 per hour.

[432] The one-time tariff filing is due within 270 days of the publication date of the Final Rule in the **Federal Register**.

[433] Respondent entities are either RTOs or ISOs.

Necessity of Information: The Commission implements this Final Rule to eliminate barriers to electric storage resource participation in the RTO/ISO markets.

Internal Review: The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

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

353. Comments concerning the collection of information and the associated burden estimate(s) may also be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

354. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Comments submitted to OMB should refer to FERC–516H and OMB Control No. To be determined.

VII. Environmental Analysis

355. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[434] We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.[435]

VIII. Regulatory Flexibility Act Certification

356. The Regulatory Flexibility Act of 1980 (RFA)[436] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[437] The small business size standards are provided in 13 CFR 121.201.

357. Under the SBA classification, the six RTOs/ISOs would be considered electric bulk power transmission and control, for which the small business size threshold is 500 or fewer employees.[438] Because each RTO/ISO has more than 500 employees, none are considered small entities.

358. Furthermore, because of their pivotal roles in wholesale electric power markets in their regions, none of the RTOs/ISOs meet the last criterion of the two-part RFA definition of a small entity: ''Not dominant in its field of operation.'' [439]

359. The estimated cost related to this Final Rule includes: (a) Preparing and making a one-time tariff filing ($115,500 per entity, as detailed in the Information Collection section above), and (b) updating the economic dispatch software. Revisions to the economic dispatch software are due to be implemented within 365 days after the due date of the tariff filing. We estimate the one-time software work will take 1,500 hours with an approximate cost of $114,000 per entity.[440] Therefore the total estimated one-time cost for the tariff filing and software work is $229,500 per entity (or $115,500 + $114,000); the total estimated one-time industry cost is $1,377,000.

360. As a result, we certify that the reforms required by this Final Rule would not have a significant economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required.

IX. Document Availability

361. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

362. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

363. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

X. Effective Date and Congressional Notification

364. This Final Rule will become effective on June 4, 2018. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

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[434] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[435] 18 CFR 380.4(a)(15).

[436] 5 U.S.C. 601–12.

[437] 13 CFR 121.101.

[438] 13 CFR 121.201 (Sector 22, Utilities).

[439] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Administration's regulations at 13 CFR 121.201 define the threshold for a small Electric Bulk Power Transmission and Control entity (NAICS code 221121) to be 500 employees. *See* 5 U.S.C. 601(3) (citing to section 3 of the Small Business Act, 15 U.S.C. 632).

[440] Based on the BLS data, the hourly estimates (for wages plus benefits) related to updating the software are: (a) Computer and mathematical (code 15–0000), $60.70; (b) Computer and information systems manager (code 11–3021), $100.68; (c) Information security analyst (code 15–1122), $66.34; (d) Electrical Engineer (code 17–2071), $68.12; (e) Economist (code 19–3011), $77.96; and (f) Management (code 11–0000), $81.52. We estimate these skill sets are equally involved in updating the software. The hourly average is $75.89, so we will round to $76 per hour.

We estimate a total of 1,500 hours per entity to develop and implement the software changes, so the related cost is estimated to be $114,000 per entity ($76/hour × 1,500 hours). The one-time industry-wide cost is $684,000.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities.

By the Commission.

Issued: February 15, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Regulatory Text

In consideration of the foregoing, the Commission amends part 35 Chapter 1, Title 18 of the *Code of Federal Regulations* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.28 by adding paragraph (b)(9) and revising paragraph (g)(9) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(b) * * *

(9) *Electric storage resource* as used in this section means a resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid.

* * * * *

(g) * * *

* * * * *

(9) *Electric storage resources.*

(i) Each Commission-approved independent system operator and regional transmission organization must have tariff provisions providing a participation model for electric storage resources that:

(A) Ensures that a resource using the participation model for electric storage resources in an independent system operator or regional transmission organization market is eligible to provide all capacity, energy, and ancillary services that it is technically capable of providing;

(B) Ensures that a resource using the participation model for electric storage resources can be dispatched and can set the wholesale market clearing price as both a wholesale seller and wholesale buyer consistent with rules that govern the conditions under which a resource can set the wholesale price;

(C) Accounts for the physical and operational characteristics of electric storage resources through bidding parameters or other means; and

(D) Establishes a minimum size requirement for resources using the participation model for electric storage resources that does not exceed 100 kW.

(ii) The sale of electric energy from an independent system operator or regional transmission organization market to an electric storage resource that the resource then resells back to that market must be at the wholesale locational marginal price.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A: Abbreviated Names of Commenters

The following table contains the abbreviated names of the commenters that are used in this Final Rule.

Abbreviation	Commenter (full name)
Advanced Energy Economy	Advanced Energy Economy.
Advanced Energy Management	Advanced Energy Management Alliance.
Advanced Microgrid Solutions	Advanced Microgrid Solutions, Inc.
Advanced Rail Energy Storage	Advanced Rail Energy Storage, LLC.
AES Companies	AES Companies.
Alevo	Alevo USA Inc.
Altametric	Altametric LLC.
Amanda Drabek	Amanda Drabek, Pantsuit Nation of East Texas.
American Petroleum Institute	American Petroleum Institute.
APPA/NRECA	American Public Power Association and National Rural Electric Cooperative Association.
Avangrid	AVANGRID, Inc.
AWEA	American Wind Energy Association.
Beacon Power	Beacon Power, LLC.
Benjamin Kingston	Benjamin D. Kingston.
Bonneville	Bonneville Power Administration.
Brookfield Renewable	Brookfield Renewable.
CAISO	California Independent System Operator Corporation.
California Commission	Public Utilities Commission of the State of California.
California Energy Storage Alliance	California Energy Storage Alliance.
California Municipals	California Municipal Utilities Association (incorporated by reference APPA/NRECA's comments).
Center for Biological Diversity	Center for Biological Diversity.
City of New York	City of New York.
Connecticut State Entities	Bureau of Energy and Technology Policy of the Connecticut Department of Energy and Environmental Protection and the Connecticut Public Utilities Regulatory Authority (incorporated by reference NESCOE comments).
Delaware Commission	Delaware Public Service Commission.
DER/Storage Developers	DER and Storage Developers.
Dominion	Dominion Resources Services, Inc. (supports EEI's comments).
DTE Electric/Consumers Energy	DTE Electric Company and Consumers Energy Company.
Duke Energy	Duke Energy Corporation (supports EEI's comments).
E4TheFuture	E4TheFuture.
Eagle Crest	Eagle Crest Energy Company.
EEI	Edison Electric Institute.
Efficient Holdings	Efficient Holdings, LLC.
ELCON	Electricity Consumers Resource Council.
Electric Vehicle R&D Group	EV R&D Group, University of Delaware.
Energy Storage Association	Energy Storage Association.
EPRI	Electric Power Research Institute.
EPSA/PJM Power Providers	Electric Power Supply Association and PJM Power Providers Group.

Abbreviation	Commenter (full name)
Exelon	Exelon Corporation.
FirstLight	FirstLight Power Resources, Inc.
Fluidic	Fluidic Energy.
Fresh Energy/Sierra Club/Union of Concerned Scientists	Fresh Energy, the Sierra Club, and the Union of Concerned Scientists.
Genbright	Genbright LLC.
GridWise	GridWise Alliance (supports some of Advanced Energy Economy's and EEI's comments).
Guannan He	Guannan He.
Harvard Environmental Policy Institute	Harvard Environmental Policy Institute.
Imperial Irrigation District	Imperial Irrigation District.
Independent Energy Producers Association	Independent Energy Producers Association.
Institute for Policy Integrity	Institute for Policy Integrity.
IPKeys/Motorola	IPKeys Technologies and Motorola Solutions.
IRC	ISO–RTO Council.
ISO–NE	ISO New England Inc.
Kathy Seal	Kathy Seal.
Liza White	Liza C White.
Lyla Fadali	Lyla Fadali.
Magnum	Magnum CAES, LLC (supports some of APPA/NRECA's and National Hydropower Association's comments).
Maryland and New Jersey Commissions	Maryland Public Service Commission and New Jersey Board of Public Utilities.
Massachusetts State Entities	Massachusetts Department of Public Utilities and Massachusetts Department of Energy Resources.
Massachusetts Municipal Electric	Massachusetts Municipal Wholesale Electric Company.
Matthew d'Alessio	Matthew d'Alessio.
Mensah	AF Mensah Inc.
Microgrid Resources Coalition	Microgrid Resources Coalition.
Minnesota Energy Storage Alliance	Minnesota Energy Storage Alliance.
MISO	Midcontinent Independent System Operator, Inc.
MISO Transmission Owners	MISO Transmission Owners.
Mosaic Power	Mosaic Power, LLC.
NARUC	National Association of Regulatory Utility Commissioners.
National Hydropower Association	National Hydropower Association.
NEPOOL	New England Power Pool.
NERC	North American Electric Reliability Corporation.
NESCOE	New England States Committee on Electricity.
New York State Entities	New York Public Service Commission and New York State Energy Research and Development Authority.
New York Utility Intervention Unit	Utility Intervention Unit of the New York State Department of State.
NextEra	NextEra Energy Resources, LLC.
NRG	NRG Energy, Inc.
NYISO	New York Independent System Operator, Inc.
NYISO Indicated Transmission Owners	Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Grid, New York Power Authority, Orange and Rockland Utilities, Inc., and Power Supply Long Island.
NYPA	New York Power Authority.
Ohio Commission	Public Utilities Commission of Ohio.
Open Access Technology	Open Access Technology International, Inc.
OpenADR	OpenADR Alliance.
Organization of MISO States	Organization of MISO States.
Pacific Gas & Electric	Pacific Gas and Electric Company.
PJM	PJM Interconnection, L.L.C.
PJM Market Monitor	Monitoring Analytics, LLC.
Power Applications	Power Applications and Research Systems, Inc.
Protect Sudbury	Protect Sudbury.
Public Interest Organizations	Public Interest Organizations.
R Street Institute	R Street Institute.
Research Scientists	Drs. Audun Botterud, Apurba Sakti, and Francis O'Sullivan.
Robert Borlick	Robert L. Borlick.
San Diego Water	San Diego County Water Authority.
Schulte Associates	Schulte Associates LLC.
SEIA	Solar Energy Industries Association.
Silicon Valley Leadership Group	Silicon Valley Leadership Group.
Six Cities	Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.
SoCal Edison	Southern California Edison Company.
SPP	Southwest Power Pool, Inc.
Starwood Energy	Starwood Energy Group Global, L.L.C.
Stem	Stem, Inc.
Sunrun	Sunrun Inc.
TAPS	Transmission Access Policy Study Group.
TechNet	TechNet.
TeMix	TeMix Inc.

Abbreviation	Commenter (full name)
Tesla/SolarCity	Tesla, Inc. and SolarCity Corporation.
Trans Bay	Trans Bay Cable LLC.
Union of Concerned Scientists	Union of Concerned Scientists.
US Senators	Senator Cory A. Booker, Senator Edward J. Markey, Senator Bernard Sanders, Senator Elizabeth Warren, Senator Sheldon Whitehouse, and Senator Ron Wyden.
Xcel Energy Services	Xcel Energy Services Inc.

[FR Doc. 2018–03708 Filed 3–5–18; 8:45 am]

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Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM16–6–000; Order No. 842]

Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final action.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is modifying the *pro forma* Large Generator Interconnection Agreement (LGIA) and *pro forma* Small Generator Interconnection Agreement (SGIA) to require newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection. These changes are designed to address the potential reliability impact of the evolving generation resource mix, and to ensure that the relevant provisions of the *pro forma* LGIA and *pro forma* SGIA are just, reasonable, and not unduly discriminatory or preferential.

DATES: This final action will become effective May 15, 2018.

FOR FURTHER INFORMATION CONTACT:

Jomo Richardson (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6281, *Jomo.Richardson@ferc.gov.*

Mark Bennett (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8524, *Mark.Bennet@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Order No. 842

Final Action

(Issued February 15, 2018)

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162 FERC ¶ 61,128

United States of America

Federal Energy Regulatory Commission

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

Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response—Docket No. RM16–6–000

Order No. 842

Final Action

(Issued February 15, 2018)

1. In this final action, the Commission modifies the *pro forma* Large Generator Interconnection Agreement (LGIA) and the *pro forma* Small Generator Interconnection Agreement (SGIA), pursuant to its authority under section 206 of the Federal Power Act (FPA), to ensure that rates, terms and conditions of jurisdictional service remain just and reasonable and not unduly discriminatory or preferential.[1] The modifications require new large and small generating facilities, including both synchronous and non-synchronous, interconnecting through a LGIA or SGIA to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection. The Commission also establishes certain uniform minimum operating requirements in the *pro forma* LGIA and *pro forma* SGIA, including maximum droop and deadband parameters and provisions for timely and sustained response.

2. These requirements apply to newly interconnecting generation facilities that execute, or request the unexecuted filing of, an LGIA or SGIA on or after the effective date of this final action. These requirements also apply to existing large and small generating facilities that take any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after the effective date of this final action. These requirements do not apply to existing generating facilities,[2] a subset of combined heat and power (CHP) facilities, or generating facilities regulated by the Nuclear Regulatory Commission (NRC). In addition, the Commission does not impose a headroom requirement for new generating facilities, and does not mandate that new generating facilities receive compensation for complying with the primary frequency response requirements.

3. The modifications address the Commission's concerns that the existing *pro forma* LGIA contains limited primary frequency response requirements that apply only to synchronous generating facilities and do not account for recent technological advancements that now enable new non-synchronous generating facilities to have primary frequency response capabilities. Further, the Commission believes that it is unduly discriminatory or preferential to impose primary frequency response requirements only on new large generating facilities but not on new small generating facilities. The reforms adopted here impose comparable primary frequency response requirements on both new large and small generating facilities.

I. Background

A. Frequency Response

4. Reliable operation of an Interconnection [3] depends on maintaining frequency within predetermined boundaries above and below a scheduled value, which is 60 Hertz (Hz) in North America. Changes in frequency are caused by changes in the balance between load and generation, such as the sudden loss of a large generator or a large amount of load. If frequency deviates too far above or below its scheduled value, it could potentially result in under frequency load shedding (UFLS), generation tripping, or cascading outages.[4]

5. Mitigation of frequency deviations after the sudden loss of generation or load is driven by three primary factors: inertial response, primary frequency response, and secondary frequency response.[5] Primary frequency response actions begin within seconds after system frequency changes and are mostly provided by the automatic and autonomous actions (*i.e.,* outside of system operator control) of turbine-governors, while some response is provided by frequency responsive loads.[6] Primary frequency response actions are intended to arrest abnormal frequency deviations and ensure that

[1] 16 U.S.C. 824e.

[2] As discussed below in Section II.G, we will not impose primary frequency response requirements on existing generating facilities that do not submit new interconnection requests that result in an executed or unexecuted interconnection agreement at this time.

[3] An Interconnection is a geographic area in which the operation of the electric system is synchronized. In the continental United States, there are three Interconnections, namely, the Eastern, Texas, and Western Interconnections.

[4] UFLS is designed to be activated in extreme conditions to stabilize the balance between generation and load. Under frequency protection schemes are drastic measures employed if system frequency falls below a specified value. *See Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards,* Notice of Proposed Rulemaking, 76 FR 66220 (Oct. 26, 2011), FERC Stats. & Regs. ¶ 32,682, at PP 4–10 (2011).

[5] In the Notice of Inquiry issued in Docket No. RM16–6–000 on February 8, 2016, the Commission provided detailed discussion of how inertia, primary frequency response, and secondary frequency response interact to mitigate frequency deviations. *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response,* 154 FERC ¶ 61,117, at PP 3–7 (2016) (NOI). *See also Use of Frequency Response Metrics to Assess the Planning and Operating Requirements for Reliable Integration of Variable Renewable Generation,* Lawrence Berkeley National Laboratory, at 13–14 (Dec. 2010), *http://energy.lbl.gov/ea/certs/pdf/lbnl-4142e.pdf* (LBNL 2010 Report).

[6] NOI, 154 FERC ¶ 61,117 at P 6. The Commission also noted that regulation service is different than primary frequency response because generating facilities that provide regulation respond to automatic generation control signals and regulation service is centrally coordinated by the system operator, whereas primary frequency response service, in contrast, is autonomous and is not centrally coordinated. Schedule 3 of the *pro forma* Open Access Transmission Tariff (OATT) bundles these different services together. *See id.* n.66.

system frequency remains within acceptable bounds. An important goal for system planners and operators is for the frequency nadir,[7] during large disturbances, to remain above the first stage of UFLS set points within an Interconnection.

6. Frequency response is a measure of an Interconnection's ability to arrest and stabilize frequency deviations following the sudden loss of generation or load, and is affected by the collective responses of generation and load throughout the Interconnection. When considered in aggregate, the primary frequency response provided by generators within an Interconnection has a significant impact on the overall frequency response. Reliability Standard BAL–003–1.1 defines the amount of frequency response needed from balancing authorities [8] to maintain Interconnection frequency within predefined bounds and includes requirements for the measurement and provision of frequency response.[9] While Reliability Standard BAL–003–1.1 establishes requirements for balancing authorities, it does not include any requirements applicable to individual generator owners or operators.[10]

7. Unless otherwise required by tariffs or interconnection agreements, generator owners and operators can independently decide whether to configure their generating facilities to provide primary frequency response.[11] The magnitude and duration of a generating facility's response to frequency deviations is generally determined by the settings of the facility's governor [12] (or equivalent controls) and other plant-level (*e.g.,* ''outer-loop'') control systems.[13] In particular, the governor's droop and deadband settings have a significant impact on the unit's provision of primary frequency response. In addition, plant-level controls, unless properly configured, can override or nullify a generator's governor response and return the unit to operate at a scheduled pre-disturbance megawatt set-point.[14] In 2010, NERC conducted a survey of generator owners and operators and found that only approximately 30 percent of generating facilities in the Eastern Interconnection provided primary frequency response, and that only approximately 10 percent of generating facilities provided sustained primary frequency response.[15] This suggests that many generating facilities within the Eastern Interconnection disable or otherwise set their governors or plant-level controls such that they provide little to no primary frequency response.[16]

8. Declining frequency response performance has been an industry concern for many years. NERC, in conjunction with the Electric Power Research Institute (EPRI), initiated its first examination of declining frequency response and governor response in 1991.[17] More recently, as noted in the NOI, while the three U.S. Interconnections currently exhibit adequate frequency response performance above their Interconnection Frequency Response Obligations,[18] there has been a decline in the frequency response performance of the Western and Eastern Interconnections from historic values.[19]

B. Prior Commission Actions

9. In Order Nos. 2003 [20] and 2006,[21] the Commission adopted standard procedures for the interconnection of large and small generating facilities, including the development of standardized *pro forma* generator interconnection agreements and procedures. The Commission required public utility transmission providers [22] to file revised OATTs containing these standardized provisions, and use the LGIA and SGIA to provide non-discriminatory interconnection service to Large Generators (*i.e.,* generating facilities having a capacity of more than 20 MW) and Small Generators (*i.e.,* generators having a capacity of no more than 20 MW). The *pro forma* LGIA and *pro forma* SGIA have since been revised through various subsequent proceedings.[23]

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[7] The point at which the frequency decline is arrested (following the sudden loss of generation) is called the frequency nadir, and represents the point at which the net primary frequency response (real power) output from all generating units and the decrease in power consumed by the load within an Interconnection matches the net initial loss of generation (in megawatts (MW)).

[8] NERC's Glossary of Terms defines a balancing authority as ''(t)he responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports Interconnection frequency in real time.'' NERC's Glossary of Terms is available at: *http://www.nerc.com/files/glossary_of_terms.pdf.*

[9] *Frequency Response and Frequency Bias Setting Reliability Standard,* Order No. 794, 146 FERC ¶ 61,024 (2014).

[10] The Commission has also accepted Regional Reliability Standard BAL–001–TRE–01 (Primary Frequency Response in the ERCOT Region) as mandatory and enforceable, which does establish requirements for generator owners and operators with respect to governor control settings and the provision of primary frequency response within the Electric Reliability Council of Texas (ERCOT) region. *North American Electric Reliability Corporation,* 146 FERC ¶ 61,025 (2014).

[11] *See* NOI, 154 FERC ¶ 61,117 at PP 18–19.

[12] A governor is an electronic or mechanical device that implements primary frequency response on a generating facility via a droop parameter. Droop refers to the variation in real power (MW) output due to variations in system frequency and is typically expressed as a percentage (*e.g.,* 5 percent droop). Droop reflects the amount of frequency change from nominal (*e.g.,* 5 percent of 60 Hz is 3 Hz) that is necessary to cause the main prime mover control mechanism of a generating facility to move from fully closed to fully open. A governor also has a deadband parameter which represents a minimum frequency deviation (*e.g.,* ±0.036 Hz) from nominal system frequency (*i.e.,* 60 Hz in North America) that must be exceeded in order for the generating facility to provide primary frequency response.

[13] These controls are known as plant-level or outer-loop controls to distinguish them from more direct, lower-level control of the generator operations.

[14] For more discussion on ''premature withdrawal'' of primary frequency response, *see* NOI, 154 FERC ¶ 61,117 at PP 49–50.

[15] *See* NERC, *Frequency Response Initiative Report: The Reliability Role of Frequency Response* (Oct. 2012), *http://www.nerc.com/docs/pc/FRI_Report_10-30-12_Master_w-appendices.pdf* (NERC Frequency Response Initiative Report) at 95. For the purposes of this final action, as indicated below in the revised *pro forma* language in Section K, sustained response refers to a generating facility responding to an abnormal frequency deviation outside of the deadband parameter, and holding (*i.e.,* not prematurely withdrawing) the response until system frequency returns to a value that is within the deadband.

[16] However, as noted below, some commenters note that nuclear generating facilities are restricted by their NRC operating licenses regarding the provision of primary frequency response.

[17] NERC Frequency Response Initiative Report at 22.

[18] The Interconnection Frequency Response Obligations are established by NERC and are designed to require sufficient frequency response for each Interconnection (*i.e.,* the Eastern, ERCOT, Quebec, and Western Interconnections) to arrest frequency declines even for severe, but possible, contingencies.

[19] NOI, 154 FERC ¶ 61,117 at P 20.

[20] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g,* Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied,* 552 U.S. 1230 (2008).

[21] *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g,* Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification,* Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221 (2006).

[22] A public utility is a utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce, as defined by the FPA. *See* 16 U.S.C. 824(e) (2012). A non-public utility that seeks voluntary compliance with the reciprocity condition of an OATT may satisfy that condition by filing an OATT, which includes a LGIA and SGIA. *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 840–845.

[23] *E.g., Small Generator Interconnection Agreements and Procedures,* Order No. 792, 145 FERC ¶ 61,159 (2013), *clarifying,* Order No. 792–A, 146 FERC ¶ 61,214 (2014); *Reactive Power Requirements for Non-Synchronous Generation,* Order No. 827, FERC Stats. & Regs. ¶ 31,385 (2016) (cross-referenced at 155 FERC ¶ 61,277) (2016); *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities,* Order No. 828, 156 FERC ¶ 61,062 (2016).

C. Notice of Inquiry

10. On February 18, 2016, the Commission issued the NOI to explore issues regarding essential reliability services and the evolving Bulk-Power System.[24] In particular, the Commission asked a broad range of questions on the need for reform of its requirements regarding the provision of and compensation for primary frequency response. The Commission explained that there is a significant risk that, as conventional synchronous generating facilities retire or are displaced by increased numbers of variable energy resources (VERs),[25] which typically do not contribute to system inertia [26] or have primary frequency response capabilities, the net amount of frequency responsive generation online will be reduced.[27]

11. In the NOI, the Commission also explained that these developments and their potential impacts could challenge system operators in maintaining system frequency within acceptable bounds following system disturbances.[28] Further, the Commission explained that Reliability Standard BAL–003–1.1 and the *pro forma* LGIA and *pro forma* SGIA do not specifically address a generator's ability to provide frequency response.[29] The Commission noted, however, that while in previous years many non-synchronous generating facilities [30] were not designed with primary frequency response capabilities, the technology now exists for new non-synchronous generating facilities to install primary frequency response capability.[31]

12. Accordingly, the Commission requested comments on three main sets of issues. First, the Commission sought comment on whether amendments to the *pro forma* LGIA and *pro forma* SGIA are warranted to require all new generating facilities, both synchronous and non-synchronous, to have primary frequency response capabilities as a precondition of interconnection.[32] Second, the Commission sought comment on the performance of existing generating facilities and whether primary frequency response requirements for these facilities are warranted.[33] Finally, the Commission sought comment on compensation for primary frequency response.[34]

D. Notice of Proposed Rulemaking

13. On November 17, 2016, the Commission issued a Notice of Proposed Rulemaking that proposed to revise the *pro forma* LGIA and the *pro forma* SGIA to require all newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install and enable primary frequency response capability as a condition of interconnection.[35] The Commission also proposed to establish certain operating requirements in the *pro forma* LGIA and *pro forma* SGIA, including maximum droop and deadband parameters, and provisions for timely and sustained response.

14. The Commission sought comment on the proposed: (1) Requirements for new large and small generating facilities to install, maintain, and operate a governor or equivalent controls; (2) requirements for droop and deadband settings of 5 percent and ±0.036 Hz, respectively; (3) requirements for timely and sustained response, and in particular whether the proposed requirements will be sufficient to prevent plant-level controls from inhibiting primary frequency response; (4) requirement for droop parameters to be based on nameplate capability with a linear operating range of 59 to 61 Hz; and (5) exemptions for new nuclear units. The Commission also sought comment on its proposal to not impose a generic headroom requirement or mandate compensation related to the proposed reforms.

15. Twenty-eight entities submitted comments in response to the NOPR and are listed in Appendix A to this final action.

E. Notice of Request for Supplemental Comments

16. On August 18, 2017, the Commission issued a Notice of Request for Supplemental Comments (Supplemental Notice) to augment the record on the potential impacts of the NOPR proposals on electric storage resources [36] and small generating facilities.[37] In particular, the Commission stated that the NOPR did not contain any special consideration or provisions for electric storage resources, and that some commenters raised concerns that, by failing to address electric storage resources' unique technical attributes, the proposed requirements could pose an unduly discriminatory burden on electric storage resources.[38] In response to commenters' concerns, the Commission asked several questions to augment the record on possible impacts to electric storage facilities.[39]

17. In addition, the Commission stated that the NOPR proposed that small generating facilities be subject to new primary frequency response requirements in the *pro forma* SGIA, and that some commenters raised concerns that small generating facilities could face disproportionate costs to install primary frequency response capability,[40] while other commenters requested that the Commission consider adopting a size limitation.[41] In response to commenters' concerns, the Commission asked several questions to augment the record on small generating facilities.[42]

18. Twenty entities submitted comments in response to the notice of

[24] NOI, 81 FR 9182 (Feb. 24, 2016), 154 FERC ¶ 61,117.

[25] The term VER is defined as a device for the production of electricity that is characterized by an energy source that: (1) Is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator. *See, e.g., Integration of Variable Energy Resources,* Order No. 764, FERC Stats. & Regs. ¶ 31,331 at P 210, *order on reh'g and clarification,* Order No. 764–A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh'g,* Order No. 764–B, 144 FERC ¶ 61,222 (2013).

[26] Inertial response, or system inertia, involves the release or absorption of kinetic energy by the rotating masses of online generation and load within an Interconnection, and is the result of the coupling between the rotating masses of synchronous generation and load and the electric system. *See* NOI, 154 FERC ¶ 61,117 at PP 3–7 for a more detailed discussion of how inertia, primary frequency response, and secondary frequency response interact to mitigate frequency deviations.

[27] NOI, 154 FERC ¶ 61,117 at P 12.

[28] *Id.* P 14.

[29] *Id.* P 41.

[30] Non-synchronous generating facilities are ''connected to the bulk power system through power electronics, but do not produce power at system frequency (60 Hz).'' They ''do not operate in the same way as traditional generators and respond differently to network disturbances.'' *PJM Interconnection, L.L.C.,* 151 FERC ¶ 61,097, at P 1 n.3 (2015) (citing *Interconnection for Wind Energy,* Order No. 661, FERC Stats. & Regs. ¶ 31,198, at P 3 n.4 (2005)). Wind and solar photovoltaic generating facilities as well as electric storage resources are examples of non-synchronous generating facilities.

[31] NOI, 154 FERC ¶ 61,117 at P 43.

[32] *Id.* PP 2 and 44–45.

[33] *Id.* PP 2, 46, and 52.

[34] *Id.* PP 2, 53–54.

[35] *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response,* Notice of Proposed Rulemaking, 81 FR 85176 (Nov. 25, 2016), 157 FERC ¶ 61,122 (2016) (NOPR).

[36] For the purposes of this final action, we define an electric storage resource as a resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid. This definition is also used in a concurrently-issued Final Rule, published elsewhere in this issue of the **Federal Register**, concerning electric storage resources entitled *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators,* 162 FERC ¶ 61,127 (2018).

[37] *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response,* Notice of Request for Supplemental Comments, 82 FR 40081 (Aug. 24, 2017), 160 FERC ¶ 61,011 (2017).

[38] *Id.* P 4.

[39] *Id.* P 6.

[40] *Id.* P 8.

[41] *Id.* P 9.

[42] *Id.* P 10.

request for supplemental comments and are listed in Appendix B to this final action.

II. Discussion

19. For the reasons discussed below, the Commission adopts the NOPR proposal and will require newly interconnecting large and small generating facilities that interconnect pursuant to the *pro forma* LGIA or *pro forma* SGIA, to install, maintain, and operate a functioning governor or equivalent controls capable of providing primary frequency response. The reforms adopted here build upon Order Nos. 2003 and 2006 by accounting for the effect upon primary frequency response from the ongoing changes to the nation's generation resource mix, including significant retirements of conventional generating facilities and an increasing proportion of VERs interconnecting to the Bulk-Power System.[43] Another important consideration is that the frequency response performance of the Eastern and Western Interconnections, while currently adequate, has significantly declined from historic values.[44] NERC has found that ''increasing levels of non-synchronous resources installed without controls that enable frequency response capability, coupled with retirement of conventional generating facilities that have traditionally provided primary frequency response, have contributed to the decline in primary frequency response.'' [45] Finally, the record in this proceeding indicates that VER equipment manufacturers have made significant technological advancements in developing primary frequency response capability for VERs, and that the costs of this capability have declined over time.[46] For all of these reasons, we find that the *pro forma* LGIA and *pro forma* SGIA are no longer just and reasonable, and are unduly discriminatory or preferential, and thus need to be revised to ensure that all newly interconnecting large and small generating facilities have primary frequency response capability as a condition of interconnection.[47]

20. We find that the current requirements for governor controls in the *pro forma* LGIA do not reflect NERC's currently recommended operating practices or recent advances in technology for non-synchronous generating facilities, as discussed below.

21. First, Article 9.6.2.1 of the *pro forma* LGIA does not address the settings of governors or equivalent controls (*i.e.,* deadband and droop), nor does Article 9.6.2.1 address plant-level controls, which if not properly coordinated on a generating facility, can lead to the premature withdrawal of primary frequency response during disturbances. Furthermore, the substantial body of knowledge regarding the operation of generator governors and plant control systems amassed by NERC and industry stakeholders since the *pro forma* LGIA was promulgated under Order No. 2003 raises concerns that Article 9.6.2.1 of the *pro forma* LGIA allows too much discretion for generator owners and operators. For example, in 2012, NERC found that a number of generators implemented deadband settings that were so wide as to effectively disable themselves from providing primary frequency response, and also that many generators provide frequency response in the wrong direction during a disturbance.[48] In addition, in 2015, NERC observed that: (1) For many conventional steam plants, deadband settings exceeded ±0.036 Hz; (2) several generating facilities failed to sustain primary frequency response; and (3) the vast majority of the gas turbine fleet was not frequency responsive.[49]

22. Second, existing Article 9.6.2.1 of the *pro forma* LGIA states that ''speed governors,'' if installed, must be operated in automatic mode. However, instead of utilizing traditional speed governors to implement primary frequency response capability, many new non-synchronous generating facilities interconnecting to the grid, such as wind, solar, and electric storage resources, utilize enhanced inverters and other plant control technology that can be designed to include primary frequency response capability.[50] We find that due to these recent technological advancements that allow new large non-synchronous generating facilities to install primary frequency response capability at low cost, as well as the expected overall increase of the proportion of the resource mix that are non-synchronous generating facilities, it is unduly discriminatory and preferential to only require synchronous generators to provide primary frequency response. The references to ''speed governors'' in existing Article 9.6.2.1 of the *pro forma* LGIA, which are only applicable to large synchronous generating facilities, are outdated and should be expanded to include both synchronous and non-synchronous generators.

23. Investigation by various NERC task forces and subcommittees has led to a voluntary NERC Primary Frequency Control Guideline that includes recommended droop and deadband settings for generating facilities within all three U.S. Interconnections.[51] However, as noted in the NOPR, the *pro forma* LGIA and *pro forma* SGIA do not currently reflect these updated recommended practices by NERC for governor and plant control system settings of generating facilities.[52]

24. We also find that revisions to the *pro forma* LGIA and *pro forma* SGIA are necessary to provide for the continued reliable operation of the Bulk-Power System by addressing the potential adverse impacts on primary frequency response of the nation's evolving generation resource mix described in the NOI.[53] As noted in the NOPR,

[43] Section 215(a)(1) of the FPA, 16 U.S.C. 824o(a)(1) (2012) defines ''Bulk-Power System'' as those ''facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) [and] electric energy from generating facilities needed to maintain transmission system reliability.'' The term does not include facilities used in the local distribution of electric energy. *See also Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 76 (cross-referenced at 118 FERC ¶ 61,218), *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[44] *See* NOPR, 157 FERC ¶ 61,122 at P 36 (citing NERC Frequency Response Initiative Industry Advisory—Generator Governor Frequency Response, at slide 10 (Apr. 2015), *http://www.nerc.com/pa/rrm/Webinars%20DL/Generator_Governor_Frequency_Response_Webinar_April_2015.pdf. See also* NERC Frequency Response Initiative Report at 22, and LBNL 2010 Report at xiv–xv).

[45] NERC Comments at 5. NERC's Essential Reliability Services Task Force has determined that primary frequency response is an ''essential reliability service.'' Essential reliability services are referred to as elemental reliability building blocks from resources (generation and load) that are necessary to maintain the reliability of the Bulk-Power System. *See* Essential Reliability Services Task Force Scope Document, at 1 (Apr. 2014), *http://www.nerc.com/comm/Other/essntlrlbltysrvcstskfrcDL/Scope_ERSTF_Final.pdf.*

[46] NOPR, 157 FERC ¶ 61,122 at PP 28, 36.

[47] 16 U.S.C. 824e. The Commission routinely evaluates the effectiveness of its regulations and policies in light of changing industry conditions to determine if changes in these conditions and policies are necessary. *See, e.g.,* Order No. 764, FERC Stats. & Regs. ¶ 31,331.

[48] NERC Frequency Response Initiative Report at 92, 96–97.

[49] NOI, 154 FERC ¶ 61,117 at P 50 (citing NERC Generator Governor Frequency Response Advisory—Webinar Questions and Answers at 1 (April 2015), *http://www.nerc.com/pa/rrm/Webinars%20DL/Generator_Governor_Frequency_Response_Webinar_QandA_April_2015.pdf.).*

[50] *See* Electric Power Research Institute, *Recommended Settings for Voltage and Frequency Ride-Through of Distributed Energy Resources* at 27(May 2015), *http://www.epri.com/abstracts/Pages/ProductAbstract.aspx?ProductId=000000003002006203. See also* National Renewable Energy Labs (NREL), *Advanced Grid-Friendly Controls Demonstration Project for Utility-Scale PV Power Plants,* at 1–2 (Jan. 2016), *http://www.nrel.gov/docs/fy16osti/65368.pdf.*

[51] *See* NERC's Primary Frequency Control Guideline.

[52] NOPR, 157 FERC ¶ 61,122 at P 39.

[53] NOI, 154 FERC ¶ 61,117 at PP 13–17 (citing to the Essential Reliability Services Task Force Measures Report at iv).

NERC's Essential Reliability Services Task Force concluded that primary frequency response capability should be required of all new generating facilities.[54] However, the *pro forma* LGIA and the *pro forma* SGIA do not currently require generating facilities to install such capability.

25. Further, the limited references to primary frequency response in the Commission's requirements apply only to large generating facilities. Based on the absence of a technical or economic basis for the different requirements imposed on small and large generating facilities, and the significant technological advancements that manufacturers have made in developing primary frequency response capability for VERs, we find that the absence of any similar provisions in the current *pro forma* SGIA is unduly discriminatory or preferential.

26. The Commission has previously acted under FPA section 206 to remove inconsistencies between the *pro forma* LGIA and *pro forma* SGIA when there is no economic or technical basis for treating large and small generating facilities differently.[55] As discussed more fully below in Section II.H.7, the record developed in this proceeding indicates that small generating facilities are capable of installing and enabling governors or equivalent controls at a low cost and in a manner comparable to large generating facilities.[56] Given these low-cost technological advances, we do not anticipate that these additional requirements added to the *pro forma* SGIA will present a barrier to entry for small generating facilities. Thus, in light of the need for additional primary frequency response capability and an increasingly large market penetration of small generating facilities, we believe that there is a need to add these requirements to the *pro forma* SGIA to help ensure adequate primary frequency response capability.

27. Accordingly, we find that revising the *pro forma* LGIA and *pro forma* SGIA to require all new generating facilities to install, maintain, and operate a functioning governor or equivalent controls, consistent with the exceptions and operating requirements described below, is just and reasonable. Doing so will help to ensure adequate primary frequency response capability as the generation resource mix continues to evolve, ensure fair and consistent treatment for all types of generating facilities, help balancing authorities meet their frequency response obligations pursuant to Reliability Standard BAL–003–1.1, and help improve reliability, particularly during system restoration and islanding situations.[57]

A. Requirement To Install, Maintain, and Operate Equipment Capable of Providing Primary Frequency Response

1. NOPR Proposal

28. In the NOPR, the Commission proposed to revise the *pro forma* LGIA and *pro forma* SGIA to include requirements for new large and small generating facilities, both synchronous and non-synchronous, to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection.[58] In particular, the Commission explained that the proposed revisions would require new large and small generating facilities to install, maintain, and operate a functioning governor or equivalent controls, which the Commission proposed to define as the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the generating facility's real power output in accordance with the proposed maximum droop and deadband parameters and in the direction needed to correct frequency deviations.[59]

2. Comments

29. The proposed requirement for new generating facilities to install the necessary equipment for primary frequency response capability as a condition of interconnection received broad support from commenters.[60] For example, APPA et al. state that requiring newly interconnecting generating facilities to install governors or equivalent control devices is a relatively low-cost way to prevent the erosion of the Interconnections' collective frequency response capability as the generation resource mix evolves.[61] APPA et al. state that primary frequency response capability should be a standard feature and part of the ''rules of the road'' for all new generating facilities, similar to how all new cars come equipped with anti-lock brakes.[62] Bonneville asserts that the trend of declining frequency response capability will continue with a changing generation resource mix (namely, the integration of large amounts of VERs), unless provisions are put in place to ensure that adequate primary frequency response capability is available in the future.[63] As a result, Bonneville believes that it is necessary to require newly interconnecting generating facilities to have primary frequency response capability.[64] EEI states that now that the technology is available and economical for non-synchronous generation facilities, it supports the proposed requirement for these facilities to install the equipment needed to provide primary frequency response.[65]

30. NERC states that it has determined that increasing levels of non-synchronous generating facilities installed without controls that enable frequency response capability, coupled with retirement of conventional generating facilities that have traditionally provided primary frequency response, has contributed to the decline in primary frequency response.[66] NERC further states that a changing generation resource mix will further alter the dispatch of generating facilities, potentially resulting in operating conditions where frequency response capability could be diminished unless a sufficient amount of frequency responsive capacity is included in the dispatch.[67] NERC asserts that the NOPR's proposed revisions would apply measurable, clear requirements to newly interconnecting synchronous and non-synchronous generating facilities.[68] Tri-State comments that primary frequency response requirements for all generating facilities are necessary to address the

[54] NOPR, 157 FERC ¶ 61,122 at P 15.

[55] *See* Order No. 828, 156 FERC ¶ 61,062 (revising the *pro forma* SGIA such that small generating facilities have frequency and voltage ride through requirements comparable to large generating facilities).

[56] *See, e.g.,* IEEE–P1547 Working Group NOI Comments at 1, 5, and 7; ISO–RTO Council Supplemental Comments at 7; SoCal Edison Supplemental Comments at 3; WIRAB Supplemental Comments at 7. Moreover, the Commission notes that other commenters stated costs of installing primary frequency response capability are generally low, but did not differentiate between small and large generating facilities. *See, e.g.,* APPA, *et al.* Comments at 6; California Cities Comments at 2; EEI Comments at 13; Indicated ISOs/RTOs Comments at 3–5; SoCal Edison Comments at 2.

[57] NOPR, 157 FERC ¶ 61,122 at P 43.

[58] *Id.* P 44.

[59] *Id.* P 47.

[60] APPA et al., Bonneville, California Cities, EEI, ESA, Competitive Suppliers, First Solar, Idaho Power (for generating facilities larger than 10 MW), ISO–RTO Council, MISO TOs, NERC, PG&E, SoCal Edison, SVP, Tri-State, Xcel, and WIRAB support the requirement for new generating facilities to install governors or equivalent controls. In addition, AWEA states that it does not oppose a primary frequency response capability requirement.

[61] APPA et al. Comments at 6.

[62] *Id.*

[63] Bonneville Comments at 2.

[64] *Id.*

[65] EEI Comments at 2.

[66] NERC Comments at 5.

[67] *Id.*

[68] *Id.*

decline in frequency response and are in the best interest of industry.[69] ISO–RTO Council adds that a number of Regional Transmission Operators (RTOs) and Independent System Operators (ISOs) have, for several years, had similar requirements to those proposed in the NOPR, and as a result, the Commission's proposal does not create significant burdens as it merely extends these existing ''best practices'' nationwide.[70] SVP states that the NOPR proposals should not create a major hardship in terms of costs or other burdens related to installing frequency response capability.[71] SoCal Edison states that there is neither a technological nor an economic reason not to require primary frequency response capability of small and/or non-synchronous generating facilities.[72]

31. On the other hand, some commenters do not support a requirement for new generating facilities to install, maintain, and operate primary frequency response capability as a condition of interconnection.[73] For example, API states that primary frequency response operation may not be required from *all* generating facilities since it is possible for balancing authorities to have a sufficient number of existing generating facilities with primary frequency response capability.[74] APS argues that more time is needed to measure and understand the effect of Reliability Standard BAL–003–1.1 on frequency response before mandating primary frequency response capability.[75] Chelan County adds that while it may be true that it is more cost effective to install primary frequency response capability during a generating facility's initial construction (as opposed to retrofitting an already-existing generating facility) and the costs of doing so may be nominal, the Commission should not require generating facilities to provide primary frequency response as a condition of interconnection.[76] NRECA asserts that the proposal could have adverse impacts on deployment of non-traditional generation sources without conferring reliability benefits that warrant such risks.[77] Therefore, NRECA asserts that if the Commission proceeds to require primary frequency response capability as a condition of interconnection, then the Commission should provide for flexibility to balance the reliability needs with possible costs and the desire to encourage new generating facilities by: (1) Considering a size threshold, whereby new generators under a certain size are not required to have primary frequency response capability; (2) establishing penetration level thresholds for primary frequency response requirements; or (3) allowing for a waiver process.[78]

32. In addition, some of these commenters request that the Commission reconsider its proposal to mandate the installation of specific equipment on all new generating facilities (or the operation of such equipment as proposed in the NOPR) as a condition of interconnection, and to instead direct market-based or cost-based approaches to ensure adequate levels of primary frequency response.[79]

3. Commission Determination

33. We adopt the NOPR proposal to revise the *pro forma* LGIA and *pro forma* SGIA to include requirements for new large and small generating facilities, both synchronous and non-synchronous, to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection, with certain exemptions and special accommodations as discussed below in Section II.H.

34. We adopt the NOPR proposal to define ''functioning governor or equivalent controls'' as the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the generating facility's real power output in accordance with maximum droop and deadband parameters and in the direction needed to correct frequency deviations.[80]

35. The proposal to require new generating facilities to install equipment capable of providing primary frequency response received broad support from commenters.[81] We find compelling these commenters' observations that requiring newly interconnecting generating facilities to install governors or equivalent control devices is a low cost way to address the erosion of the Interconnections' collective frequency response capability as the generation resource mix evolves. As assessments by NERC, the Essential Reliability Services Task Force, and others confirm, ongoing changes to the generation resource mix are altering the composition and dispatch of generating facilities across the daily and seasonal demand spectrum. The resulting operating conditions have affected frequency response capability and the amount of frequency responsive capacity online at any given moment. We believe that the revisions to the *pro forma* LGIA and *pro forma* SGIA adopted here will address this problem by providing that the future generation resource mix has frequency responsive capacity available for dispatch by system operators to maintain system reliability.

36. We acknowledge that some commenters do not support a requirement for all newly interconnecting generating facilities to install, maintain, and operate governors or equivalent controls.[82] Some of these commenters only support a requirement for newly interconnecting generating facilities to install primary frequency response capability as a condition of interconnection, but do not support including the proposed operating requirements in the *pro forma* LGIA and *pro forma* SGIA.[83] These commenters either advocate for regional flexibility (*i.e.,* allowing the transmission provider or the balancing authority to establish regional requirements) or request exemption or special accommodation of the requirements for particular technology types (*e.g.,* electric storage resources and CHP facilities). Comments that request regional flexibility for individual transmission providers or balancing authorities to establish operating requirements are addressed below in Section II.B. Comments that request a special accommodation for certain types of generating facilities, including but not limited to electric storage and CHP facilities are addressed below in Section II.H.

[69] Tri-State Supplemental Comments at 3.

[70] ISO–RTO Council Comments at 2.

[71] SVP Comments at 2.

[72] SoCal Edison Comments at 2.

[73] *See, e.g.,* API Comments at 2; APS Supplemental Comments at 12; Chelan County Comments at 1; NRECA Comments at 2; Public Interest Organizations Comments at 4; R Street Comments at 2; SDG&E Comments at 1; Sunflower and Mid-Kansas Comments at 2.

[74] API Comments at 4.

[75] APS Supplemental Comments at 12.

[76] Chelan County Comments at 1.

[77] NRECA Comments at 6.

[78] *Id.* at 8–9.

[79] *See, e.g.,* API Comments at 2; Chelan County Comments at 1; Public Interest Organizations Comments at 4; R Street Comments at 2–3; SDG&E Comments at 1, 3–4.

[80] NOPR, 157 FERC ¶ 61,122 at P 47.

[81] APPA et al., Bonneville, California Cities, EEI, ESA, Competitive Suppliers, First Solar, Idaho Power (for generating facilities larger than 10 MW), ISO–RTO Council, MISO TOs, NERC, PG&E, SoCal Edison, SVP, Tri-State, Xcel, and WIRAB support the requirement for new generating facilities to install governors or equivalent controls.

[82] *See, e.g.,* API Comments at 2; APS Supplemental Comments at 12; Chelan County Comments at 1; NRECA Comments at 2; Public Interest Organizations Comments at 4; R Street Comments at 2; SDG&E Comments at 1; Sunflower and Mid-Kansas Comments at 2.

[83] *See, e.g.,* AES Companies Comments at 6; EEI Comments at 8; MISO TOs Comments at 10–11; SoCal Edison Comments at 2–3; Xcel Comments at 7.

37. Rather than uniform requirements in the *pro forma* LGIA and *pro forma* SGIA, some commenters prefer market-based or cost-based compensation mechanisms to ensure sufficient primary frequency response capability, and urge the Commission to consider the economic impacts of the proposed requirements on load. Comments related to compensation are addressed below in Section II.E. Comments related to the impacts on load are addressed below in Section II.H.8.

38. Finally, some commenters assert that the Commission should: (1) Consider a size threshold; (2) establish penetration level thresholds for primary frequency response requirements; (3) allow for a waiver process; and (4) establish primary frequency response pools. These comments are addressed below in Sections II.H and II.J.

39. Accordingly, as a result of this final action, new large and small generating facilities, will be required to install, maintain, and operate a functioning governor or equivalent controls with certain exemptions or accommodations for nuclear generating facilities, electric storage facilities, and combined heat and power facilities as discussed below.

B. Including Operating Requirements for Droop and Deadband in the Pro Forma LGIA and Pro Forma SGIA

1. NOPR Proposal

40. In the NOPR, the Commission proposed to include *minimum* operating requirements for droop and deadband for governors or equivalent controls.[84] In particular, the Commission proposed to require new generating facilities to install, maintain, and operate governor or equivalent controls with the ability to operate with a maximum 5 percent droop and ±0.036 Hz deadband parameter, consistent with NERC's recommended guidance.[85]

41. The Commission also proposed to require the droop parameter to be based on the nameplate capability of the generating facility and linear in operating range between 59 and 61 Hz.[86] The Commission explained that this provision is reasonable because it would allow for new generating facilities that remain connected during frequency deviations (and have operating capability, *e.g.,* headroom;[87] or floor-room[88] at the time of the disturbance) to provide a proportional response within this range of frequencies.[89]

42. The Commission also proposed that if the interconnection customer[90] disables its governor or equivalent controls for any reason, it shall notify the transmission provider's system operator, or its designated representative, and shall make Reasonable Efforts[91] to return the governor or equivalent controls to service as soon as practicable.[92] In addition, the Commission proposed that the interconnection customer must provide the status and settings of the governor or equivalent controls to the transmission provider upon request.[93]

2. Comments

a. Whether To Include Operating Requirements for Primary Frequency Response in the Pro Forma LGIA and Pro Forma SGIA

43. Several commenters support the NOPR proposal to include operating requirements (*i.e.,* droop, deadband, and timely and sustained response) in the *pro forma* LGIA and *pro forma* SGIA,[94] while other commenters either object to specific, uniform governor control setting requirements, prefer a market-based approach, or seek limited or full exemptions based on unique operating characteristics.[95] Several commenters agree that a maximum 5 percent droop and ±0.036 Hz deadband for newly interconnecting generating facilities is technically feasible.[96]

44. Among those supporting the proposed operating requirements, NERC asserts that the ''proposed minimum operating conditions should help ensure that frequency response capability is installed as well as available and ready to respond, regardless of the mix of resources in the dispatch,'' and ''should lead to tighter control and frequency stability.'' [97] ISO–RTO Council states that, absent unique local requirements such as lower and more responsive droop values in some remote areas of the grid, NERC's guidelines provide a sound baseline and are consistent with current requirements in some regions, including ISO New England, Inc. (ISO–NE), New York Independent System Operator, Inc. (NYISO), and PJM Interconnection, L.L.C. (PJM).[98] While it supports the NOPR proposal, WIRAB also notes the relevance of regional differences, and recommends that the Commission ensure that NERC and the Regional Entities continue to monitor frequency response capability in each region and develop best practices that highlight regional differences in the electricity resource mix and the need for primary frequency response.[99] Further, WIRAB suggests that NERC and the Regional Entities periodically reevaluate the required maximum droop and deadband settings.[100]

45. While it disagrees with a general mandate for primary frequency response capability, in the event the Commission proceeds with a requirement for new generating facilities to install primary frequency response capability, NRECA supports the specific proposed operating requirements.[101]

46. Some commenters express concern that uniform, specific governor control settings in the *pro forma* LGIA and *pro forma* SGIA may fail to account for regional differences and unique operating characteristics of certain generating facilities and resource types, and could add unnecessary costs. These commenters assert that the *pro forma* LGIA and *pro forma* SGIA should only obligate new generating facilities to install and maintain governors or equivalent controls, and not establish specific operating requirements that

[84] NOPR, 157 FERC ¶ 61,122 at P 48.

[85] *Id.*

[86] *Id.* P 50.

[87] For the purposes of this final action, headroom refers to the difference between the current operating point of a generating facility and its maximum operating capability, and represents the potential amount of additional energy that can be provided by the generating facility in real-time. *See* NOPR, 157 FERC ¶ 61,122 at n.27.

[88] For the purposes of this final action, floor-room refers to the difference between the current operating point of a generating facility and its minimum operating capability, and represents the potential amount of additional energy that can be withdrawn by the generating facility in real-time. Stated differently, a generating facility with floor-room will have the capability to reduce its MW output in response to a frequency deviation.

[89] *See* NOPR, 157 FERC ¶ 61,122 at P 50.

[90] The phrase ''interconnection customer'' shall have the meaning given it in the definitional sections of the *pro forma* LGIA and *pro forma* SGIA.

[91] The *pro forma* LGIA and *pro forma* SGIA state that reasonable efforts ''shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.'' *Pro forma* LGIA Art. 1 (Definitions). *Pro forma* SGIA Attachment 1 (Glossary of Terms).

[92] NOPR, 157 FERC ¶ 61,122 at P 52, proposed Section 9.6.4 of the *pro forma* LGIA and Section 1.8.4 of the *pro forma* SGIA.

[93] Proposed Section 9.6.4.1 of the *pro forma* LGIA and 1.8.4.1 of the *pro forma* SGIA.

[94] APPA et al., AWEA, Bonneville, California Cities, Competitive Suppliers, First Solar, Idaho Power (for generating facilities larger than 10 MW), ISO–RTO Council, NERC, PG&E, SVP, and WIRAB state that they either support or do not object to the inclusion of the proposed operating requirements in the *pro forma* LGIA and *pro forma* SGIA.

[95] AES Companies; API; EEI; ELCON; ESA; MISO TOs; R St. Institute; SoCal Edison; NRECA; and Xcel.

[96] *See, e.g.,* AWEA Comments at 4; Bonneville Comments at 3; ISO–RTO Council Comments at 4–5; NERC Comments at 6; NRECA Comments at 2–3.

[97] NERC Comments at 5.

[98] ISO–RTO Council Comments at 4–5.

[99] WIRAB Comments at 3.

[100] *Id.*

[101] NRECA Comments at 2.

must be used.[102] While supporting revisions to the *pro forma* LGIA and *pro forma* SGIA to obligate newly interconnecting generators to install governors or equivalent controls to provide primary frequency response, EEI opposes including operating requirements. EEI asserts that tariffs, rather than interconnection agreements, are a more effective means of establishing operating requirements, since there are significant differences among generating facility types and interconnections as well as cost considerations, and because interconnection agreements ''do not provide the necessary controls to ensure compliance.'' [103] EEI further states that operating requirements for new generating facilities are better determined by individual balancing authorities on an as-needed basis or through voluntary guidance from NERC.[104] EEI also requests that, rather than mandating specific operating requirements, the Commission conduct a series of regional technical conferences to ''allow for a more holistic evaluation of all [essential reliability services]'' [105] and provides details regarding the proposed focus and scope of such conferences.[106]

47. MISO TOs object to ''rigid standards that do not allow for changes in technology or in the applicable NERC standards or guidelines.'' [107] Rather, MISO TOs contend that flexibility can be achieved through a generic requirement for appropriate settings consistent with good utility practices. MISO TOs believe this approach would minimize the need to modify the *pro forma* LGIA and *pro forma* SGIA and expedite the implementation of needed changes for primary frequency response.[108] AES Companies also oppose the proposed operating requirement for droop and deadband settings, and believe that this requirement should not be a uniform standard that is applied to all new generating facilities.[109] AES Companies assert that NERC provides a primary frequency control guideline rather than a Reliability Standard because the guideline may need to differ based on the type of generating facility.[110]

48. While it generally agrees with the specific proposed droop and deadband settings, NRECA supports allowing flexibility in the requirements ''to the extent new generating facilities have differing operating, technical or other characteristics which make compliance with these standardized requirements unduly burdensome or impossible.'' [111] APS, MISO TOs, SoCal Edison, Xcel and NYTOs add that the Commission should defer to balancing authorities or transmission providers to establish specified operating requirements for governor or equivalent controls.[112] Xcel states that regional system differences could justify different primary frequency response standards.[113] While the Commission should require that primary frequency response capabilities be installed on all new facilities, any final action should be flexible enough to allow for regional differences.[114]

49. Some commenters that oppose including the proposed operating requirements in the *pro forma* LGIA and *pro forma* SGIA state that market-based procurement of primary frequency response service (in regions of the country with organized markets) would better ensure that the right amount and quality of primary frequency response service is available at a lower cost to consumers.[115] Also, NRECA is concerned that the costs of the Commission's proposal could outweigh the reliability benefits and delay the development of the types of alternative technologies supported by the Commission.[116]

b. Whether To Incorporate a Reference to a Future NERC Reliability Standard in the Pro Forma LGIA and Pro Forma SGIA

50. ISO–RTO Council asserts that revisions to the *pro forma* LGIA and *pro forma* SGIA should account for the possibility that NERC may develop a reliability standard with more stringent specific droop and deadband parameters, and as a result, the *pro forma* LGIA and *pro forma* SGIA should be written to allow for this eventuality without a need to amend the *pro forma* agreements.[117] ISO–RTO Council asserts that a possible future reliability standard with more stringent droop and deadband parameters should supersede the *pro forma* interconnection requirements.[118] Specifically, ISO–RTO Council recommends that the Commission require new generating facilities to comply with the more stringent of the following requirements: (1) A maximum 5 percent droop and ±0.036 Hz deadband parameter and a droop parameter to be based on the nameplate capability of the unit and linear in operating range between 59 to 61 Hz as proposed in the NOPR; or (2) an approved NERC Reliability Standard providing for more stringent parameters.[119]

c. Requirements for Droop and Deadband

51. Some commenters question the NOPR proposal to base a generating facility's droop parameter on its nameplate capacity. EEI asserts that the proposal is problematic because the mandated response from generating facilities is based on MW and Reactive Curves, and not mega volt-ampere (MVA) nameplate ratings.[120] Similarly, ISO–RTO Council urges the Commission to consider that nameplate capability of a unit may not be consistent with the rated capacity of a generating facility for purposes of obtaining interconnection service or for participation in an organized market.[121] In addition, ISO–RTO Council believes that the Commission should clarify that efficiency improvements to a resource increasing its output (*e.g.,* duct burners that allow for increased output from a steam generator) should be considered when calculating a generating unit's droop parameter.[122]

52. While it supports the NOPR proposal for the droop parameter to be linear in the operating range between 59 to 61 Hz, WIRAB recommends that the Commission allow generating facilities to use faster, non-linear settings over the proposed linear operating range.[123] WIRAB explains that a linear setting over the proposed operating range will result in a 5 percent droop across the entire range, but that non-linear droop parameters may lead to faster responses.[124] More specifically, WIRAB explains that rather than a linear 5 percent droop across the entire operating range, ''nonlinear or

[102] *See, e.g.,* AES Companies Comments at 6; EEI Comments at 8; MISO TOs Comments at 10–11; SoCal Edison Comments at 2–3; Xcel Comments at 7.

[103] EEI Comments at 9, 11.

[104] *Id.* at 11–12.

[105] *Id.* at 12.

[106] *Id.* at 4, n.5.

[107] MISO TOs Comments at 9.

[108] *Id.* at 11.

[109] AES Companies Comments at 6.

[110] *Id.*

[111] NRECA Comments at 3.

[112] APS Supplemental Comments at 5–6; MISO TOs Comments at 2; SoCal Edison Comments at 3; Xcel Comments at 7; NYTOs Supplemental Comments at 3–4.

[113] Xcel Comments at 7.

[114] *Id.*

[115] *See, e.g.,* AES Companies Comments at 9; API Comments at 4; ELCON Supplemental Comments at 12, in support of R St Institute's Comments; Public Interest Organizations Comments at 2; R St Institute Comments at 4; SDG&E Comments at 5–6.

[116] NRECA Comments at 3.

[117] ISO–RTO Council Comments at 5.

[118] *Id.*

[119] *Id.* at 5–6.

[120] EEI Comments at 14.

[121] ISO–RTO Council Comments at 6.

[122] *Id.*

[123] WIRAB Comments at 7.

[124] *Id.*

piecewise droop parameters,'' such as a 5 percent droop between 60.036 and 61.000 Hz and a 3 percent droop between 59.964 and 59.000 Hz, ''may help to restore system frequency to normal faster and improve system resiliency.'' [125] On the other hand, EEI recommends that the Commission not include in the *pro forma* interconnection agreements the proposed requirement for the droop characteristic to be linear in the operating between 59 to 61 Hz.[126] In support of its position, EEI contends that: (1) The proposed frequency range includes the deadband, where governors do not operate; and (2) actual generating facility response to frequency deviations may not be linear.[127]

53. Regarding deadband parameters, NERC suggests that the Commission consider replacing the proposed requirements with the NERC Primary Frequency Control Guideline's recommendation [128] concerning the implementation of the deadband within the droop curve.[129] Specifically, NERC recommends that deadbands should be implemented without a step to the droop curve, *i.e.,* once frequency deviates outside the deadband, then change in the generating facility's MW output starts from zero and then proportionally increases with the input signal (*i.e.,* frequency).[130]

d. Requirements for the Status and Settings of the Governor or Equivalent Controls

54. NERC recommends that the Commission require the interconnection customer to provide the status and settings of the governor or equivalent controls and plant level controls not only to the transmission provider (or its designated system operator) but also to the relevant balancing authority upon request, and notify the balancing authority when it needs to take the governor or equivalent controls and plant level controls out of service.[131] In support, NERC asserts that, as the entity with a compliance obligation under Reliability Standard BAL–003–1.1 for providing frequency response, the balancing authority needs to know the status and settings of the governor or equivalent controls and plant level controls in order to assess whether there is an appropriate amount of frequency response available.[132] NERC explains that providing this information to the balancing authority would support efforts to help ensure sufficient frequency response and compliance with Reliability Standard BAL–003–1.1.[133]

55. Regarding the disabling of an interconnection customer's governor or equivalent controls, Bonneville asserts that the proposed revisions to the *pro forma* LGIA and *pro forma* SGIA appear to give the interconnection customer complete discretion to take its governor or equivalent controls out of service, provided it gives the transmission provider notice.[134] To ensure the availability of frequency response when the balancing authority needs it, Bonneville suggests that such discretion be limited to operational constraints, ''including, but not limited to, ambient temperature limitations, outages of mechanical equipment, or regulatory requirements.'' [135]

3. Commission Determination

a. Whether To Include Operating Requirements for Primary Frequency Response in the Pro Forma LGIA and Pro Forma SGIA

56. We disagree with commenters that argue the Commission should not establish minimum uniform operating requirements for primary frequency response.[136] Instead, we find that the establishment of minimum uniform operating requirements for all newly interconnecting generating facilities is preferable to the fragmented and inconsistent primary frequency response settings currently in place throughout the Eastern and Western Interconnections.[137] Assessments by NERC's Essential Reliability Services Task Force demonstrate that a lack of uniform, mandatory primary frequency response requirements has created the opportunity for generator owners/operators to implement operating settings that undermine the purpose and intent of Article 9.6.2.1 of the *pro forma* LGIA to promote and ensure the adequate provision of primary frequency response.[138] Article 9.6.2.1 of the *pro forma* LGIA requires a generating facility to operate its speed governors and voltage regulators in automatic operation mode when the facility is capable of such operation. Further, as the Commission observed in the NOPR, ''[w]hile technological advancements have enabled wind and solar generating facilities to now have the ability to provide primary frequency response, this functionality has not historically been a standard feature that was included and enabled on non-synchronous generating facilities.'' [139] Nothing in the record indicates that the Commission's observation was incorrect.

57. We believe it is necessary to make these changes to the *pro forma* LGIA and *pro forma* SGIA now in order to ensure that the future generation mix will be capable of providing primary frequency response, and to arrest the general long-term declining trend for this essential reliability service. Adopting these requirements now is more prudent than waiting until the lack of primary frequency response undermines grid reliability, a point acknowledged by NERC's Essential Reliability Services Task Force.

58. Accordingly, we find that it is just and reasonable to include the proposed operating requirements of a maximum droop setting of 5 percent and deadband setting of ±0.036 Hz for primary frequency response in the *pro forma* LGIA and *pro forma* SGIA. We acknowledge that the needs of individual regions and balancing authority areas may warrant the adoption of different operating requirements in the future.[140] Therefore, the operating requirements for the *pro forma* LGIA and *pro forma* SGIA we adopt here are *minimum* interconnection requirements for new generating facilities based on the

[125] *Id.*

[126] EEI Comments at 14–15, 17.

[127] *Id.* at 14.

[128] NERC Primary Frequency Control Guideline at 6.

[129] NERC Comments at 6.

[130] *Id.*

[131] *Id.*

[132] *Id.* at 6–7.

[133] *Id.*

[134] Bonneville Comments at 4.

[135] *Id.* at 4–5.

[136] *See, e.g.,* AES Companies Comments at 6; EEI Comments at 8; MISO TOs Comments at 10–11; SoCal Edison Comments at 2–3; Xcel Comments at 7.

[137] The ERCOT Interconnection has uniform minimum requirements for primary frequency response, as generating facilities in Texas Reliability Entity Inc. are required to comply with the requirements of Regional Reliability Standard BAL–001–TRE–01.

[138] *See* NOPR, 157 FERC ¶ 61,122 at P 8. There, the NOPR explains that a 2010 NERC survey found that ''only approximately 30 percent of generators in the Eastern Interconnection provided primary frequency response, and that only approximately 10 percent of generators provided sustained primary frequency response. This suggests that many generators within the Interconnection disable or otherwise set their governors or outer-loop controls such that they provide little to no primary frequency response.''

[139] *Id.* P 13.

[140] *See, e.g.,* Order No. 827, FERC Stats. & Regs. 31,385 (''Due to technological advancements, the cost of providing reactive power no longer represents an obstacle to the development of wind generation.''). *See also* Order No. 828, 156 FERC ¶ 61,062 at P 8 (modifying the *pro forma* SGIA to require interconnecting small generating facilities to ride through abnormal frequency and voltage events and not disconnect during such events because ''the impact of small generating facilities on the grid has changed.'').

Primary Frequency Control Guideline developed by NERC through a broad-based stakeholder process.[141] NERC's Primary Frequency Control Guideline ''reflect[s] the most advanced set of continent-wide best practices and information available in support of frequency response capability.'' [142]

59. We disagree with the view of NRECA that this action is premature because, at present, primary frequency response at the Interconnection level may be acceptable.[143] Rather, we find, as stated by NERC, that increasing levels of generating facilities without primary frequency response capability, combined with the retirement of those generating facilities that have traditionally provided primary frequency response, ''has contributed to the decline in primary frequency response.'' [144] Further, we agree with NERC's Essential Reliability Services Task Force, which concluded that it is prudent and necessary to ensure that the future generation mix includes primary frequency response capabilities and recommends that all new generators support the capability to manage frequency.[145]

60. AES Companies and MISO TOs contend that NERC ''provides guidelines rather than standards because these guidelines may need to differ based on the type of resource,'' [146] and that NERC's Primary Frequency Control Guideline was adopted rather than a Reliability Standard because ''there are many current and anticipated reasons to deviate from'' the Guideline.[147] We disagree and are persuaded instead by NERC and other commenters that minimum requirements are needed.[148]

61. We find ample support in the record to support this approach. For example, in its comments on the NOPR, NERC states that ''the Commission's proposed revisions to the *pro forma* interconnection agreements are consistent with the results of recent NERC reliability assessment recommendations.'' [149] Further, NERC supports the Commission's proposal, stating that ''the NOPR's proposed minimum operating conditions should help ensure that frequency response capability is installed as well as available and ready to respond, regardless of the mix of resources in the dispatch'' and notes its support for including the proposed droop and deadband settings in the *pro forma* LGIA and *pro forma* SGIA.[150]

62. We disagree with EEI's assertion that the primary frequency response operating requirements should not be included in the *pro forma* LGIA and *pro forma* SGIA because the *pro forma* interconnection agreements lack ''the necessary controls to ensure compliance.'' [151] While this final action does not establish specific compliance procedures for new generating facilities, transmission providers are not prohibited from proposing such procedures in a FPA section 205 filing.[152] Also, the *pro forma* LGIA and *pro forma* SGIA contain Commission-approved directives that are legally enforceable obligations.[153] In any event, EEI's suggestion that transmission providers would neither detect nor address possible interconnection customer non-compliance with the new operating requirements is speculative and without support in the record.

63. EEI, MISO TOs, and SoCal Edison request that the Commission not include the proposed operating requirements in the *pro forma* LGIA and *pro forma* SGIA, but instead defer to transmission providers or balancing authorities to establish operating requirements addressing reliability needs identified in regional studies.[154] For the reasons discussed above, we find that it is prudent to establish minimum uniform operating requirements as the foundational element of a framework for ensuring the adequacy and timeliness of primary frequency response. However, as noted immediately below and discussed in more detail in Section II.I below, the Commission establishes, with an addition and clarification, methods for proposing variations to this final action.[155]

64. While we are establishing uniform operating requirements, we also note that there is flexibility built into both the requirements themselves and the Commission's processes. First, we clarify that the requirements we adopt herein are *minimum* requirements. Thus, if an interconnection customer wishes to implement more stringent deadband and droop settings, it may do so.[156] Second, as also discussed in the next section, we have clarified the final action to allow for the possibility of a NERC Reliability Standard that has more stringent parameters than the requirements adopted here. Third, as discussed in Section II.I below, we continue the Commission's historic practice of allowing RTOs/ISOs to propose independent entity variations, as well as permitting other transmission providers to propose changes that are ''consistent with or superior to'' the *pro forma* language. Finally, in the event of a unique circumstance affecting specific resources, the transmission provider may file a non-conforming LGIA or SGIA, or the interconnection customer may request that the transmission provider file an unexecuted LGIA or SGIA.

65. Regarding EEI's request to conduct regional conferences, we do not believe that they are necessary at this time since: (1) The Commission has determined that minimum operating requirements are appropriate to include in the *pro forma* LGIA and *pro forma* SGIA; and (2) EEI's request to focus on other essential reliability services besides primary frequency response is beyond the scope of this proceeding.

66. Comments that reference compensation in lieu of including uniform operating requirements in the *pro forma* LGIA and *pro forma* SGIA are addressed below in Section II.E.

b. Whether To Include a Reference to a Future NERC Reliability Standard in the Pro Forma LGIA and Pro Forma SGIA

67. The Commission is persuaded by ISO–RTO Council's request to include in the *pro forma* LGIA and *pro forma* SGIA provisions that address any future NERC Reliability Standard that provides for more stringent parameters. The Commission agrees that the *pro forma* LGIA and *pro forma* SGIA (as applied to newly interconnecting generation facilities) should be written to allow for

[141] The Preamble to NERC's Primary Frequency Control Guideline states that ''[t]hese guidelines are coordinated by the technical committees and include the collective experience, expertise and judgment of the industry. The objective of this reliability guideline is to distribute key best practices and information on specific issues critical to maintaining the highest levels of BES reliability.'' *See* NERC Primary Frequency Control Guideline at 1.

[142] NERC Comments at 6.

[143] NRECA Comments at 7.

[144] NERC Comments at 5.

[145] Essential Reliability Services Task Force Measures Report at vi.

[146] AES Comments at 6.

[147] MISO TOs Comments at 11.

[148] *See, e.g.,* Bonneville Comments at 3; NERC Comments at 5; ISO–RTO Council Comments at 4–5.

[149] NERC Comments at 5.

[150] *Id.* at 5–6.

[151] EEI Comments at 11.

[152] 16 U.S.C. 824d (2012).

[153] *See NSTAR Elec. & Gas Corp.* v. *FERC,* 481 F.3d 794, 800 (D.C. Cir. 2007).

[154] EEI Comments at 12; MISO TOs Comments at 9; SoCal Edison Comments at 3.

[155] *See* P 233 below, describing the following variation methods: (1) Variations based on Regional Entity reliability requirements; (2) variations that are ''consistent with or superior to'' the final action; and (3) ''independent entity variations'' filed by RTOs/ISOs.

[156] *See* NOPR, 157 FERC ¶ 61,122 at P 8 (''The Commission notes that these proposed requirements are minimum requirements; therefore, if a new generating facility elects, in coordination with its transmission provider, to operate in a more responsive mode by using lower droop or tighter deadband settings, nothing in these requirements would prohibit it from doing so'').

the adoption of a future Reliability Standard with stricter operating requirements (droop and deadband parameters) without a need to further amend interconnection agreements.

68. Accordingly, as discussed below, we are modifying the NOPR proposal to allow for the possibility of a future NERC Reliability Standard that includes equivalent or more stringent operating requirements for droop, deadband, and/or timely and sustained response that would supersede the operating requirements for droop, deadband, and timely and sustained response adopted in this final action. We believe this approach will provide for the harmonization of the reliability-related provisions of the *pro forma* LGIA and *pro forma* SGIA with any future Reliability Standard, and will avoid potential conflicts between Reliability Standards and tariff provisions.[157]

69. We clarify that interconnection customers that are required to comply with this final action will be required to do so until such time as the Commission approves a NERC Reliability Standard with equivalent or more stringent parameters.[158] If the Commission approves such a NERC Reliability Standard, interconnection customers subject to this final action will be required to comply with the operating requirements of the Reliability Standard if it applies to them. However, interconnection customers that are not Applicable Entities of the Reliability Standard will continue to be required to comply with the operating requirements contained within the *pro forma* LGIA and *pro forma* SGIA as adopted in this final action.

c. Requirements for Droop and Deadband

70. We adopt the NOPR proposal to require newly interconnecting generating facilities to install, maintain, and operate a governor or equivalent with a maximum 5 percent droop and ±0.036 Hz deadband and for the droop characteristic to be based on the nameplate capacity.

71. As a threshold matter for this requirement, we clarify the term ''nameplate capacity.'' Some commenters raise concerns with the proposal to base the droop parameter on the nameplate capacity of a generating facility.[159] EEI asserts that basing droop characteristics on nameplate capacity is problematic since ''resource response is based on MW and Reactive curves, and not MVA nameplate ratings.'' [160] In response to this concern, we clarify that the use of the term ''nameplate capacity'' refers to the maximum MW rating of the facility as defined by the Energy Information Administration (EIA).[161] We note that EIA's definition of ''nameplate capacity'' utilizes units of MWs, not MVAs as suggested by EEI. In response to ISO–RTO Council's request for clarification on whether efficiency improvements to a generating facility that increase its output should be factored into the calculation of the droop parameter,[162] we clarify that if a modification to a generating facility causes its nameplate capacity to increase or decrease, then droop parameter should be based on the updated nameplate capacity value.

72. The droop parameter is historically based on the percent change in frequency that would cause a 100 percent change in valve or gate position. This has been translated to the percent change in frequency that would cause a 100 percent change in power output, where a 100 percent change in power output is equivalent to the generator's nameplate capacity. The droop parameter also represents the slope of the MW response in proportion to the frequency deviation.

73. By requiring the droop parameter to be based on nameplate capacity, the Commission intends for a generating facility's expected MW response to frequency deviations to be a percentage of its nameplate capacity, and proportional to the magnitude of the frequency deviation. In particular, the magnitude of a generating facility's MW response to a frequency deviation will depend both on its nameplate capacity and on the magnitude of the frequency deviation. Generating facilities with larger nameplate capacities will provide more MW of primary frequency response per Hz of Interconnection frequency error compared to generating facilities with an equivalent percent droop parameter that have lower nameplate capacities. Accordingly, nameplate capacity is the ''basis'' of the droop parameter since this value will be used to calculate the expected proportional MW response to frequency deviations.

74. ISO–RTO Council points out that the nameplate capacity of a generating facility may not be consistent with its rated capacity for the purposes of obtaining interconnection service or for participation in an organized market. In addition, we recognize that during some operating conditions, the maximum steady state operating limit (*e.g.,* maximum sustainable MW limit) of a generating facility may be less than its nameplate capacity. Therefore, we clarify that for the purposes of calculating the expected amount of primary frequency response that is provided in response to frequency deviations, the calculation should still be based on a generating facility's full nameplate capacity even if the level of requested interconnection service or the steady state operating limit is below that nameplate capacity. We find that this approach is consistent with EPRI's statement that the droop setting is historically based on the percent change in frequency that would cause a 100 percent change in power output (where a 100 percent change in power output is equivalent to the nameplate capacity).[163] As an example, in the case of a generating facility with a 5 percent droop, as the Interconnection's frequency error changes from 0 to 3 Hz and as the system frequency transitions outside of the deadband parameter, the expected change in the generating facility's MW output should range from 0 MW to full nameplate capacity.

75. We clarify that this final action will not require a generating facility that responds to frequency deviations to provide and sustain a value of primary frequency response that causes its MW output to exceed its maximum steady state operating limit.[164] For example, under-frequency conditions outside of the deadband parameter would result in an automatic increase in the generating facility's MW output. However, if the calculated incremental MW value that would be provided as primary

[157] *See* 18 CFR 39.6 (2017). This regulation requires the Commission to issue an order within 60 days, unless it otherwise orders, following notification of a conflict between a Reliability Standard and any function, rule, order, tariff, rate schedule or agreement accepted, approved, or ordered by the Commission. If the Commission determines a conflict exists it will either direct the Transmission Organization to file a modification of the function, rule, order, tariff, rate schedule or agreement under FPA section 206 or the Electric Reliability Organization to file a modification to the conflicting Reliability Standard.

[158] For example, such a Reliability Standard may have requirements for tighter droop (maximum 4 percent droop) and/or deadband settings (*e.g.,* ±0.017 Hz).

[159] EEI Comments at 14; ESA Comments at 3–4.

[160] EEI Comments at 14.

[161] EIA defines nameplate capacity as ''[t]he maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer. Installed generator nameplate capacity is commonly expressed in MW and is usually indicated on a nameplate physically attached to the generator.'' *See* EIA Glossary, *https://www.eia.gov/tools/glossary/index.php?id=G.*

[162] ISO–RTO Council Comments at 6.

[163] EPRI Supplemental Comments at 5.

[164] For example, a generating facility's maximum steady state operating limit may be capped at the MW level of interconnection service requested. Or, during certain periods of an operating year, ambient temperature conditions reduce the maximum sustainable MW output level to below nameplate capacity.

frequency response per the droop parameter would cause the generating facility to exceed its maximum steady state operating limit, the interconnection customer would be permitted to limit the increase in the generating facility's MW output such that its MW output (after primary frequency response has been provided) does not exceed its maximum steady state operating limit, since doing so may cause facility-level reliability concerns. Should a generating facility's maximum operating limit per its interconnection agreement be less than its nameplate capacity, nothing in this final action would require an interconnection customer to violate the terms of its interconnection agreement. In such a situation, an interconnection customer would be permitted to limit the increase in the generating facility's MW output such that its MW output does not exceed the maximum operating limit as described in the interconnection agreement.

76. Similarly, over-frequency conditions would result in an automatic reduction in a generating facility's MW output. However, if the calculated value of primary frequency response would cause the facility's MW output to drop below its minimum operating MW limit, an interconnection customer will be permitted to limit the decrease in the facility's MW output such that the facility does not operate below its minimum steady state operating limit.

77. In addition, we are persuaded by NERC's suggestion to require the deadband parameter to be implemented without a step to the droop curve. We note that NERC's Primary Frequency Control Guideline references a 2013 IEEE Power & Energy Society (IEEE–PES) Technical Report stating that a droop curve (with a deadband) can be implemented in a generator governor in two possible ways: ''Stepped'' or ''non-stepped.'' [165] In its report, IEEE–PES points out that these two methodologies of implementing the deadband parameter can potentially have significantly different results in the response of a generating facility's governor control system to changes in system frequency.[166] According to IEEE–PES, if the deadband is implemented under the stepped approach, as soon as system frequency transitions outside of the deadband parameter (*e.g.,* ±0.036 Hz), the generating facility will experience a sudden spike (increase or decrease) in its MW output, which IEEE–PES warns can be undesirable.[167] To account for this issue, NERC recommends in its Primary Frequency Control Guideline [168] and its comments to the NOPR [169] that the deadband should be implemented without a step to the droop curve. Under the non-stepped approach of implementing the deadband parameter, once frequency transitions outside of the deadband, the incremental change in the generating facility's MW output will start from zero and then increase linearly to the generating facility's nameplate capacity and in proportion to the Interconnection's frequency error.[170]

78. In consideration of this additional information, we agree with NERC and modify the NOPR proposal to require the deadband parameter to be implemented without a step. Accordingly, we are requiring the droop curve to be implemented in a manner such that as frequency transitions outside of the deadband (both for under-frequency and over-frequency conditions), the generating facility's expected MW response should start from 0 MW and increase linearly to the nameplate capacity of the generating facility, as the Interconnection's frequency error changes from 0 Hz to the generating facility's percentage droop multiplied by 60 Hz (*e.g.,* in the case of a 5 percent droop, this would be 3 Hz).

79. In response to EEI's concerns that: (1) The proposed frequency range of 59 to 61 Hz includes the deadband where governors do not operate; and (2) not all generating facilities respond in a linear manner, we are modifying the NOPR proposal and adopt in this final action that the droop parameter should be linear in the range of frequencies between 59 to 61 Hz that are outside of the deadband parameter. This is because the range of frequency values within the deadband do not trigger the operation of the governor or equivalent controls, and the slope of the droop curve that relates change in frequency to change in MW output should only apply to the range of frequencies outside of the deadband, *i.e.,* those frequencies where the generating facility's MW output is expected to change in proportion to frequency deviations. Regarding EEI's concern that not all generating facilities respond in a linear manner, we acknowledge that non-linear responses can and may occur. However, we believe that the existence of non-linear responses will not undermine the effectiveness of this final action. We expect that interconnection customers will take Reasonable Efforts to maximize and ensure their ability to provide a linear response in accordance with the droop parameter.

80. While we agree with WIRAB that the use of non-linear or piecewise droop parameters may lead to faster responses, we decline to adopt WIRAB's request to, on a generic basis, require prospective interconnection customers to implement non-linear or piecewise droop curves. While we require the droop curve to be linear (*e.g.,* 5 percent) in the range of frequencies outside of the deadband between 59 to 61 Hz (*i.e.,* the response for both under-frequency and over-frequency conditions should be based on a maximum 5 percent droop), consistent with the NOPR proposal, we find that nothing in these requirements prohibit the implementation of asymmetrical droop settings (*i.e.,* different droop settings for under-frequency and over-frequency conditions), provided that each segment has a percent droop value of no more than 5 percent.[171] For example, our requirements would not prohibit the implementation of a droop curve that has a five percent droop for over-frequency conditions (*e.g.,* between 60.036 and 61.000 Hz) and a 3 percent droop for under-frequency conditions (*e.g.,* between 59.964 and 59.000 Hz).[172]

d. Requirements for the Status and Settings of the Governor or Equivalent Controls

81. We agree with NERC that the balancing authority should know the status and settings of the governor or equivalent controls and plant level controls in order to assess whether there is an appropriate amount of frequency reserve available.[173] In addition, the Commission agrees with NERC that providing this information to the balancing authority ''would support [balancing authority] and [frequency response sharing group] efforts to help ensure sufficient frequency response and their compliance with Reliability Standard BAL–003–1.1.'' [174]

82. Accordingly, we are modifying in this final action the NOPR proposal to require the interconnection customer to provide its relevant balancing authority with the status and settings of the

[165] NERC Primary Frequency Control Guideline at 6, referencing *Dynamic Models for Turbine-Governors in Power System Studies* at Appendix B: Deadband, IEEE–PES (Jan 2013), *http://sites.ieee.org/fw-pes/files/2013/01/PES_TR1.pdf* (IEEE–PES Report).

[166] IEEE–PES Report at Appendix B.

[167] *Id.*

[168] NERC Primary Frequency Control Guideline at 6.

[169] NERC Comments at 6.

[170] *Id.*

[171] *See* NOPR, 157 FERC ¶ 61,122 at n.126.

[172] *See* WIRAB Comments at 7.

[173] NERC Comments at 6–7.

[174] *Id.*

governor or equivalent controls upon request or when the interconnection customer operates the generating facility with its governor or equivalent controls not in service. We determine that this is just and reasonable because it will help improve situational awareness by helping the balancing authority assess whether there is an appropriate amount of frequency responsive capacity online.

83. Regarding the process for an interconnection customer to disable its governor or equivalent controls, we share Bonneville's concern that the interconnection customer should not be allowed to operate its generating facility with its governor or equivalent controls not in service by merely notifying the transmission provider.[175] While we believe that it is not necessary to require the interconnection customer to meet specific operational conditions (*e.g.,* maintenance or outages of mechanical equipment) as a precondition to disabling the governor or equivalent controls as Bonneville suggests,[176] we are modifying the NOPR proposal to provide additional clarity on this issue.

84. Specifically, we revise the *pro forma* LGIA and *pro forma* SGIA to require the interconnection customer to make Reasonable Efforts to keep outages of the generating facility's governor or equivalent controls to a minimum whenever it is operated in parallel with the Transmission System. The interconnection customer shall immediately notify the transmission provider and relevant balancing authority of its need to operate the generating facility without the governor or equivalent controls in service.

85. Accordingly, we will modify the *pro forma* LGIA and *pro forma* SGIA to state that when providing notice to the transmission provider of its intent to disable its governor or equivalent controls, the interconnection customer's notice shall include: (1) The operating status of the governor or equivalent controls (*i.e.,* whether it is currently out of service or when it will be taken out of service); (2) the reasons why the governor or equivalent controls are unable to be operated in service; and (3) a reasonable estimate as to when the governor or equivalent controls will be returned to service. The interconnection customer will be required to then make Reasonable Efforts to return its governor or equivalent controls to service as soon as practicable and notify the transmission provider and balancing authority when it has done so.

[175] Bonneville Comments at 4.

[176] *Id.*

C. Requirement To Ensure the Timely and Sustained Response to Frequency Deviations

1. NOPR Proposal

86. In the NOPR, the Commission proposed to prohibit all new large and small generating facilities from taking any action that would inhibit the provision of primary frequency response, except under certain conditions, including but not limited to, ambient temperature limitations, outages of mechanical equipment, or regulatory requirements.[177] The Commission explained that the lack of coordination between governor and plant-level control systems can result in premature withdrawal of primary frequency response by allowing additional plant control systems to reverse the action of the governor to return the unit to operating at a pre-selected target set-point.[178] The Commission noted that NERC's Primary Frequency Control Guideline explains that ''in order to provide sustained primary frequency response, it is essential that the prime mover governor, plant controls and remote plant controls are coordinated.'' [179]

87. Accordingly, the Commission proposed to require new generating facilities that respond to frequency deviations to not inhibit primary frequency response, such as by coordinating plant-level control equipment with the governor or equivalent controls.[180] In particular, the Commission proposed to include new Sections 9.6.4.2 of the *pro forma* LGIA and 1.8.4.2 of the *pro forma* SGIA to require that the real power response of new large and small generating facilities ''to sustained frequency deviations outside of the deadband setting is provided without undue delay . . . until system frequency returns to a stable value within the deadband setting of the governor or equivalent controls.'' [181]

2. Comments

88. Several commenters support including the proposed provisions for timely and sustained response in the *pro forma* LGIA and *pro forma* SGIA.[182] NERC supports the minimum operating conditions proposed in the NOPR because ''[s]uch requirements for the capability of 'timely and sustained response to frequency deviations' should promote reliability and help avoid a scenario where the transforming resource mix reduces frequency response capability.'' [183] ISO–RTO Council asserts that requiring primary frequency response to be sustained until frequency returns within the deadband parameter ''is consistent with the current requirements of PJM and ISO–NE, as well as CAISO.'' [184]

89. While acknowledging the importance of timely and sustained frequency response, EEI does not believe that such requirements should be included in the *pro forma* LGIA and *pro forma* SGIA because ''the requirements do not consider the resource type or available capacity in requiring sustained response and therefore impose operating requirements for all governors or equivalent controls.'' [185] EEI recommends that the Commission ''limit its modifications of the *pro forma* LGIA and SGIA requirements to address resource capability (but not operational requirements) in order to allow regional needs and markets to address the issue of timely and sustained response for frequency deviations.'' [186] Also, EEI believes that individual balancing authorities should determine operating requirements ''on an as-needed basis or through compliance guidance'' from NERC.[187] AES Companies agree, asserting that it is prudent for each balancing authority to determine appropriate criteria for timely and sustained response, because ''the criteria for sustained and timely response may differ from system to system due to operating conditions, resource mix and more.'' [188]

90. EEI raises an additional concern, stating that ''requirements to provide timely and sustained frequency response cannot be implemented in a manner that is fair and non-discriminatory'' because interconnection agreements ''do not provide the necessary controls to ensure compliance . . . [or] effectively or fairly ensure compensation to those entities providing this support.'' [189] EEI states that without a generic headroom requirement, a uniform requirement for timely primary frequency response ''unfairly discriminates between those

[177] NOPR, 157 FERC ¶ 61,122 at P 49.

[178] *Id.*

[179] *Id.* (citing NERC Primary Frequency Control Guideline at 4).

[180] *Id.*

[181] *Id.* PP 52–53.

[182] Bonneville Comments at 2, First Solar Comments at 4; Idaho Power Comments at 1–2; ISO–RTO Council Comments at 5; NERC Comments at 5–6; WIRAB Comments at 5.

[183] NERC Comments at 5–6.

[184] ISO–RTO Council Comments at 5.

[185] EEI Comments at 9.

[186] *Id.*

[187] *Id.* at 12.

[188] AES Companies Comments at 14.

[189] EEI Comments at 11.

resources that are capable of providing timely response due to their design or current operating status over resources that are not capable of providing a timely response.'' [190] As an example, EEI states that renewables may not be able to provide a timely response to under-frequency deviations if they are operating at capacity or due to other technical limitations.[191]

91. WIRAB and EEI recommend certain modifications to the NOPR proposal for timely and sustained response. Both recommend that the Commission explicitly prohibit in the *pro forma* LGIA and *pro forma* SGIA the interconnection customer from blocking or otherwise inhibiting the ability of the governor or equivalent controls to respond.[192]

92. In the NOPR, the Commission proposed to require that the real power response of new large and small generating facilities to sustained frequency deviations outside of the deadband setting is provided without undue delay . . . until system frequency returns to a stable value within the deadband setting of the governor or equivalent controls.'' [193] WIRAB recommends that the term ''without undue delay'' be defined to require the generating facility to ''provide immediate frequency response when system frequency deviates outside of the required deadband settings, and that no grace period be allowed that can postpone the response.'' [194] Additionally, WIRAB recommends that ''stable value'' be defined as the ''settled frequency response value achieved when frequency has rebounded and settled—after hitting the nadir—but possibly before reaching the normal frequency of 60 Hz.'' [195] Also, WIRAB recommends that ''[o]utside controls should not override a generator's frequency response until the system frequency has settled.'' [196] WIRAB states that its recommended changes would ensure a consistent, timely, and sustained response from generating facilities providing primary frequency response.[197]

93. AWEA asks the Commission to clarify that its proposed prohibition of actions ''inhibiting'' response does not restrict the ability of wind and other generating facilities to adjust the speed of their response in coordination with system operators to ensure a fair and coordinated response that best meets the needs of the system as a whole.[198] AWEA explains that the fast controls inherent in modern wind turbines allow them to respond to frequency deviations more quickly and accurately than many conventional generators, and that some generating facilities can respond so fast that slower-responding facilities cannot provide a coordinated response.[199] AWEA argues that there should be flexibility to ensure a fair and coordinated response (*i.e.,* allow wind generating facilities to respond more slowly than their full design capability) that meets the needs of the system and does not result in a disproportionate share of the response—and cost burden—being provided by facilities that can respond more rapidly (such as very fast-responding wind plants).[200] Accordingly, AWEA recommends that the Commission clarify that adjustments to the response speed of non-synchronous generating facilities, when done to ensure coordinated response for the system operator and fair distribution of cost impacts across generating facility types, do not ''inhibit'' response within the meaning of the NOPR, or if it does, are within the scope of the operational constraints permitted under the NOPR.[201]

3. Commission Determination

94. We determine that it is just and reasonable to include a requirement for timely and sustained response in the *pro forma* LGIA and *pro forma* SGIA. As stated in the NOI, premature withdrawal of primary frequency response ''has the potential to degrade the overall response of the Interconnection and result in a frequency that declines below the original nadir.'' [202] We are persuaded by the reliability assessments performed by NERC confirming a general decline in primary frequency response that, unless adequately addressed, could worsen as the generation resource mix continues to evolve.[203] The requirement for timely and sustained response would address that decline and more specifically would address concerns raised by NERC and others about the premature withdrawal of primary frequency response following a system disturbance, which is a significant concern in the Eastern Interconnection and a somewhat smaller issue in the Western Interconnection.[204] This phenomenon stems from generating facilities that do not sustain the response until system frequency returns to within the deadband parameter; instead they withdraw the response soon after it is provided.[205] In adopting this requirement, we agree with commenters who stated that there should be a clear requirement for primary frequency response to be timely and sustained.[206]

95. We are not persuaded by EEI's and AES Companies' view that timely and sustained response requirements should be part of regional solutions rather than be included in the *pro forma* LGIA and *pro forma* SGIA. NERC's assessments and conclusions do not indicate that the fundamental concerns about declining primary frequency response or the premature withdrawal of primary frequency response are unique or limited to individual regions. In addition, we note that frequency response is an Interconnection-wide phenomenon. Accordingly, we find that minimum, uniform primary frequency response requirements, including timely and sustained response, are just and reasonable.

96. EEI comments that without a provision to ''fairly ensure adequate compensation,'' and a mandate that each new generating facility operate with headroom at all times, the proposed requirements for timely and sustained primary frequency response ''cannot be implemented in a manner that is fair and non-discriminatory.'' [207] EEI asserts that ''requiring all resources to have a timely operating response, but

[190] *Id.*

[191] *Id.*

[192] EEI Comments at 18–19; WIRAB Comments at 5–6.

[193] NOPR, 157 FERC ¶ 61,122 at PP 52–53.

[194] WIRAB Comments at 5.

[195] *Id.* at 5–6. WIRAB notes that NERC describes this settled frequency value in its Interconnection Frequency Response Obligation calculation used in Reliability Standard BAL–003–1.1 and labels the value ''Value B'' in the calculation. *Id.* at n.8.

[196] *Id.* at 6.

[197] *Id.* at 5.

[198] AWEA Comments at 8–9.

[199] *Id.*

[200] *Id.* at 9.

[201] *Id.*

[202] *See* NOI, 154 FERC ¶ 61,117 at P 49.

[203] *See* NERC Comments at 5. NERC states that it ''has determined that increasing levels of non-synchronous resources installed without controls that enable frequency response capability, coupled with retirement of conventional resources that have traditionally provided primary frequency response, has contributed to the decline in primary frequency response'' and that ''a changing resource mix will further alter the dispatch of resources and combinations of resources . . . potentially resulting in systems operating states where frequency response capability could be diminished unless a sufficient amount of frequency responsive capacity is included in the dispatch.''

[204] *See* NOI, 154 FERC ¶ 61,117 at PP 49–50. *See also Frequency Response and Frequency Bias Setting Reliability Standard,* Notice of Proposed Rulemaking, 78 FR 45479 (July 29, 2013), 144 FERC ¶ 61,057, at PP 35–38 (2013).

[205] In the NOI, the Commission stated that primary frequency response withdrawal ''has the potential to degrade the overall response of the Interconnection and result in a frequency that declines below the original nadir.'' *See* NOI, 154 FERC ¶ 61,117 at P 49.

[206] *See, e.g.,* Bonneville Comments at 2; ISO–RTO Council Comments at 5; NERC Comments at 5–6; WIRAB Comments at 6.

[207] EEI Comments at 11.

failing to require necessary headroom, unfairly discriminates between those resources that are capable of providing a timely response due to their design or current operation status over resources that are not capable of providing a timely response.'' [208] We disagree. We are imposing operating requirements on all newly interconnecting generating facilities (with limited exemptions) but not mandating headroom or compensation for any generating facilities. Any headroom maintained by these facilities is not required by this final action, and does not render our operating requirements unduly discriminatory. If future conditions necessitate a headroom requirement, we will then consider any appropriate compensation.

97. As noted in Section II above, one of the Commission's concerns with the current lack of clear, uniform primary frequency response requirements is NERC's finding indicating that a number of generator owners/operators have implemented operating settings that have effectively removed the availability of their generating facilities from providing timely and sustained primary frequency response (*e.g.,* wide deadband settings, uncoordinated plant-level controls).[209] The reforms adopted in this final action, to be applied uniformly to new generating facilities, are intended to eliminate these practices. Accordingly, the Commission determines that the requirements are just, reasonable and not unduly discriminatory or preferential.

98. Further, while it is true that generating facilities that are operated with no headroom at the time of an under-frequency deviation will provide little or no response in the upward direction, they will still be available to support the reliability of the power system by responding in the downward direction during abnormal over-frequency system conditions. Since the timing of an abnormal frequency deviation outside of the deadband parameter—and when a generating facility will thus be required to respond—is unpredictable, it is possible that these generating facilities will have operating capability in the upward direction to respond to some abnormal under-frequency deviations.

99. We agree with the suggestions of EEI and WIRAB to explicitly prohibit interconnection customers from blocking or otherwise inhibiting the governor's or equivalent controls' ability to respond.[210] Accordingly, as discussed below in Section II.K.3, the Commission will modify in this final action the NOPR proposal to require interconnection customers to not block or otherwise inhibit the governor or equivalent controls' ability to respond.

100. AWEA, ESA, and WIRAB ask the Commission to clarify the proposed timely and sustained response provisions, and their comments raise the following questions: (1) How soon should a generating facility begin to provide primary frequency response following a disturbance; and (2) how long, at a minimum, should the response be sustained?

101. Regarding how soon a generating facility should begin to provide primary frequency response following a disturbance, the Commission agrees with WIRAB that the definition of ''without undue delay'' should be clarified.[211] Accordingly, we clarify that the NOPR proposal for generating facilities to respond ''without undue delay'' is intended to address the concern that an interconnection customer could program an intentional delay of several seconds or minutes to effectively avoid contributing to the support of power system reliability following a disturbance. Following the sudden loss of generation or load, primary frequency response must be delivered as promptly as possible, within the physical characteristics of the generating facility, in order to avoid, for example, Interconnection frequency declining to a level where UFLS relays are activated or to a lower level where generation under-speed protection relays activate, resulting in additional generation trips or cascading outages. Accordingly, in response to WIRAB's request to clarify when a generating facility should respond to a frequency deviation, we will modify the NOPR proposal and adopt in this final action the requirement that generating facilities respond *immediately* after system frequency deviates outside of the deadband parameter, to the extent that they have available operating capability in the direction needed to correct frequency deviation at the time of the disturbance.[212]

102. We agree with WIRAB that no grace period should be allowed that can postpone the response. Accordingly, we deny AWEA's request to coordinate response times between interconnection customers and system operators.[213] Instead, we require generating facilities to respond immediately, consistent with the technical capabilities of the generating facility and its control equipment.

103. Regarding the minimum period of time that a response should be sustained, we will not establish in this final action a minimum timeframe in minutes that the response to frequency deviations should be sustained since the amount of time that Interconnection frequency remains outside of the deadband varies by event.

104. We determine that rather than using the term ''stable'' used in the NOPR concerning the sustained response requirement, it is preferable to require primary frequency response to be sustained until such time that system frequency returns to a value within the deadband. Therefore, we find that WIRAB's recommendation to adopt its definition of ''stable value'' is moot. Accordingly, we clarify that with the exception of certain operational constraints described in Section 9.6.4.2 of the *pro forma* LGIA and Section 1.8.4.2 of the *pro forma* SGIA, generating facilities that respond to abnormal and sustained frequency deviations outside of the deadband parameter are required to provide and sustain primary frequency response until system frequency has returned to a value within the deadband parameter. If frequency recovers to within the deadband but suddenly deviates outside of the deadband parameter again, the interconnection customer will be required to provide and sustain its response until such time that frequency returns to a value within the deadband.

105. Comments related to electric storage resources pertaining to the timely and sustained response provisions are addressed below in Section II.H.2.

D. Proposal Not To Mandate Headroom

1. NOPR Proposal

106. In the NOPR, the Commission clarified that the proposed requirements did not impose a generic headroom requirement, but sought comment on such a requirement.[214] The Commission stated its belief that the reliability benefits from the proposed

[208] *Id.*

[209] *Id.* PP 8–9, 39.

[210] EEI Comments at 16, 18–19; WIRAB Comments at 5–6.

[211] *See* WIRAB Comments at 5.

[212] The Commission accepted similar tariff language proposed by CAISO. *See Cal. Indep. Sys. Operator Corp.,* 156 FERC ¶ 61,182, at P 17 (2016) (accepting, among other things, CAISO's proposed changes to s Section 4.6.5.1 of its tariff, which provides in pertinent part that ''Participating Generators with governor controls that are synchronized to the CAISO Controlled Grid must respond immediately and automatically.'').

[213] *See* AWEA Comments at 8–9 (describing efforts to coordinate the fast response times of wind facilities with system operators).

[214] NOPR, 157 FERC ¶ 61,122 at P 51.

modifications to the *pro forma* LGIA and *pro forma* SGIA do not require imposing additional costs that would result from a generic headroom requirement.[215]

2. Comments

107. Several commenters state that the Commission should not create a mandatory headroom requirement.[216] Idaho Power asserts that a generic headroom requirement is not necessary at this time.[217] AWEA, Public Interest Organizations, and SDG&E state that there are significant opportunity costs involved in maintaining headroom.[218] WIRAB adds that not every generating facility needs to provide primary frequency response all the time; instead the decision of whether a generating facility provides primary frequency response and the necessary amount of headroom should be determined by economic considerations rather than by generic requirements.[219] EEI supports the NOPR proposal not to include a generic headroom requirement in the *pro forma* LGIA and *pro forma* SGIA ''since these requirements go beyond capability (*i.e.,* equipment specifications.)'' [220] However, EEI also asserts that *not* requiring headroom while requiring all primary frequency responses to be timely and sustained would be discriminatory, because all generating facilities are not capable of timely responses.[221] We address this assertion above in Section II.C.3.

108. AWEA requests that the Commission consider expanding on the NOPR proposal by finding that it would be unjust and unreasonable for a transmission provider to impose a requirement for all generating facilities to reserve headroom to provide primary frequency response due to the large inefficiency and cost of such a requirement.[222] ESA asserts that it interprets the Commission's proposal as an explicit prohibition against requiring interconnection customers to reserve headroom as a condition of interconnection.[223]

3. Commission Determination

109. We will not mandate a headroom requirement at this time. We continue to believe that the reliability benefits from the proposed modifications to the *pro forma* LGIA and *pro forma* SGIA do not require imposing additional costs that would result from a generic headroom requirement.[224]

110. We decline to address AWEA's request to find it unjust and unreasonable for a transmission provider to impose a requirement for all generating facilities to reserve headroom to provide primary frequency response. Instead, in response to AWEA and ESA, we clarify that this final action does not prohibit a transmission provider from arguing to the Commission that headroom should be required as a condition of interconnection in a particular factual circumstance and proposing an associated compensation mechanism. We will evaluate any such filings on a case-by-case basis. Finally, we revise proposed Article 9.6.4 of the *pro forma* LGIA and Article 1.8.4 of the *pro forma* SGIA to delete the following reference: ''Nothing shall require the generating facility to operate above its minimum operating limit, below its maximum operating limit, or otherwise alter its dispatch to have headroom to provide primary frequency response.'' We believe that this phrase is unnecessary and that it is clear without it that we are not requiring headroom as a condition of interconnection.

E. Proposal Not To Mandate Compensation

1. NOPR Proposal

111. The Commission did not propose to mandate compensation related to the new primary frequency response requirements, stating ''the Commission has previously accepted changes to transmission provider tariffs that similarly required interconnection customers to install primary frequency response capability or that established specific governor settings, without requiring any accompanying compensation.'' [225] Further, the Commission clarified that the absence of a compensation mandate is not intended to prohibit a public utility from filing a proposal for primary frequency response compensation under section 205 of the FPA.[226]

2. Comments

112. Many commenters support not mandating compensation.[227] On the other hand, a few commenters reject the NOPR's overarching approach, asserting instead that a market-based approach or a centralized forward procurement process is needed.[228] Other commenters qualify their support of the NOPR's approach to compensation on future efforts to establish forward procurement or market mechanisms.[229]

113. Some commenters believe that compensation issues are best decided at the regional level.[230] ISO–RTO Council asserts that not mandating compensation is reasonable because ''[f]undamentally, the costs of providing primary frequency response by all registered generators should be viewed simply as a cost of reliable generator operation (similar to, for example, maintenance, staffing, metering, software, and communications).[231] APPA et al. agrees, stating that primary frequency response capability should be a standard feature of new generating facilities.[232] APPA et al. also notes that the Commission recently recognized imposing requirements for generating facilities with governor controls without additional compensation is a just and reasonable condition of participation in wholesale markets.[233] In addition, SoCal Edison believes that the costs of primary frequency response capability are already adequately recovered through existing bilateral or market-based capacity contracts.[234]

114. AWEA states that the cost of attaining primary frequency response capability for new generators is low [235] but asserts that the Commission's decision not to address compensation for primary frequency response capability in the proposed rulemaking is not a major concern, so long as there is no headroom requirement.[236] California Cities compares primary frequency response with a number of interconnection requirements for generating facilities in which the recovery of capital costs and operating

[215] *Id.*

[216] EEI, Public Interest Organizations, AWEA, ESA, ISO–RTO Council, Xcel, Idaho Power, WIRAB, NERC, First Solar.

[217] Idaho Power Comments at 2.

[218] AWEA Comments at 2; Public Interest Organizations Comments at 4; SDG&E Comments at 2.

[219] WIRAB Comments at 9.

[220] EEI Comments at 13.

[221] *Id.* at 11.

[222] AWEA Comments at 3.

[223] ESA Comments at 2.

[224] NOPR, 157 FERC ¶ 61,122 at P 44.

[225] *Id.* P 55 (citing *PJM Interconnection, L.L.C.,* 151 FERC ¶ 61,097 at n.58; *Cal. Indep. Sys. Operator Corp.,* 156 FERC ¶ 61,182, at PP 10–12 and 17 (2016); *New England Power Pool,* 109 FERC ¶ 61,155 (2004), *order on reh'g,* 110 FERC ¶ 61,335 (2005)).

[226] *Id.*

[227] ISO–RTO Council; WIRAB; Xcel; PG&E; APPA et al.; EEI; MISO TOs; NRECA; California Cities; and SoCal Edison.

[228] AES; SDG&E; API; Chelan County; R St. Institute; and CESA.

[229] AWEA; ELCON; Public Interest Organizations; and First Solar.

[230] Xcel Comments at 7; PG&E Comments at 2; EEI Comments at 11; MISO TOs Comments at 14.

[231] ISO–RTO Council Comments at 10.

[232] APPA et al. Comments at 6.

[233] *Id.* (citing *Cal. Indep. Sys. Operator Corp.,* 156 FERC ¶ 61,182 at P 17 (2016)).

[234] SoCal Edison Comments at 4.

[235] AWEA Comments at 1.

[236] *Id.* at 9.

expenses are not necessarily ensured.[237] California Cities states that developers of new generating facilities have the opportunity to recover capital costs for primary frequency response capability in the same ways they recover other capital costs associated with generation resources and can factor the costs of primary frequency response into their economic assessment of project viability under anticipated market conditions and into their negotiations for capacity sales.[238]

115. ELCON supports not mandating compensation, expressing its expectation that such costs should be low, observing that the administrative costs of a compensation scheme may outweigh the costs of providing mandated service.[239] Further, ELCON joins APPA et al. in noting that this is consistent with prior Commission decisions requiring the installation of primary frequency response capability or specifying governor settings, without mandating compensation.[240] ELCON emphasizes that its comments regarding compensation are limited to the currently proposed limited applicability of new requirements to new generation facilities because a broader approach would trigger more significant costs and should focus on market-based solutions such as that under Order No. 819.[241]

116. In support of compensation, several commenters state that the proposed requirements are inefficient or uneconomic because, among other points, they require new generating facilities to install and operate a governor or equivalent controls when the necessary primary frequency response could be provided at lower cost by another generating facility (*e.g.,* battery storage or existing generating facility).[242] These commenters believe that market-based procurement will create opportunities for transmission providers to obtain higher-quality frequency response at a lower cost compared to a mandatory primary frequency response requirement for all newly interconnecting generating facilities. Rather than the mandatory requirements proposed in the NOPR, some commenters prefer market-based compensation to incent the ''right'' level of primary frequency response.[243]

117. Other commenters believe that generating facilities should not be required to provide primary frequency response without compensation for their costs of providing the service.[244] SDG&E asserts that the NOPR proposals will not address the Commission's concerns regarding the decline in primary frequency response because ''uncompensated costs are at the root of poor historical performance.'' [245] Further, AWEA raises concerns that it is unjust and unreasonable to mandate that new generation incur investment and maintenance costs to be primary frequency response capable without being provided a real opportunity to recover such costs.[246] Competitive Suppliers assert that ''[a]ll resources that provide essential reliability services such as primary frequency response *and* inertia should be explicitly compensated rather than mandating generators provide them without distinct and additional compensation.'' [247] Competitive Suppliers urge the Commission to address compensation in a final rule or additional NOPR.[248] First Solar encourages the Commission to require compensation for the configuration and additional communication, software and control technologies required to operate the equipment at a solar PV generation facility to provide essential reliability services.[249] First Solar believes that the Commission should also require ISOs and RTOs develop a funding mechanism and operational and market rules to accommodate the headroom requirements for these facilities to provide frequency response.[250]

118. ESA raises concerns that, without compensation, the primary frequency response requirement for electric storage ''may produce disproportionate adverse economic impacts.'' [251] Therefore, ESA recommends that the Commission ''direct RTOs/ISOs to use pay-for-performance principles to price primary frequency response provision.'' [252] ESA relies on Order No. 755, where the Commission found that frequency regulation compensation practices that do not compensate performance result in rates that are unjust, unreasonable, and unduly discriminatory or preferential. ESA contends that the same argument applies to frequency response compensation.[253]

3. Commission Determination

119. We will not mandate compensation for primary frequency response service in this final action. We are not persuaded by comments that assert: (1) Generating facilities should not be required to provide a service if there is not explicit compensation; (2) market-based compensation would be more efficient than the NOPR proposal; (3) inertia should be compensated in this final action; and (4) that frequency regulation compensation under Order No. 755 requires that primary frequency response be compensated. We address each of these points below.

120. Commenter assertions that the Commission is improperly requiring the provision of a service without compensation are misplaced. While we are requiring newly interconnecting generating facilities to install equipment capable of providing frequency response and adhere to specified operating requirements, we are not mandating headroom, which is a necessary component for the provision of primary frequency response service. In addition, as stated in the NOPR, ''[t]he Commission has previously accepted changes to transmission provider tariffs that similarly required interconnection customers to install primary frequency response capability or that established specified governor settings, without requiring any accompanying compensation.'' [254] Further, we agree

[237] California Cities Comments at 4.

[238] *Id.*

[239] ELCON Comments at 6.

[240] *Id.* n.4 (citing *PJM Interconnection, L.L.C.,* 151 FERC ¶ 61,097 at n.58; *Cal. Indep. Sys. Operator Corp.,* 156 FERC ¶ 61,182, at PP 10–12 and 17 (2016); *New England Power Pool,* 109 FERC ¶ 61,155 (2004), *order on reh'g,* 110 FERC ¶ 61,335 (2005)).

[241] *Id.* at 7.

[242] AES Companies Comments at 9; API Comments at 4; AWEA Comments at 11; ELCON Supplemental Comments at 12, in support of R St Institute's Comments; Competitive Suppliers Comments at 4; ESA Comments at 6; Public Interest Organizations Comments at 2; R St Institute Comments at 4; SDG&E Comments at 5–6 and SDG&E Supplemental Comments at 2–3. Public Interest Organizations, in their Comments at 5–6, refer to the need to remove settlement system ''disincentives'' to the provision of primary frequency response by existing generators, which the Commission interprets as a request for compensation for providing this service.

[243] API Comments at 3–4; Chelan County Comments at 1–2; Public Interest Organizations Comments at 6–7; R St Institute's Comments at 2–3; and SDG&E Comments at 3.

[244] AWEA Comments at 10; ELCON Supplemental Comments at 12–13 (over longer term); Competitive Suppliers Comments at 3, 5; ESA Comments at 6–7; First Solar Comments at 4; MISO TOs Comments at 5 (compensation should be determined regionally); and SDG&E Comments at 3.

[245] SDG&E Comments at 3.

[246] AWEA Comments at 10.

[247] Competitive Suppliers Comments at 5.

[248] *Id.*

[249] First Solar Comments at 4.

[250] *Id.*

[251] ESA Comments at 4.

[252] *Id.* at 6.

[253] ESA Comments at 6–7 (citing *Frequency Regulation Compensation in Organized Wholesale Power Markets,* Order No. 755, FERC Stats. & Regs. ¶ 31,324, at P 2 (2011) (crossed referenced at 137 FERC ¶ 61,064).

[254] NOPR, 157 FERC ¶ 61,122 at P 55 (citing *PJM Interconnection, L.L.C.,* 151 FERC ¶ 61,097 at n.58; *Cal. Indep. Sys. Operator Corp.,* 156 FERC ¶ 61,182 at PP 10–12 and 17; *New England Power Pool,* 109 FERC ¶ 61,155, *order on reh'g,* 110 FERC ¶ 61,335). The Commission reiterated this approach in *Indianapolis Power & Light Company* v.

Continued

with California Cities that there are interconnection requirements for generating facilities in which the recovery of capital costs and operating expenses are not necessarily ensured.

121. On balance, we find that the record indicates that the cost of installing, maintaining, and operating a governor or equivalent controls is minimal.[255] Also, the greatest cost associated with providing primary frequency response results from maintaining headroom, as noted by several commenters.[256] No commenter provided any evidence suggesting that the costs of providing primary frequency response are greater than those indicated in the NOPR.[257] While the Commission has approved specific compensation for discrete services that require substantial identifiable costs, such as for frequency regulation and operating reserves, the Commission has not required specific compensation for all reliability-related costs. We agree with those commenters who observe that minimal reliability-related costs such as those incurred to provide primary frequency response, are reasonably considered to be part of the general cost of doing business, and are not specifically compensated.

122. With regard to requests for the Commission to mandate market-based compensation, we are not persuaded by assertions that mandatory market-based mechanisms for the procurement of primary frequency response capability are just and reasonable at this time given the record before us. While some economic efficiency may be gained from acquiring primary frequency response from the subset of generation that is most economically efficient at providing this service, we believe that the time and costs of developing a market in RTO/ISO regions or bilaterally purchasing the service in non-RTO/ISO regions should be carefully considered. ISO–RTO Council asserts, for example, that the administrative costs of developing and implementing market-based compensation of primary frequency response are likely to outweigh the incremental efficiency benefits.[258] Similarly, SDG&E states that, to develop a market, each RTO/ISO will have to address issues such as developing complex software to operate the market and verifying generator performance in sub-minute intervals, which may require the installation of high-quality metering equipment such as phasor measurement units.[259] Nonetheless, an RTO/ISO may propose such an approach upon an adequate showing under section 205, if it so chooses.

123. With regard to Competitive Suppliers' view that the Commission should mandate explicit compensation for inertial response, we decline to adopt such a requirement.[260] We recognize the reliability value of inertial response, as it helps to slow the rate of change of frequency during frequency deviations. In addition, very low levels of inertial response within an Interconnection increase the risk that the speed of primary frequency response delivery will be too slow to prevent large frequency deviations from exceeding pre-determined thresholds for load shedding or automatic generator trip protection. However, no commenter asserts that inertial response trends on the Eastern and Western Interconnections are approaching levels that could threaten reliability. In addition, because inertial response is provided automatically by the rotating mass of synchronous machines as system frequency deviates and is not controllable, synchronous generating facilities do not incur additional incremental costs to provide inertial response. Indeed, neither Competitive Suppliers nor any other commenter has indicated what, if any, incremental costs must be incurred to provide inertial response. Accordingly, we conclude that compensation for inertial response compensation is not warranted at this time.

124. We disagree with ESA's contention that the treatment of frequency regulation under Order No. 755 requires compensation of primary frequency response in this final action. In *Indianapolis Power,* the Commission rejected a similar request for primary frequency response compensation based on Order No. 755, finding that ''Order No. 755 is inapposite, as that order involved an existing market, where the Commission found that the frequency regulation compensation practices of RTOs and ISOs resulted in rates that are unjust, unreasonable, and unduly discriminatory or preferential.'' [261] For similar reasons, Order No. 755 is inapposite here.

125. AES and MISO TOs request that the Commission allow for the development of primary frequency response pools, self-supply of primary frequency response, and transferred primary frequency response markets.[262] We conclude that existing requirements (*e.g.,* contracts for frequency response service under Order No. 819,[263] and recent Commission action regarding transferred frequency response [264]) already address two of these options. Also, a Frequency Response Sharing Group under Reliability Standard BAL–003–1.1, is an option currently available to balancing authorities.

126. Finally, nothing in this final action is meant to prohibit a public utility from filing a proposal for primary frequency response compensation under section 205 of the FPA.[265]

F. Application to Existing Generating Facilities That Submit New Interconnection Requests That Result in an Executed or Unexecuted Interconnection Agreement

1. NOPR Proposal

127. In the NOPR, the Commission proposed to apply the revisions to the *pro forma* LGIA and *pro forma* SGIA to new generating facilities that execute or request the unexecuted filing of interconnection agreements on or after the effective date of any final action issued.[266] The Commission also proposed to apply the requirements to any large or small generating facility that has an executed or has requested the filing of an unexecuted LGIA or SGIA as of the effective date of any final action, but that takes any action that requires the submission of a new interconnection request on or after the effective date of any final action.[267] The Commission sought comment on the

Midcontinent Indep. Sys. Operator, Inc., 158 FERC ¶ 61,107, at PP 36–37 (2017) (*Indianapolis Power*) (denying Indianapolis Power's request that the Commission find MISO's Tariff to be unjust, unreasonable, and unduly discriminatory or preferential because it does not compensate suppliers of primary frequency response).

[255] *See* NOPR, 157 FERC ¶ 61,122 at PP 62–71; *see also* ISO–RTO Council Comments at 9 (stating ''the incremental cost to provide frequency response is minimal''); ELCON Comments at 6 (citing ''the low costs triggered by the NOPR's limited applicability to only new generating facilities''); AWEA Comments at 1 (stating ''the cost of attaining [primary frequency response] capability for new generators is low.'').

[256] *See* AWEA Comments at 9; Public Interest Organizations Comments at 4.

[257] *See* NOPR, 157 FERC ¶ 61,122 at P 41 (stating that ''small generating facilities are capable of installing and enabling governors at *low cost* in in a manner comparable to large generating facilities.'').

[258] *See* ISO–RTO Council Comments at 9–10. *See also* ELCON Comments at 6.

[259] *See* SDG&E Comments at n.6.

[260] *See* Competitive Suppliers Comments at 5.

[261] *Indianapolis Power,* 158 FERC ¶ 61,107 at P 37.

[262] AES Comments at 5; MISO TOs Comments at 11.

[263] *Third-Party Provision of Primary Frequency Response Service,* Order No. 819, FERC Stats. & Regs. ¶ 31,375 (2015) (cross-referenced at 153 FERC ¶ 61,220).

[264] *Cal. Indep. Sys. Operator Corp.,* 156 FERC ¶ 61,182, *order on clarification, compliance, and rehearing,* 158 FERC ¶ 61,129 (2017).

[265] *See* NOPR, 157 FERC ¶ 61,122 at P 55.

[266] *Id.* P 54.

[267] *Id.*

proposed effective date, including whether the proposed application of the requirements would be unduly burdensome.[268]

2. Comments

128. Most commenters addressing this issue agree with the proposed effective date and applicability, with some suggesting additional action would be helpful.[269] While Bonneville supports the Commission's proposed effective dates, it observes that ''if significant modifications are made to the generating facility, the cost of including primary frequency response capability may not add much to the cost of the modifications themselves.'' [270] Therefore, Bonneville believes that the Commission should ''explore defining what constitutes a 'significant modification'' and require existing generating facilities to include primary frequency response capability when making one.[271] California Cities support the Commission's proposal because the proposal is sufficiently narrow as to only include those generating facilities that make a substantial change.[272]

129. Other commenters, however, believe that the NOPR proposal should go further. ISO–RTO Council states that it ''is unaware of any limitations that would render the Commission's proposed effective date infeasible or unduly burdensome'' and therefore it supports the proposed effective date.[273] However, ISO–RTO Council suggests that the Commission expand the application of the primary frequency response capability and operating requirements to both conforming and non-conforming interconnection agreements resulting from new interconnection requests by existing generating facilities.[274] ISO–RTO Council explains that under the NOPR proposal, an existing interconnection customer that ''takes an action that requires the submission of a new interconnection request resulting in the execution of a conforming interconnection agreement would not be obligated under the Commission's proposed requirements because the interconnection agreement would not be filed.'' [275] Therefore, ISO–RTO Council recommends that the proposed requirements apply to any existing interconnection customer that takes any action that requires the submission of a new interconnection request that results in the execution of an interconnection agreement, regardless of whether the agreement is filed, or the filing of an unexecuted interconnection agreement after the effective date of any final action.[276]

130. Xcel contends that the Commission's proposal does not go far enough to ensure future generating facilities are capable of providing primary frequency response.[277] Xcel's concern pertains to the possibility of a generating facility obtaining an interconnection agreement for more generation than is initially installed. In this situation, new generating facilities installed years after the effective date of the final action would not be required to install primary frequency response capability because a new interconnection agreement for subsequent phases is not required.[278] Therefore, Xcel asks the Commission to consider requiring that any new generating facility added to expand an existing large or small generating facility more than two years after the effective date of the final action be required to provide primary frequency response, even if no new interconnection agreement is required.[279]

131. SVP raises concerns that the proposed reforms could apply to existing generating facilities if interconnection customers amend their interconnection agreements for minor updates involving no material substantive changes to the interconnected facilities or to the interconnection itself.[280] SVP explains that as a licensee of three hydropower projects, each with a generating capacity of less than 20 MW, SVP has for over 30 years continually procured interconnection service for these facilities through an interconnection agreement with PG&E.[281] SVP states that it is coordinating with PG&E and CAISO to reformat the existing agreements and that it may execute and file an amended agreement after the effective date of the final action with no material changes to the facilities or to the interconnection.[282] SVP seeks clarification that the proposed reforms will not apply to existing facilities with existing interconnection agreements that execute new form agreements if there are no material substantive changes to the interconnected facilities or to the interconnection itself.[283]

3. Commission Determination

132. With the clarifications noted below, we adopt the NOPR proposal to apply the primary frequency response requirements adopted herein to all newly interconnecting generating facilities as well as to all existing large and small generating facilities that take any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after the effective date of this final action.[284] In response to SVP's request, we clarify that where the submission of a new interconnection request by an existing generating facility results in an executed or unexecuted interconnection agreement by that existing generating facility, such event would be considered the triggering event that would impose the requirements of this final action. Accordingly, should an existing interconnection customer sign a new or amended interconnection agreement for reformatting purposes only those existing generating facilities would not be subject to the requirements of this final action.[285]

133. Bonneville suggests that the Commission should ''explore defining what constitutes a 'significant modification' '' to existing generating facilities that would subject them to the primary frequency response requirements adopted in this final action. It is unclear what Bonneville means by ''significant modification.'' However, we note that under the *pro forma* LGIP, a ''material modification'' [286] to an existing generating facility would result in an interconnection request requiring a new interconnection agreement, thereby

[268] *Id.*

[269] Idaho Power Comments at 2; WIRAB Comments at 8–9; First Solar Comments at 4; Bonneville Comments at 3; California Cities Comments at 3–4; ISO–RTO Council Comments at 8.

[270] Bonneville Comments at 3.

[271] *Id.*

[272] California Cities Comments at 3–4.

[273] ISO–RTO Council Comments at 8.

[274] *Id.*

[275] *Id.*

[276] *Id.*

[277] Xcel Comments at 6.

[278] *Id.*

[279] *Id.* Xcel states that this approach should not apply to an uprate of an existing facility.

[280] SVP Comments at 5–6.

[281] *Id.* at 4–5.

[282] *Id.* at 5.

[283] *Id.*

[284] NOPR, 157 FERC ¶ 61,122 at P 63.

[285] Article 1 of the *pro forma* LGIA defines an interconnection request as: ''an interconnection customer request, in the form of Appendix 1 to the Standard Large Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.'' Sections 30.9 and 30.10 of the *pro forma* LGIA provide that the LGIA and its appendices may be amended by mutual agreement of the parties and do not state that a new interconnection request must be submitted in order to do so.

[286] The *pro forma* LGIA defines a Material Modification as: ''those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.''

subjecting the existing generating facility to the requirements adopted in this final action.[287] The Commission has not adopted a bright-line definition of what constitutes a material modification; rather, that is a fact-specific inquiry.[288] Bonneville has not persuaded us that we should adopt such a bright line now. Bonneville provides no information regarding how many, if any, modification requests by existing generating facilities would not be deemed material, and would therefore not trigger the requirements of this final action, since the interconnection customer would not be required to submit a new interconnection request or execute a new interconnection agreement. Accordingly, we are not persuaded by Bonneville of the need to include a definition for the new term ''significant modification'' at this time.

134. Similarly, Xcel provides no support for its suggestion that a significant number of new generating facilities, covered by a prior interconnection agreement, may be built two or more years following the effective date of this final action and therefore should be subject to the primary frequency response requirements.[289] Accordingly, we decline to adopt Xcel's suggestion to require ''new generating facilities that are interconnected two years or more after the effective date of the Final Rule [to] also meet these requirements, even if a new interconnection agreement is not required.'' [290]

135. Further, the Commission believes that ISO–RTO Council's request that ''the Commission expand the application of the primary frequency response requirements to both conforming and non-conforming interconnection agreements resulting from new interconnection requests by existing generators'' is unnecessary.[291] ISO–RTO Council's concern relates to the NOPR's use of the phrase ''filing of an executed or unexecuted interconnection agreement.'' [292] We note that if an interconnection customer executes a new conforming interconnection agreement for an existing generating facility as a result of a new interconnection request, the agreement would not be filed at the Commission but instead reported in Electric Quarterly Reports (EQRs). However, a conforming new or amended LGIA or SGIA would need to conform to the specific transmission provider's most recently revised *pro forma* LGIA and *pro forma* SGIA, which would include the requirements of this final action. The Commission clarifies that the final action is intended to apply to all existing generating facilities that submit a new interconnection request that results in an executed or unexecuted interconnection agreement, regardless of whether that agreement is filed at the Commission or merely reported in EQRs.

G. Application to Existing Generating Facilities That Do Not Submit New Interconnection Requests That Result in an Executed or Unexecuted Interconnection Agreement

1. NOPR Proposal

136. In the NOPR, the Commission sought comment on the proposal to apply the proposed reforms only to newly interconnecting generating facilities. In particular, the Commission sought comment on whether additional primary frequency response performance or capability requirements for existing facilities are needed, and if so, whether the Commission should impose those requirements by: (1) Directing the development or modification of a reliability standard pursuant to section 215(d)(5) of the FPA; or (2) acting pursuant to section 206 of the FPA to require changes to the *pro forma* OATT.[293]

2. Comments

137. Most commenters oppose applying the proposed primary frequency response requirements to existing generating facilities.[294] Several commenters argue that requiring existing generating facilities to install and operate governors or equivalent controls would be overly expensive and unnecessarily burdensome.[295] Specifically, AWEA contends that a retroactive primary frequency response requirement would be particularly costly for older wind turbines with fixed blades that cannot physically provide primary frequency response, newer wind turbines that would still require substantial hardware and software changes, and turbines from vendors that are out of business.[296] Moreover, some commenters argue that a blanket requirement is unnecessary given generally adequate levels of frequency response at this time.[297]

138. NERC and the NYTOs contend that it is too soon after the implementation of Reliability Standard BAL–003–1.1 to determine whether it is necessary or appropriate to impose requirements for primary frequency response on existing generating facilities.[298]

139. On the other hand, Bonneville and ISO–RTO Council support reforms that would apply to existing generating facilities, suggesting that the Commission direct NERC to develop a Reliability Standard for frequency response. While Bonneville states that the cost to retrofit existing generators may be prohibitive, it contends that a standard similar to TRE's regional Reliability Standard BAL–001–TRE–01, which requires generator owners/operators in the Texas region to set their governors to meet performance requirements, would ensure both capability and performance.[299] ISO–RTO Council argues that the development of a Reliability Standard will spread frequency response requirements over many generating facilities in a non-discriminatory manner and help facilitate compliance with Reliability Standard BAL–003–1.1.[300]

140. Other commenters suggest that the Commission should wait to apply the proposed reforms to existing generation facilities until further research is completed. APPA et al. state that NERC's required report on the availability of generating facilities to provide frequency response,[301] due in July 2018, will better inform the Commission whether further action is needed on existing generating facilities.[302] WIRAB states that while it does not believe new or modified Reliability Standards are currently needed, it recommends that the Commission ''direct NERC and the Regional Entities to measure and monitor frequency response, particularly governor response and withdrawal, in Event Analysis and track resulting trends,'' [303] and develop guidelines and best practices that reflect regional differences.[304] WIRAB states

[287] *See pro forma* LGIP Sec. 4.4.3.

[288] *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 168.

[289] Xcel Comments at 6.

[290] *Id.* at 4.

[291] ISO–RTO Council Comments at 8.

[292] *See* NOPR, 157 FERC ¶ 61,122 at PP 46, 54, 63.

[293] NOPR, 157 FERC ¶ 61,122 at PP 3, 57.

[294] PG&E, APPA et al., AWEA, NRECA, WIRAB, ELCON, Competitive Suppliers, TVA, Public Interest Organizations, and Sunflower and Mid-Kansas oppose expanding the applicability of the reforms to existing generating facilities.

[295] APPA et al. Comments at 7–8; NRECA Comments at 10; Public Interest Organization Comments at 4; ELCON Comments at 5–6.

[296] AWEA Comments at 4.

[297] NRECA Comments at 10; WIRAB Comments at 10–12; Competitive Suppliers Comments at 6.

[298] NERC Comments at 8; NYTOs Supplemental Comments at 3–4.

[299] Bonneville Comments at 3–4.

[300] ISO–RTO Council Comments at 13.

[301] Order No. 794, 146 FERC ¶ 61,024 at P 3.

[302] APPA et al. Comments at 3–4.

[303] WIRAB Comments at 10.

[304] *Id.* at 4.

that NERC's Frequency Response Annual Analysis Report ''can easily be expanded to track trends, model and analyze frequency response in each of the interconnections over a 10-year time horizon, and to make recommendations regarding current and future frequency response needs.'' [305] WIRAB states that if significant declines in frequency response occur, such as decreasing frequency nadirs or continued evidence of governor withdrawal, the Commission could then direct NERC and the Regional Entities to develop or modify their mandatory reliability standards and/or update NERC's Primary Frequency Control Guideline to ensure frequency response is preserved.[306]

141. In order to encourage regional flexibility and periodic updating of the proposed maximum droop and deadband settings, WIRAB recommends that the Commission direct NERC and the Regional Entities ''to monitor frequency response capability in each region, revisit and revise NERC's droop and deadband setting guidelines as needed, and generated best practices'' to encourage generating facilities to ''appropriately tighten regional droop and deadband settings as needed to maintain system reliability.'' [307] Further, WIRAB recommends that the Commission periodically reexamine the specific droop and deadband settings, which should not be viewed as a ''once-and-for-all decision.'' [308] In support of its position, WIRAB reminds the Commission that NERC's Primary Frequency Control Guideline states that tighter deadband settings of approximately ±0.017 Hz can be successfully implemented and encouraged efforts to lower deadband settings to that level.[309]

142. Similarly, ISO–RTO Council requests the monitoring of the need for existing generators to provide primary frequency response. ISO–RTO Council acknowledges that NERC and the industry have already taken steps to ensure sufficient primary frequency response, including the development of Reliability Standard BAL–003–1.1, publishing an operating guide for generating facilities, outreach to governor and controls manufacturers, conducting webinars, as well as outreach to the North American Generator Forum.[310] ISO–RTO Council asserts that the Commission should not delay the issuance of the final action by requiring the development of a Reliability Standard for existing generating facilities.[311] Instead, it maintains such requirements should be evaluated and, if necessary, proposed in a future proceeding.[312]

3. Commission Determination

143. We will not impose primary frequency response requirements on existing generating facilities that do not submit new interconnection requests that result in an executed or unexecuted interconnection agreement. We conclude that applying the proposed requirements only to newly interconnecting generating facilities will adequately address the Commission's concerns regarding primary frequency response. We are persuaded by commenters that requiring existing generating facilities that have not submitted a new interconnection request to install and operate governors or equivalent controls would be overly expensive and unnecessarily burdensome.[313] The record indicates that costs of installing primary frequency response capability is minimal for newly interconnecting generating facilities, and as such, we do not believe that a mandate for compensation is needed at this time. However, the record also indicates that the expense to some existing facilities may be cost prohibitive,[314] for example if retrofits are needed, and accordingly we believe that applying the requirements to existing generating facilities may be unduly burdensome.

144. We agree that NERC, the Regional Entities, and other affected industry stakeholders should continue to measure and monitor the impact of Reliability Standard BAL–003–1.1 on generating facility frequency response performance, and the amount and adequacy of primary frequency response generally. We note that Order No. 794 required NERC to file in July 2018 the results of a study on the availability of existing generating facilities to provide primary frequency response.[315] We expect that NERC's July 2018 report will inform the Commission if additional action is warranted regarding the need to impose additional requirements on existing generating facilities.

145. NERC's July 2018 report will afford an opportunity for all interested parties to consider WIRAB's recommendation to expand the scope of NERC's Frequency Response Annual Analysis Report and/or State of Reliability Report to ''track trends, model and analyze frequency response in each of the [I]nterconnections over a 10-year time horizon, and to make recommendations regarding current and future frequency response needs.'' [316] The July 2018 report may also provide insight into whether NERC should consider tracking and reporting the resulting trends of frequency response performance at the regional level (*e.g.,* at the regional entity or balancing authority level), and if necessary, develop guidelines and/or best practices that reflect regional differences.[317] This will allow the Commission to access future standards directives, as necessary.

146. We also encourage NERC to review, and if necessary, update its Primary Frequency Control Guideline as appropriate to reflect changes in the generation resource mix, particularly as it pertains to the technical attributes of non-synchronous generating facilities.

147. In addition, NERC and the Regional Entities should also continue to monitor the operation and impact of the operating requirements for droop, deadband, and sustained response adopted in this final action, and recommend to the Commission any changes to those settings (*e.g.,* lower droop values or tighter deadband settings) in the future that may become appropriate in light of changed circumstances.

H. Requests for Exemption or Special Accommodation

1. Combined Heat and Power Facilities

a. NOPR Proposal

148. In the NOPR, the Commission proposed to apply the primary frequency response capability and operating requirements to all newly interconnecting generating facilities, including CHP facilities.

b. Comments

149. ELCON and API contend that the special characteristics of industrial CHP generating facilities warrant an exemption or special accommodation from the proposed revisions to the *pro forma* LGIA and *pro forma* SGIA.[318]

[305] *Id.* at 10.

[306] *Id.* at 11.

[307] *Id.* at 4.

[308] *Id.*

[309] *Id.* at 4–5.

[310] ISO–RTO Council Comments at 11, n.23.

[311] *Id.*

[312] *Id.*

[313] APPA et al. Comments at 7–8; NRECA Comments at 10; Public Interest Organization Comments at 4; ELCON Comments at 5–6.

[314] *See, e.g.,* Bonneville Comments at 3.

[315] Order No. 794, 146 FERC ¶ 61,024 at P 3.

[316] *See* WIRAB Comments at 10.

[317] NERC already tracks frequency response performance at the Interconnection-wide level in its annual State of Reliability Report.

[318] ELCON Comments at 8–9; API Comments at 4–5. The Commission notes that API states that CHP and cogeneration facilities are interchangeable. *See* API Comments at 2. However, this final action uses

Continued

ELCON is concerned that, because of the unique connection between their generation and industrial equipment, the mandatory nature of the new primary frequency response requirements could adversely impact the manufacturing processes of its member companies. ELCON asserts that the generation equipment in CHP facilities ''which are part and parcel of the load itself, cannot be treated as if they were conventional, stand-alone generators, and forcing them to act as stand-alone generation will compromise and potentially harm the manufacturing process by interfering with the steam balance.'' [319]

150. In particular, ELCON explains that ''[g]eneration equipment that is integrated with industrial process equipment is operated to optimize the overall manufacturing process including the safe operation of critical infrastructure'' and that ''[r]equiring all industrial generation to provide primary frequency response without respect to the operational needs of the manufacturing process may jeopardize the reliability and safe operation of both.'' [320]

151. ELCON explains that there are a ''wide variety of configurations and capacities in the universe of CHP generators that are dedicated to an industrial process,'' with some CHP industrial facilities designed to generate in excess of their load having ''the flexibility to provide [primary frequency response] to the extent their industrial process would not be impacted.'' [321] ELCON also notes that other CHP facilities are sized to match their industrial load, ''which in reality means sized to the steam or thermal requirement of the host manufacturing process.'' [322] ELCON asserts that ''[s]uch facilities cannot reasonably provide [primary frequency response] service without compromising the efficiency, reliability and safe operation of the manufacturing process.'' [323]

152. For example, ELCON states that an increasing number of manufacturers are installing turbines at their industrial facilities to obtain lower emissions and other benefits [324] that are susceptible to a loss of combustion during certain types of frequency excursions. ELCON explains that such events could have severe consequences, including load curtailment and suspension, a manufacturing shutdown, and execution of emergency procedures to de-pressure and stabilize equipment.[325] ELCON states that additional implications of such events include ''the loss of production, possibly for an extended period, additional maintenance and repair costs for equipment, additional personnel costs, excess emissions during shutdown and startup procedures, and although the shutdown process is designed to be executed safely and effectively, some increased potential for safety, health, and environmental consequences.'' [326] During under-frequency conditions, the provision of primary frequency response results in increased MW output, which ELCON explains may result in a level of steam production that exceeds the operating requirements of the manufacturing process.[327]

153. To address these concerns, ELCON states that ''the proposed LGIA and SGIA language should be revised to explicitly exclude imposition of mandatory primary frequency response obligations on industrial CHP units and other similarly-situated forms of industrial behind-the-meter generation.'' [328] ELCON proposes the following new language for the *pro forma* LGIA, Section 9.6.4.3 and *pro forma* SGIA, Section 1.8.4.3 to specifically exempt ''industrial behind-the-meter generation that is sized-to-load (*i.e.,* the industrial load and the generation are near-balanced in real-time operation and the generation is controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirement of its host industrial facility).'' [329] ELCON asserts, however, that an exemption from the mandatory primary frequency response obligation still could allow certain industrial processes that are capable of providing primary frequency response to opt-in to such arrangements.[330]

154. API supports ELCON's exemption request, adding that CHP facilities bring certain benefits such as high efficiency and lowered emissions and that the proposal may present a barrier to entry for such generating facilities.[331] API contends that adjusting operating levels for reasons outside of the manufacturing process, such as in response to instructions of the balancing authority, ''risks a decline in CHP efficiency and may introduce substantial risks to the manufacturing process.'' [332] Accordingly, API requests that the final action exempt all CHP technologies from maintaining and operating automatic turbine-generator governors as a condition of interconnection, regardless of whether they are sized for load or not.[333]

c. Commission Determination

155. The Commission exempts newly interconnecting CHP facilities that are sized to serve on-site load and have no material export capability from the operating requirements of this final action. However, considering the low costs associated with governor installation, we will require all newly interconnecting CHP facilities, including those sized-to-load, to install a governor or equivalent control equipment capable of providing primary frequency response as a condition of interconnection as proposed in the NOPR.[334] We believe that it is prudent to require newly interconnecting CHP facilities to install primary frequency response capability now in the event that there is an increased need in the future for primary frequency response capability. Further, we adopt, with certain modifications, the definition of ''sized-to-load'' contained in ELCON's proposed new language for the *pro forma* LGIA and *pro forma* SGIA.[335] In particular, we define CHP facilities that are ''sized-to-load'' as those generating facilities that are behind-the-meter generation that are sized-to-load (*i.e.,* the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirement of its host facility).[336] We believe that ELCON's request to limit the definition of ''sized-to-load'' only to industrial CHP facilities is too narrow.

156. We agree with ELCON and API that CHP facilities sized-to-load present

only the term ''CHP'' to avoid confusion with ''cogeneration facility,'' which is a defined term under the Public Utility Regulatory Policies Act of 1978. *See* 18 CFR 292.203(b) and 292.205 (2017).

[319] ELCON Comments at 9.

[320] *Id.* at 8.

[321] ELCON Supplemental Comments at 2–3.

[322] *Id.*

[323] *Id.*

[324] Combustion turbines operating in ''lean-burn'' mode use a higher air to fuel ratio (*i.e.,* excess air is allowed into the process) to reduce NOx emissions.

[325] ELCON Supplemental Comments at 4.

[326] *Id.* at 4–5.

[327] *Id.* at 6. ELCON raises an additional concern that mandating primary frequency response could discourage the development of CHP facilities ''because of the added investment cost, operational risk, efficiency loss and regulatory burden.'' *Id.* at 9.

[328] *Id.* at 9.

[329] *Id.* at 11.

[330] *Id.*

[331] API Comments at 5.

[332] *Id.*

[333] *Id.* at 4.

[334] ELCON noted ''the low costs triggered by the NOPR's limited applicability to only new generation facilities'' when agreeing with the Commission's proposal not to mandate compensation. ELCON Comments at 6.

[335] *See* ELCON Supplemental Comments at 11.

[336] *Id.*

unique concerns regarding the efficiency, reliability, and safe operation of their industrial processes that warrant this exemption. For example, ELCON notes that an increasing number of interconnection customers with CHP facilities are using turbines susceptible to a loss of combustion during certain types of frequency excursions, and that such events could have severe consequences, including load curtailment and suspension, a manufacturing shutdown, and execution of emergency procedures to de-pressure and stabilize equipment.[337] Additionally, during under-frequency conditions, the provision of primary frequency response results in increased MW output, which ELCON explains may result in a level of steam production that exceeds the operating requirements of the manufacturing process.[338]

2. Electric Storage Resources

a. NOPR Proposal

157. The NOPR proposed to apply the primary frequency response capability and operating requirements to all new generating facilities, including electric storage resources, without exception.

b. Comments

i. NOPR Comments

158. While most comments on the NOPR did not specifically request an exemption for electric storage resources, some commenters suggest changes to the proposed *pro forma* LGIA and *pro forma* SGIA provisions to accommodate electric storage resources. In particular, ESA argues that the proposed requirements disproportionately affect electric storage resources in four ways.[339] First, ESA states that the use of a nameplate capacity basis for primary frequency response will require storage to provide more frequent and greater magnitude of primary frequency response service than traditional generating facilities.[340] For example, ESA argues if a traditional generating facility with a nameplate capacity of 100 MW has a minimum set point of 40 MW, the primary frequency response service will be based on the 60 MW of capacity above that minimum set point. However, ESA states that electric storage has no minimum set point and is capable of operating at the full range of its capacity for withdrawals and injections.[341]

159. Second, ESA claims that whereas traditional generating facilities start-up and shut-down as a part of normal operations and are not required to provide primary frequency response while offline, electric storage resources are, by contrast, ''always online'' even when not charging or discharging.[342] Therefore, ESA suggests that electric storage resources will be available, on a more frequent basis, to provide primary frequency response than other generating facilities that go offline.[343] Third, ESA states that different electric storage technologies have different optimal depths of discharge, and exceeding the optimal depth of discharge accelerates the degradation of the facility and increases operations and maintenance costs. ESA asserts that this scenario indicates the potential of the use of nameplate capacity as the basis for primary frequency response to result in a disproportionate impact on electric storage resources.[344]

160. Fourth, ESA notes that unlike traditional generating facilities, electric storage is energy limited. Thus, ESA argues that the requirement to sustain output in proposed section 9.6.4.2 of the *pro forma* LGIA poses unique regulatory and financial exposure, such as NERC violations and lost revenues in future intervals, especially when a storage resource is at a low state of charge subsequent to the provision of energy or ancillary services.[345]

161. ESA claims that, for these reasons, the proposal is unduly discriminatory by potentially burdening storage, and recommends that the NOPR proposal be modified to: (1) Establish a minimum set point for primary frequency response service; and (2) include inadequate state of charge as an explicit operational constraint exempting storage from maintaining sustained output.[346] Absent these requested changes, ESA requests a complete exemption for electric storage resources.[347]

162. AES Companies request a complete exemption from the proposed NOPR requirements for electric storage resources including but not limited to battery storage devices providing one or more ancillary services.[348] AES Companies assert that the proposed requirement of a maximum five percent droop setting, if imposed, would unnecessarily limit the benefits that electric storage resources specifically designed for primary frequency response can contribute to grid stability.[349] AES Companies also state that a five percent droop setting ignores the majority of the primary frequency response capacity that an electric storage resource was designed to deliver by directing the resource to deliver only a fraction of its benefits.[350] AES Companies further argue for an exemption from the requirement to dedicate a portion of the capacity of an electric storage resource for the provision of primary frequency response.[351] AES Companies state that droop parameters should be specific to the technology, and that requiring, for instance, a lithium ion battery to provide primary frequency response at its full capacity would require a droop approaching 0 percent.[352]

ii. Supplemental Comments

163. Supplemental commenters are split on whether electric storage resources should be subject to the operating requirements proposed in the NOPR. Tri-State, ISO–RTO Council, Berkshire, NERC, and WIRAB support applying the proposed requirements to electric storage resources. SoCal Edison opposes the proposed operating requirements, but explains that if the Commission adopts the proposal, it should be applicable to all newly interconnecting generating facilities on a technology neutral basis so that such requirements will be implemented in a non-discriminatory fashion.[353]

164. However, Sunrun, AES Companies, and CESA comment that electric storage resources would bear a disproportionate impact compared to other resources due to the proposed droop and sustained response requirements, and therefore request an exemption or an accommodation from the proposed requirements. Several other commenters reiterate their initial NOPR comments that operating requirements for primary frequency response should not be included in the *pro forma* LGIA and *pro forma* SGIA, stating that a market-based approach to

[337] ELCON Supplemental Comments at 4.

[338] *Id.* at 6. ELCON raises an additional concern that mandating primary frequency response could discourage the development of CHP facilities ''because of the added investment cost, operational risk, efficiency loss and regulatory burden.'' *Id.* at 9.

[339] ESA Comments at 3.

[340] *Id.* at 3–4.

[341] *Id.*

[342] *Id.* at 4.

[343] *Id.*

[344] *Id.* at 3–4.

[345] *Id.* at 4.

[346] *Id.* at 4–5.

[347] *Id.* at 5.

[348] *See* AES Companies Comments at 17, 19 (*i.e.,* specified changes to the *pro forma* language).

[349] *Id.* at 6. AES Companies contend that a five percent droop will limit the amount of capacity that an electric storage resource can dedicate to primary frequency response service.

[350] *Id.*

[351] *Id.* at 6. The Commission notes that in the NOPR, it did not propose any mandatory headroom requirements.

[352] AES Companies Comments at 7.

[353] SoCal Edison Supplemental Comments at 2.

primary frequency response, or regional flexibility in facilitating the provision of primary frequency response (*e.g.,* allowing balancing authorities to determine which generating facilities should supply primary frequency response) would lead to more efficient and cost effective outcomes.[354]

165. A number of commenters reference either technical or economic challenges that would be unique to electric storage resources under the proposed requirements. Sunrun, ESA, and CESA state that electric storage resources have a finite lifecycle, and that compliance with the proposed operating requirements for timely and sustained response may limit the lifetime of an electric storage resource.[355] These commenters also assert that different electric storage technologies will have different depths of discharge and may face different challenges under the proposed operating requirements.

166. ESA argues that the proposed droop and sustained response requirements would impose adverse conditions on electric storage resources because they would bear a disproportionate impact on the provision of primary frequency response capability compared to other generating facilities. In particular, ESA asserts that because electric storage resources are energy-limited, it is inappropriate to require electric storage resources to provide sustained response because doing so would constrain electric storage resources from effectively managing their fuel supply (*i.e.,* state of charge), potentially reducing their ability to fulfill service obligations and creating an effective headroom requirement.[356]

167. ESA restates its NOPR comment that droop is calculated as a percent of nameplate capacity above a minimum set point, and because electric storage resources lack such a set point, storage resources will be required to provide proportionally greater primary frequency response service.[357] In addition, ESA states that if an electric storage resource is charging when called upon to provide primary frequency response, the switch to discharging means that the electric storage resource will provide both the injected energy and the removal of an effective ''load,'' creating a response significantly greater than contemplated in the proposed droop settings.[358] However, EPRI states that this concern can be mitigated if the Commission makes certain clarifications in the final action. In particular, EPRI states that the NOPR requirement setting the droop curve at no more than five percent, based on nameplate capacity, can be assumed to refer to a slope equating to a five percent change in frequency causing a change in the full discharge capacity (not discharge capacity plus charge capacity) of the electric storage resource.[359] Both AES Companies and ESA comment that the proposed deadband and timely response requirements do not pose challenges or adverse operational impacts for most electric storage resources.[360]

168. Additionally, ESA claims that since electric storage resources are always ''online,'' as opposed to generating facilities that start-up and shut-down (*i.e.,* go offline), electric storage resources would be available to provide primary frequency response on a more frequent basis, and would therefore be expected to provide more primary frequency response service than generating facilities that go offline.[361] On the other hand, APS states that while it acknowledges that electric storage resources could provide more primary frequency response than other resources, such provision will be limited by the obligations and operational characteristics and design of such resources, similar to all other resource types. In particular, if there is to be a minimum state of charge below which electric storage resources would not have to provide primary frequency response, these resources may not be providing primary frequency response of greater magnitude than other resources.[362]

169. Several commenters assert that there is little substantive difference between the operating constraints faced by electric storage resources and the operational characteristics that limit the capacity of other types of generating facilities to provide primary frequency response.[363] For example, NERC asserts that ''run-of-river hydro units may have insufficient river flow, thermal units may have discharge temperature limitations on cooling water, gas turbines may need to be derated during the summer, pumped storage may not have yet refilled storage reservoirs, and units may be in the middle of coming on or going off-line.'' [364] NERC states that while several types of generating facilities have technical limitations that may inhibit their ability to provide primary frequency response under certain circumstances, these operating constraints should not preclude any generating facility from maintaining primary frequency response capability.[365] A number of supplemental commenters state that any determination regarding accommodations to mitigate such operational constraints, including, for example, the threshold limit below which an electric storage resource should be required to provide primary frequency response or allowed to disconnect from the grid during low frequency events, must be made on a case-by-case basis and can be done during the interconnection process.[366] Further, APS comments that the operational wear and tear on electric storage resources and its impact on the overall life expectancy of an electric resource is not significantly different than the potential impact of wear and tear on other generating facilities.[367]

170. ISO–RTO Council also believes that possible accommodations or exemptions for electric storage resources and small generators are unwarranted, stating that such measures could allow such resources to avoid solving the very problem to which such resources contribute and the NOPR rules were intended to address.[368] ISO–RTO Council asserts that the proposed requirements are consistent with the recommendations and guidelines contained in NERC's Primary Frequency Control Guideline, and are similar to the current requirements of PJM, ISO–NE, and CAISO for electric storage resources and/or small generators to install, maintain and operate primary frequency response related equipment as a condition of interconnection ''that have not required exemptions for either electric storage resources or small generators.'' [369] ISO–RTO Council

[354] *See, e.g.,* EEI Comments at 4–5.

[355] Sunrun Supplemental Comments at 2; ESA Supplemental Comments at 4; CESA Supplemental Comments at 11.

[356] ESA Supplemental Comments at 3.

[357] *Id.* at 4.

[358] *Id.*

[359] EPRI Supplemental Comments at 6.

[360] AES Companies Supplemental Comments at 23; ESA Supplemental Comments at 6.

[361] ESA Supplemental Comments at 7.

[362] APS Supplemental Comments at 6.

[363] *See, e.g.,* APS Supplemental Comments at 4; NERC Supplemental Comments at 5, stating that operating constraints should not preclude any new generating facility from maintaining primary frequency response capability.

[364] NERC Supplemental Comments at 5.

[365] *Id.*

[366] *See, e.g.,* APS Supplemental Comments at 5, 7; EPRI Supplemental Comments at 12–13; NRECA Supplemental Comments at 3; NERC Supplemental Comments at 5, stating that interconnection customers should evaluate any ''technical limitations on a unit-by-unit basis and coordinate with their NERC Balancing Authority and Interconnection Agreement Transmission Provider/Transmission Owner, as appropriate.''

[367] APS Supplemental Comments at 7.

[368] ISO–RTO Council Supplemental Comments at 2.

[369] *Id.* at 3.

further notes that primary frequency response capability requirements that already exist in ''areas with substantial penetration of renewable resources'' in the European Union have not had ''negative impacts.'' [370]

171. EPRI states that the unique characteristics of electric storage resources should not directly affect the current requirements for droop settings.[371] Specifically, EPRI comments that there is a limited amount of additional power required (2 percent of nameplate or less for a 0.1 Hz frequency deviation) and a limited amount of time it must be sustained (generally five minutes or less, maximum about seven minutes).[372] EPRI concludes that the energy required to provide sustained frequency response is very small in relation to the energy that the electric storage resource would be providing otherwise.[373]

172. While ESA supports an exemption for electric storage resources, it suggests several accommodations to the proposed requirements to mitigate the potentially adverse impact of the proposed requirements on electric storage resources. ESA asserts that electric storage resources should have a means to effectively ''go offline,'' similar to generating facilities on shut down, and that the language ''whenever the Large Generating Facility is operated in parallel with the Transmission System'' in Section 9.6.2.1 should be interpreted to mean providing services to the grid and should exclude simply being idle.[374] WIRAB adds that it would not be just and reasonable to require an electric storage resource to enable primary frequency response while in standby mode when other generating facilities are not subject to a similar requirement.[375]

173. ESA also suggests that electric storage resources should be exempt from requirements for providing sustained primary frequency response when such a resource does not have enough energy stored to provide sustained frequency response at required capacity when a frequency deviation occurs (*i.e.,* inadequate state of charge).[376] ESA states that this exemption for ''inadequate state of charge'' should be included along with the allowances for ambient temperature limitations, outages of mechanical equipment, and regulatory requirements in the proposed tariff language of Section 9.6.4.2. WIRAB agrees that the concept of energy limitation should be included as an exemption to sustained response in proposed Section 9.6.4.2 of the *pro forma* LGIA and 1.8.4.2 of the *pro forma* SGIA, but clarifies that this exemption should not apply only to electric storage resources because other generating facilities also face energy limitations.[377]

174. ESA states that, in lieu of other mechanisms to accommodate electric storage resources, operators of electric storage resources could specify an operating range outside of which electric storage resources would not be required to provide and/or sustain primary frequency response.[378] Doing so, according to ESA, would prevent the excessive wear and tear impacts on electric storage resources, as well as potentially mitigate inadequate state of charge for sustained response.[379] However, ESA states that even with this approach to mitigate adverse impacts of primary frequency response requirements, electric storage resources would continue to face constraints on state of charge management and a reduction in capability to provide other energy and ancillary services, primarily as a result of the unpredictable nature of abnormal frequency deviations.[380] APS comments that establishing a minimum set point or an operating range are both workable solutions, and argues that the Commission should allow flexibility in determining the approach on a case-by-case basis.[381] APS states that an operating range could be established through collaboration and evaluation during the interconnection process and included in the interconnection agreement.[382] EPRI comments that a static operating range could lead to inefficiencies.[383] AES Companies does not support the use of an operating range.[384]

175. SDG&E believes that markets for primary frequency response have the potential to eliminate nearly all the issues addressed by the questions in the Commission's Request for Supplemental Comments.[385] Berkshire recommends that the Commission acknowledge in the final action that electric storage resources are not always utilized as generation or accounted for as generation assets, and that the Commission consider holding a technical conference to discuss alternative applications for electric storage resources apart from providing primary frequency response within a prescribed bandwidth.[386]

c. Commission Determination

176. In consideration of the unique physical and operational characteristics of electric storage resources, we will require transmission providers to include in their *pro forma* LGIA and *pro forma* SGIA specific accommodations for electric storage resources and place limitations on when electric storage resources will be required to provide primary frequency response consistent with the conditions set forth in Sections 9.6.4, 9.6.4.1, 9.6.4.2, 9.6.4.3, and 9.6.4.4 of the *pro forma* LGIA and Sections 1.8.4, 1.8.4.1, 1.8.4.2, 1.8.4.3, and 1.8.4.4 of the *pro forma* SGIA, as applicable.

177. Specifically, as discussed in further detail below, this includes the identification of an operating range within which electric storage resources will be required to provide primary frequency response, the identification of particular operating circumstances when electric storage resources will not be required to provide primary frequency response, and the inclusion of energy limitations in the list of exemptions from the requirement to provide primary frequency response.

178. We disagree with SoCal Edison, ISO–RTO Council, and WIRAB that suggest electric storage resources should be subject to the same requirements for primary frequency response as all other resources.[387] We find that the provision of primary frequency response in accordance with the requirements of this final action may present challenges for some electric storage resources. Specifically, we are persuaded by ESA's comments that requiring an electric storage resource to sustain its output without any consideration for whether the electric storage resource has sufficient state of charge could result in depths of discharge that could accelerate the degradation of an electric storage resource. However, while we agree that electric storage resources could experience disproportionate harm from the proposed requirements under some circumstances, we are also persuaded by EPRI's suggestion that those harms would be modest and can be mitigated with certain

[370] *Id.* at 4 (citing ENTSO–E requirements for Generators, Chapter 1, Article 13).

[371] EPRI Supplemental Comments at 4.

[372] *Id.*

[373] *Id.*

[374] ESA Supplemental Comments at 8.

[375] WIRAB Supplemental Comments at 6.

[376] ESA Supplemental Comments at 10.

[377] WIRAB Supplemental Comments at 5.

[378] ESA Supplemental Comments at 12–13.

[379] *Id.* at 13.

[380] *Id.*

[381] APS Supplemental Comments at 9.

[382] *Id.* at 8–9.

[383] EPRI Supplemental Comments at 15.

[384] AES Companies Supplemental Comments at 38.

[385] SDG&E Supplemental Comments at 3–4

[386] Berkshire Supplemental Comments at 2–3.

[387] ISO-RTO Supplemental Comments at 4–5; SoCal Edison Supplemental Comments at 2; WIRAB Supplemental Comments at 3.

accommodations.[388] In particular, EPRI notes that ''the energy required to provide sustained primary frequency response is very small in relation to the energy that the electric storage resource would be providing otherwise due to provision of energy or other ancillary services such that the risk of running into state of charge limits would already be known and not likely impacted by provision of primary frequency response by itself.'' [389]

179. We are persuaded by ESA's comment that allowing operators of electric storage resources to specify an operating range ''would prevent the excessive wear and tear impacts on electric storage as well as potentially mitigate inadequate state of charge for sustained response.'' [390] Therefore, while acknowledging the limited degree of the amount of energy that will be required to provide sustained response,[391] we find that, on balance, limiting the circumstances under which electric storage resources are required to provide primary frequency response will adequately alleviate the potential for excessive wear and tear that may have otherwise been experienced by electric storage resources.

180. Specifically, we will require electric storage resources to identify in their interconnection request an operating range for the basis of the provision of primary frequency response. This operating range will represent the minimum and maximum states of charge between which an electric storage resource will be required to provide primary frequency response. The operating range for each electric storage resource will need to be agreed to by the interconnection customer and transmission provider, in consultation with the applicable balancing authority or any other relevant parties as appropriate, consider the system needs for primary frequency response, and the physical limitations of the electric storage resource as identified by the developer and any relevant manufacturer specifications, and be established in Appendix C of the *pro forma* LGIA (''Interconnection Details'') or Attachment 5 of the *pro forma* SGIA (''Additional Operating Requirements for the Transmission Provider's Transmission System and Affected Systems Needed to Support the Interconnection Customer's Needs''). We find that this operating range addresses concerns regarding excessive wear and tear on electric storage resources, mitigates the concerns about inadequate state of charge, and effectively allows electric storage resources to identify a minimum and maximum set point below and above which they will not be obligated to provide primary frequency response comparable to synchronous generation as suggested by ESA.[392]

181. However, we do not agree with ESA that electric storage resources should not be required to specify the details of an inadequate state of charge parameter in their interconnection agreements.[393] We find that requiring an electric storage resource to identify the states of charge at which it is unable to inject or receive additional energy to provide primary frequency response is necessary to mitigate the adverse impacts on electric storage resources while still requiring them to provide this essential reliability service when they are technically capable to do so. While we believe that the interconnection customer will have the best information regarding the physical capabilities of the electric storage resource and any limitations that should be placed on its operations due to manufacturer specifications, we also believe that the transmission provider will have the best information with respect to: (1) The expected magnitude of frequency deviations; (2) the expected duration that system frequency will remain outside of the deadband parameter; and (3) the expected incidence of frequency deviations outside of the deadband parameter. This information from the transmission provider is necessary for the interconnection customer to calculate the anticipated obligations to provide primary frequency response for an electric storage resource in terms of the energy requirements for individual incidents, as well as increased electricity throughput (*i.e.,* cycling) over the life of the electric storage resource. We note that both the physical limitations of the electric storage resource, as identified by the interconnection customer, and the expected primary frequency response system requirements, as identified by the transmission provider, may be necessary to determine the appropriate operating range for an electric storage resource. Therefore, we find that it is necessary to provide the interconnection customer with the ability to propose an operating range with its initial interconnection request, but also allow the transmission provider and/or balancing authority to consider the system needs for primary frequency response prior to reaching an agreement on the final operating range among the parties in a LGIA or SGIA. We also find that the transmission providers must treat electric storage resources in a not unduly discriminatory or preferential manner when determining the appropriate operating range.

182. Because the requirements for primary frequency response may change over time, the Commission is persuaded by commenters that it is appropriate to provide transmission providers with flexibility to determine whether the operating ranges established in the interconnection agreements for electric storage resources are static or dynamic values.[394] We understand that system conditions and contingency planning can change, which may alter the anticipated incidence, magnitude, and duration of frequency deviations. Additionally, the capabilities of electric storage resources to provide primary frequency response may change due to degradation, repowering, or changes in service obligations, and these may also need to be considered when revisiting a dynamic operating range.[395] If a transmission provider decides to implement a dynamic operating range for an electric storage resource to provide primary frequency response, it must also determine how frequently the operating range will be reevaluated and the factors that may be considered when reevaluating it either on a case-by-case basis in Appendix C of the *pro forma* LGIA and Attachment 5 of the *pro forma* SGIA, or as a standard approach filed in compliance with this final action. To the extent that the interconnection customer and the transmission provider

[388] ''If an electric storage resource is not providing any online service, it should not be required to provide primary frequency response to align with the rules designated in the NOPR.'' EPRI Supplemental Comments at 8; ''Resources claiming artificial minimum set points during operational time frames that they would not provide primary frequency response during over-frequency events can be managed on a case-by-case basis, if sufficient primary frequency response capability is otherwise available.'' EPRI Supplemental Comments at 10; ''The [operating] range should be provided if there are any ''rough zones'' for any technologies where primary frequency response is not controllable, not possible, or would lead to extraordinary damage or wear-and-tear costs.'' EPRI Supplemental Comments at 15.

[389] EPRI Supplemental Comments at 4.

[390] *See* ESA Supplemental Comments at 12–13.

[391] *See* EPRI Supplemental Comments at 4, stating that ''the energy required to provide sustained primary frequency response is very small in relation to the energy that the electric storage resource would be providing otherwise due to provision of energy or other ancillary services.''

[392] *See* ESA Supplemental Comments at 12–13.

[393] *See* ESA Supplemental Comments at 11.

[394] *See, e.g.,* APS Supplemental Comments at 8; EPRI Supplemental Comments at 15; ESA Supplemental Comments at 13.

[395] A dynamic operating range will allow the minimum and maximum state of charge values that define the operating range to change over time based on changing system needs and/or electric storage resource capabilities.

cannot agree on these issues, the interconnection customer has the right to request the filing of an unexecuted interconnection agreement to seek Commission resolution.

183. Additionally, we agree with comments that suggest certain electric storage technologies are always online and capable of providing primary frequency response, and that without any accommodation, those resources could be required to provide sustained primary frequency response more frequently than other generating facilities that start up and shut down (*i.e.,* go offline).[396] Therefore, we find that it is appropriate to place limitations on when electric storage resources are required to provide primary frequency response. In particular, we agree with EPRI that ''[if] an electric storage resource is not providing any online service, it should not be required to provide primary frequency response.'' [397] To require an electric storage resource to provide a service under conditions that other generating facilities are not required to provide it would raise discrimination concerns. Therefore, we revise the *pro forma* LGIA and *pro forma* SGIA to make clear that electric storage resources will only be required to provide primary frequency response when they are online and are dispatched to inject electricity to the grid and/or dispatched to receive electricity from the grid. We clarify that the requirement to provide primary frequency response will exclude situations when an electric storage resource is not dispatched to inject electricity to the grid and/or dispatched to receive electricity from the grid.

184. We also agree with WIRAB that electric storage resources and some other resources could face physical limitations that would make them unable to provide primary frequency response, and believe that accommodations for such limitations are appropriate.[398] While the previously discussed accommodations for electric storage resources are intended to limit adverse impacts of the primary frequency response requirements on them, we find that providing a specific exemption for physical energy limitations will not only further ensure that electric storage resources are not required to provide primary frequency response when they are physically unable to do so, but it will also prevent other resources that experience similar physical limitations from being required to provide the service when they are not able to. Conditions under which a resource is physically unable to provide primary frequency response could, for example, include an inability for an electric storage resource to increase its output because it does not have any stored energy (*i.e.,* its state of charge is equal to zero), or an inability for a wind or solar generating facility to increase output because there is not sufficient wind or solar energy to allow an increase in MW output.

185. Moreover, we find that including this exemption in the *pro forma* LGIA and *pro forma* SGIA is consistent with our finding that it is not necessary to establish a headroom requirement for primary frequency response. Because we are not requiring newly interconnecting generating facilities to maintain headroom to provide primary frequency response, we find that it is unjust and unreasonable to require the provision of primary frequency response from generating facilities that are physically unable to provide the service. Accordingly, we clarify that all generating facilities subject to this final action will be exempt from the timely and sustained frequency response requirements if they experience a physical energy limitation that would prevent them from fulfilling their obligations that would have otherwise been required under the parameters set forth in this final action. To implement this requirement, we modify the list of exemptions in Section 9.6.4.2 (Timely and Sustained Response) of the *pro forma* LGIA and Section 1.8.4.2 (Timely and Sustained Response) of the *pro forma* SGIA to include the term ''physical energy limitation.'' We define ''physical energy limitation'' to mean the circumstance when a resource would not have the physical ability, due to insufficient remaining charge for an electric storage resource or insufficient remaining fuel for a generating facility to satisfy its timely and sustained primary frequency response service obligation, as dictated by the magnitude of the frequency deviation and the droop parameter of the governor or equivalent controls. However, we also find that when a generating facility experiences a physical energy limitation, then the interconnection customer must be able to demonstrate to the transmission provider, and to the extent applicable, the relevant balancing authority, that such a physical energy limitation existed before or during an abnormal frequency deviation outside of the deadband parameter.

186. We find that ESA's comments that suggest a minimum set point should be used in the determination of the droop response are misplaced. A generating facility's minimum set point is not used in the calculation of the MW droop response. We clarify that for all generating facilities, the calculation of the MW droop response is based on a generating facility's nameplate capacity (*i.e.,* for a five percent droop curve, a generating facility would be expected to increase its output by 100 percent of its nameplate capacity for a five percent change in frequency). While it is true in theory that an electric storage resource may have a greater operating range over which to provide primary frequency response, from a practical standpoint the droop parameter limits the percentage of nameplate capacity that a generating facility will provide in response to abnormal frequency deviations.[399]

187. ESA contends that ''[i]f a storage resource is charging when called to provide [primary frequency response], the switch to discharging means that the storage [resource] will provide both the injected energy and the removal of an effective 'load,' creating a response significantly greater than contemplated in the proposed droop settings.'' [400] To address ESA's concern, we will require electric storage resources that are being dispatched to charge at the time of an abnormal frequency deviation to increase (for over-frequency deviations) or decrease (for under-frequency deviations) the rate at which they are charging according to the droop parameter to satisfy the timely and sustained primary frequency response requirement. For example, if an electric storage resource is charging at two MW prior to an abnormal under-frequency deviation, and the calculated response per the droop parameter is to increase real-power output by one MW, the electric storage resource could satisfy its obligation by reducing its consumption by one MW (instead of completely reducing its consumption by the full two MW and then discharging at one MW, which would result in a net of three MW provided as primary frequency response). Further, if an electric storage resource is capable of switching from charging to discharging, or vice versa, within the time period that the primary frequency response is

[396] *See* ESA Supplemental Comments at 7.

[397] *See* EPRI Supplemental Comments at 8. EPRI states that the determination of a generating facility being online is ''it being connected to the grid and providing online services (energy or online ancillary services).''

[398] *See* WIRAB Supplemental Comments at 4.

[399] For example, as pointed out by EPRI, ''[a] [five percent] droop setting and 36mHz deadband equates to an individual resource having a frequency response of about [two percent of] nameplate capacity per tenth of a Hz at a tenth of a Hz frequency deviation.'' EPRI Supplemental Comments at 7.

[400] ESA Supplemental Comments at 3–4.

needed the resource should do so if necessary to meet its calculated response. For example, if an electric storage resource is charging at one MW prior to an abnormal under-frequency deviation, and the calculated response per the droop parameter is to increase real-power output by three MW, the electric storage resource could satisfy its obligation by switching from charging at one MW to discharging at two MW. We clarify that electric storage resources would not be required to change from charging to discharging, or vice versa, if they are not technically capable of making the transition during the period in which the primary frequency response is needed.

188. Regarding AES Companies' contention that a five percent droop setting ignores the majority of the primary frequency response capacity that an electric storage resource was designed to deliver,[401] we note that, as stated in the NOPR, the requirements adopted in this final action are *minimum* requirements; therefore, if a new generating or electric storage facility elects, in coordination with its transmission provider and/or balancing authority, to operate in a more responsive mode by using lower droop or tighter deadband settings, nothing in these requirements would prohibit it from doing so.[402]

189. Finally, we are not persuaded by Berkshire that a technical conference is needed at this time because there is sufficient evidence in the record to make a finding on this issue, as discussed in this final action.

3. Distributed Energy Resources

a. NOPR Proposal

190. In the NOPR, the Commission proposed to apply the primary frequency response capability and operating requirements to all newly interconnecting generating facilities interconnecting through an LGIA or SGIA.[403]

b. Comments

191. Several commenters assert that the final action should include special considerations for generating facilities connecting at the distribution level. Public Interest Organizations state that, in the NOI, SolarCity Corporation raised concerns that already-installed behind-the-meter generation and DERs could become subject to the *pro forma* SGIA should those DERs opt to participate in wholesale energy markets.[404] Public Interest Organizations request that the Commission clarify the circumstances in which DER participation in wholesale energy markets would trigger requirements in the SGIA because ''[u]nless warranted by a significant shortfall of primary frequency response service, requiring the retrofit of existing generators for primary frequency response capability under such circumstances would not be cost-effective.'' [405] TVA states that exceptions to the primary frequency response requirements could reasonably be justified for generating facilities interconnected only through lower voltage distribution systems.[406]

192. Xcel argues that dynamic frequency response at the distribution level can interfere with anti-islanding [407] protection methods, and that, unlike transmission-connected generation, generating facilities connected to the distribution system must meet the anti-islanding requirements of the Institute of Electrical and Electronics Engineers (IEEE) Standards to protect the distribution system.[408] Xcel explains that the IEEE anti-islanding standards may require that the primary frequency response of the facility be restricted or that suitable mitigation measures be installed.[409] Accordingly, Xcel asserts that the *pro forma* SGIA should require that the distribution system operator be notified of the primary frequency response capabilities of a generating facility to be connected to the distribution system, and that the distribution system operator must have the ability to place limitations on the primary frequency response of the generating facility if such limitations are required to ensure system reliability and power quality.[410]

c. Commission Determination

193. The requirements of this final action will apply to newly interconnecting DERs that execute, or request the unexecuted filing of, an LGIA or SGIA on or after the effective date of this final action. We find Public Interest Organizations' request that the Commission clarify the circumstances in which DER participation in wholesale energy markets would trigger requirements in the *pro forma* SGIA to be outside the scope of this proceeding.[411]

194. Xcel is concerned that dynamic frequency response at the distribution level can interfere with anti-islanding protection methods. The sustained response provisions adopted herein would require a generating facility, only to the extent that it is allowed to remain online and ride through a disturbance and has operating capability in the direction needed to counteract the frequency deviation, to provide and sustain its response.

195. The Commission in Order No. 828 provided flexibility to address anti-islanding concerns by finding that, if a transmission provider believes a particular facility has a higher risk of unintentional islanding due to specific conditions at that facility, the transmission provider may coordinate with the small generating facility to set ride through settings appropriate for those conditions, in accordance with Good Utility Practice and the appropriate technical standards.[412] For those facilities with a lower risk of forming an unintentional island, the Commission found that they can be held to a longer ride through requirement.[413]

196. We clarify that the sustained response provisions in the revisions to the *pro forma* LGIA and *pro forma* SGIA apply only when a generating facility is allowed to ride through, and do not supersede a generating facility's ride through settings, or require an interconnection customer to override anti-islanding protection or any protective relaying that has been set to

[401] AES Companies Comments at 6.

[402] NOPR, 157 FERC ¶ 61,122 at P 48.

[403] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 7, *order on reh 'g,* Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196, *order on clarification,* Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221.

[404] Public Interest Organizations Comments at 3.

[405] *Id.* at 3–4.

[406] TVA Comments at 4.

[407] Islanding refers to the condition in which a DER continues to power a location even though electrical grid power from the electric utility is no longer present. Unintentional islanding can pose a hazard to utility personnel and customer equipment, and it may prevent automatic re-connection of devices. The currently effective version of IEEE–1547 standard requires that for an unintentional island in which the DER energizes a portion of the distribution system, the DER shall detect the island and cease to energize the system within two seconds of the formation of an island.

[408] Xcel Comments at 9; IEEE Standard 1547–2003, *Interconnecting Distributed Resources with Electric Power Systems* and IEEE Standard 1547a–2014, *Interconnecting Distributed Resources with Electric Power Systems Amendment 1.*

[409] Xcel Comments at 9.

[410] *Id.*

[411] CAISO, ISO–NE, MISO, NYISO, PJM, and SPP all have programs that allow demand response and/or certain demand-side resources to aggregate and participate in wholesale markets. The CAISO model requires a prospective DER aggregator to execute a Distributed Energy Resource Provider Agreement to accept and abide by the terms of the CAISO Tariff, but does not require the DER aggregator nor the aggregated DERs to execute an SGIA. *See Cal. Indep. Sys. Operator Corp.,* 155 FERC ¶ 61,229, at P 1 (2016) (conditionally accepting tariff provisions to facilitate participation of aggregations of distribution-connected or distributed energy resources in CAISO's energy and ancillary service markets).

[412] *See* Order No. 828, 156 FERC ¶ 61,062 at P 28.

[413] *Id.*

disconnect the generating facility during certain abnormal system conditions. Further, we clarify that for those abnormal system conditions in which a generating facility is *not* tripped offline by anti-islanding or protective relays and remains connected, to the extent it has the necessary MW operating capability in the appropriate direction to correct the frequency deviation, it would be expected to provide and sustain primary frequency response.

197. Accordingly, the obligations imposed for primary frequency response apply only to generating facilities allowed to ride through and, because the ride through settings will be coordinated between the interconnection customer and the transmission provider, we believe this should adequately address Xcel's anti-islanding concerns.

4. Nuclear Generating Facilities

a. NOPR Proposal

198. In the NOPR, the Commission proposed to exempt generating facilities regulated by the NRC due to their unique operating characteristics and regulatory requirements.

b. Comments

199. Several commenters support the exemption for nuclear generating facilities.[414] EEI and the MISO TOs agree with the proposed exemption, explaining that nuclear units are restricted by their NRC operating licenses on the amount of primary frequency response, if any, they can provide for safety reasons.[415] EEI also noted that in comments filed in response to the NOI, the Nuclear Energy Institute pointed out that nuclear plants are not well-suited to provide primary frequency response, and emphasized the role of the NRC as the safety regulator for commercial nuclear operations and its regulatory restrictions on NRC licenses.[416] MISO TOs assert that nuclear generating facilities generally have turbine controls, which are designed to maintain steam pressure and do not respond to grid frequency deviations, and that because primary frequency response is automatic, unsupervised and unplanned maneuvering of a nuclear reactor can lead to safety issues.[417]

200. On the other hand, other commenters believe that the Commission should not automatically exempt new nuclear generating facilities. WIRAB asserts that the Commission should require new nuclear generating facilities to seek individual exemptions, as needed, based on legitimate safety requirements in their NRC operating license.[418] WIRAB contends that in the future, new nuclear generating facilities in the U.S. may have the capability to safely and reliably respond to frequency deviations, and therefore the Commission should not provide an automatic exemption.[419]

201. Similarly, ISO–RTO Council believes that the Commission should not ''anticipate'' exemption requirements. Instead, ''any *pro forma* exemptions to the requirement to provide frequency response, including exemptions for new nuclear units, should be supported by applicable regulatory requirements, such as NRC rules and any regional requirements demonstrated by the nuclear owner to be applicable to the particular unit or type of unit.'' [420]

c. Commission Determination

202. We adopt the NOPR proposal to exempt nuclear generating facilities from the final action requirements, due to the unique regulatory and technical requirements of nuclear generating facilities. As explained in the NOPR, nuclear generating facilities have separate licensing requirements under the NRC, which often restrict or severely limit nuclear generating facilities from providing primary frequency response.[421] Further, nuclear generating facilities are designed to maintain internal steam pressure and are not intended to react to changes in the grid.[422]

203. We disagree with WIRAB's and ISO–RTO Council's view that an entire class of generating facilities should not be exempted from the *pro forma* requirements. We find that the unique regulatory and technical requirements of nuclear facilities justify an exemption. Requiring nuclear generating facilities to request unit-specific exemptions from providing a service that their licensing requirements already limit or restrict could result in an unreasonable administrative burden that can be avoided by allowing a general exemption in the *pro forma* LGIA and *pro forma* SGIA, and we do so here.

5. Wind Generating Facilities

a. NOPR Proposal

204. In the NOPR, the Commission did not propose to exempt new wind generating facilities from the new primary frequency response requirements. The Commission observed that while primary frequency response functionality has not been a standard feature on non-synchronous generating facilities, recent technological advancements have equipped wind generating facilities with this capability. The Commission further noted that wind generating facilities typically operate at their maximum operating output, and generally lack excess capacity (or headroom) to provide primary frequency response during under-frequency conditions.[423]

b. Comments

205. AWEA states that the Commission's proposed addition of a primary frequency response requirement to the *pro forma* LGIA and *pro forma* SGIA can be met at low cost for new wind projects, and therefore new wind turbines should not have difficulty complying with the Commission's proposal.[424] AWEA further states that it does not oppose the addition of the proposed primary frequency response capability requirement to interconnection standards for new non-synchronous generators, and that the proposed deadband and response rates for capability settings of maximum 5 percent droop and ±0.036 Hz deadband appear reasonable and consistent with industry practice.[425]

206. However, Sunflower and Mid-Kansas contend that, given current adequate frequency response performance and a lack of sufficient data in the record on the extent to which primary frequency response is needed from wind generating facilities, the Commission should not adopt a blanket requirement that includes wind generating facilities at this time. Sunflower and Mid-Kansas assert that the Commission should instead proceed with further analysis first, as contemplated by NERC, or at least allow for flexibility in the requirements.[426]

c. Commission Determination

207. We are not persuaded by Sunflower and Mid-Kansas to exempt wind generating facilities from the primary frequency response

[414] *See, e.g.,* AES Companies Comments at 7; MISO TOs Comments at 8, 13–14; EEI Comments at 14; NRECA Comments at 3; PG&E Comments at 2; SoCal Edison Comments at 4; TVA Comments at 3; Xcel Comments at 8.

[415] EEI Comments at 14; MISO TOs Comments at 13.

[416] EEI Comments at 14.

[417] MISO TOs Comments at 13–14.

[418] WIRAB Comments at 7–8.

[419] *Id.*

[420] ISO–RTO Council Comments at 7.

[421] NOPR, 157 FERC ¶ 61,122 at P 31.

[422] *Id.*

[423] NOPR, 157 FERC ¶ 61,122 at P 13.

[424] AWEA Comments at 4.

[425] *Id.* at 4–5.

[426] Sunflower and Mid-Kansas Comments at 4.

requirements of this final action. As discussed above, a key focus of this final action is the ongoing shift of the generation resource mix, with declining amounts of traditional synchronous generating facilities that historically have provided primary frequency response and increasing penetrations of non-synchronous generation, including wind generating facilities that historically have not been a significant source of primary frequency response. Unlike certain CHP or nuclear generating facilities, the record does not indicate that there is an economic, technical, or regulatory basis for a generic exemption for newly interconnecting wind generating facilities. In particular, we are persuaded by AWEA's assertion that the proposed primary frequency response capability requirements can be met at low cost for new wind projects, and that newly interconnecting wind facilities should not have difficulty complying with the proposed deadband of ±0.036 Hz and a maximum 5 percent droop parameter.[427] Accordingly, we will not exempt wind generating facilities from the requirements of this final action.

6. Surplus Interconnection

a. NOPR Proposal

208. In the NOPR, the Commission did not propose any provisions related to surplus interconnection service.[428]

b. Comments

209. ESA states that the Commission recently issued a NOPR which proposes to make available the use of surplus interconnection service, which is intended to maximize the use of existing interconnection service capacity and concerns generating facilities that are existing interconnection customers.[429] ESA contends that these forms of interconnections should not be considered ''new interconnection'' for the purposes of primary frequency response capability requirements, and requests that the Commission exempt surplus interconnection services from its proposed primary frequency response requirements.[430]

c. Commission Determination

210. We find that ESA's request that surplus interconnection service should not be considered ''new interconnection'' for purposes of this final action is premature, because the Commission has yet to issue any final action that addresses surplus interconnection service.[431]

7. Small Generating Facilities

a. NOPR Proposal

211. In the NOPR, the Commission proposed to apply the proposed requirements to newly interconnecting small generating facilities. The Commission stated that the record suggests that small generating facilities are capable of installing and enabling governors at low cost in a manner comparable to large generating facilities.[432] The Commission concluded that given recent technological advances, the Commission did not anticipate that requiring the *pro forma* SGIA to be amended to include requirements for primary frequency response capability would present a barrier for small generating facilities, and, given the need for additional primary frequency response capability and an increasingly large market penetration of small generating facilities, the Commission believed that there is a need to add these requirements to the *pro forma* SGIA to help ensure primary frequency response capability. In support, the Commission referenced PJM's recent changes to its interconnection agreements to require new large and small non-synchronous generating facilities to install enhanced inverters, which include primary frequency response capability requirements.[433]

b. Comments

i. NOPR Comments

212. Most commenters who generally supported the NOPR's proposal did not differentiate between small and large generators. APPA et al. contends applying the primary frequency response requirement to all generators is important, particularly given that non-synchronous generators and small generators are making up a growing share of the changing generation resource mix.[434] EEI states that it supports the Commission acting to remove inconsistencies between the *pro forma* LGIA and the *pro forma* SGIA because there is no economical or technical basis for treating large and small generating facilities differently when they are both capable of installing and enabling governors at comparable costs.[435]

213. Some commenters,[436] however, raise concerns that small generating facilities could face disproportionate costs to install primary frequency response capability. For example, the Public Interest Organizations argue that the Commission's discussion of the economic impact on small generating facilities of installing primary frequency response capability is limited, and claimed the cited evidence in the NOPR does not directly support the Commission's conclusion that ''small generating facilities are capable of installing and enabling governors at low cost in a manner comparable to large generating facilities.''[437] In support of their position, Public Interest Organizations note SolarCity Corporation's concern that ''a requirement that all generating facilities have frequency response capability may cost more for some resources, including behind-the-meter and distributed energy resources.''[438] Public Interest Organizations state that they therefore encourage the Commission to further investigate the cost for small renewable energy generating facilities to install frequency response capability before making the proposed revisions to the *pro forma* SGIA.[439]

214. Other commenters request the Commission adopt a size limitation for applying the NOPR requirements. For example, TVA requests an exemption for generating facilities under 5 MVA as long as they do not aggregate with facilities greater than 75 MVA or connect to the grid at 100 kV or above.[440] Similarly, Idaho Power and NRECA request that the Commission consider exempting generating facilities

[427] AWEA Comments at 4.

[428] *See Reform of Generator Interconnection Procedures and Agreements,* Notice of Proposed Rulemaking, 82 FR 4464 (Jan. 13, 2017), 157 FERC ¶ 61,212 (2016). Surplus interconnection service refers to an instance where an interconnection customer has an interconnection agreement which provides more interconnection service than it currently uses, and may wish to add resources, such as electric storage resources, which were not planned with part of the original interconnection request, or it may wish to sell surplus interconnection service without conveying the originally planned generating facility as part of the sale.

[429] ESA Comments at 5.

[430] *Id.*

[431] We further note that MISO's Net Zero Interconnection Service is an interconnection request that results in a GIA. As such, a generator connecting to the transmission system using Net Zero Interconnection Service would be expected to comply with this final action. *See* MISO Tariff Attachment X 3.3.1.1 (Additional Requirements for a Net Zero Interconnection Request application).

[432] NOPR, 157 FERC ¶ 61,122 at P 41 (citing IEEE–P1547 Working Group NOI Comments at 1, 5, and 7).

[433] *Id.* P 42.

[434] APPA et al. Comments at 5.

[435] EEI Comments at 8.

[436] *See* NRECA Comments at 8; Public Interest Organizations Comments at 3; TVA Comments at 4; Idaho Power Comments at 2.

[437] Public Interest Organizations Comments at 3 (citing NOPR, 157 FERC ¶ 61,122 at P 42).

[438] *Id.* at 3 (citing SolarCity Corporation's NOI Comments at 4).

[439] *Id.* at 3–4.

[440] TVA Comments at 4.

that are smaller than 10 MW. Idaho Power states that it would be difficult to determine compliance if the required response is too small.[441] NRECA suggests that small generating facilities might have a different cost-benefit analysis than large generating facilities, and asserts that there is not a sufficient record to conclude that the proposed requirement to install primary frequency response capability will not pose an undue burden on smaller generating facilities.[442]

ii. Supplemental Comments

215. NAGF, Tri-State, ISO–RTO Council, SoCal Edison, and WIRAB support applying the proposed requirements to small generating facilities.[443] ISO–RTO Council states that the proposed requirements are consistent with the current requirements of PJM, NYISO, ISO–NE, and CAISO, all of which require small generators to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection.[444] ISO–RTO Council contends that these requirements have been in place for several years, have not resulted in operational issues or challenges associated with such requirements, and have not required exemptions for small generators.[445]

216. Further, ISO–RTO Council asserts that ''providing an exemption or variation to the NOPR requirements for small generators and electric storage resources could allow such resources to avoid solving the very problem to which such resources contribute and the NOPR rules were meant to address.'' [446] In particular, ISO–RTO Council points out that the ongoing transformation of the generation resource mix involves the loss of the inertia and primary frequency response contributions from baseload and synchronous generating facilities that have and will retire. Since non-synchronous generators, small generators, distributed energy resources, and electric storage resources will comprise an increasing percentage of the future generation mix, ISO–RTO Council states that they should contribute their fair share of primary frequency response in accordance with the requirements proposed in the NOPR.[447]

217. EEI adds that as the market penetration of small generating facilities increases, there will be a growing need for primary frequency response from these non-traditional generating facilities.[448] EEI argues that ''[i]f the Commission exempts new small generating resources from installing primary frequency response capability now, then retrofitting them may be needed in the future to address reliability concerns, which will be more costly.'' [449] EEI states, however, that the potential costs for small generating facilities can be reduced if the Commission limits its proposal to solely installing primary frequency response capability and not adopting the proposed operating requirements for droop, deadband, and timely and sustained response in the *pro forma* LGIA and *pro forma* SGIA.[450]

218. APS suggests that all generating facilities should contribute to primary frequency response and opposes a blanket exemption for small generating facilities. Rather, APS suggests that determining whether and how small generating facilities contribute to primary frequency response should be a collaborative effort among the balancing authority, transmission provider, and interconnection customer.[451]

219. While AES Companies oppose the NOPR, they state that the size of any particular generating facility should not impact the solution implemented.[452] NRECA agrees that there should be flexibility for balancing authorities, RTOs/ISOs, or other public utility transmission providers to adopt requirements for primary frequency response capability in response to specific concerns in their regions in instances where generating facilities have particular operating or other characteristics which make it unreasonable from a cost-benefit or technical perspective to require primary frequency response capability as a condition precedent to interconnection.[453] SDG&E remains concerned that unnecessary capital costs will be incurred if the Commission chooses to require all new generators to have primary frequency response capability, and that generation owners will attempt to pass those costs along to consumers.[454]

220. Finally, Sunrun states that even inverters certified to UL 1741 SA [455] may or may not have certified frequency-watt response capability, as it is not required for California's phase one advanced inverter implementation, and even the most progressive state-level inverter function requirements may fall short of enabling primary frequency response capability, leaving a number of important unknowns to small systems also needing to aggregate and participate in wholesale markets.[456]

221. In response to the Commission's question about whether the costs for small generating facilities to install, maintain, and operate governors or equivalent controls are proportionally comparable to the costs for large generating facilities, NRECA states that a size threshold is necessary so that small generators will not be forced to forego interconnection because the cost of including primary frequency response capability outweighs the benefit of interconnection.[457] However, WIRAB states that costs for inverters capable of providing primary frequency response have declined. WIRAB submits that in 2013, the cost between a traditional inverter and an inverter capable of providing primary frequency response was less than 1 percent of the overall project. WIRAB adds that it is now standard practice to install such inverters for all utility scale, non-synchronous generating facilities because operational changes and updates can be made through software changes.[458] Further, WIRAB states that if the Commission determines that small generating facilities may experience disproportionate cost impacts associated with the proposed requirement, the Commission should establish an exemption that would allow small generators to provide a demonstration of disproportionate costs to its utility to be exempt from the primary frequency response requirements.[459] SoCal Edison agrees that given significant technological advances in generation facilities and equipment, including inverters, the proposed primary

[441] Idaho Power Comments at 2.

[442] NRECA Comments at 8.

[443] NAGF Supplemental Comments at 2; Tri-State Supplemental Comments at 3; ISO–RTO Council Supplemental Comments at 6; SoCal Edison Supplemental Comments at 2; WIRAB Supplemental Comments at 7.

[444] ISO–RTO Supplemental Comments at 3.

[445] ISO–RTO Council Supplemental Comments at 4.

[446] *Id.* at 2.

[447] *Id.* at 2, 3.

[448] EEI Supplemental Comments at 8.

[449] *Id.*

[450] *Id.* at 4.

[451] APS Supplemental Comments at 10–11.

[452] AES Companies Supplemental Comments at 42.

[453] NRECA Supplemental Comments at 2–3.

[454] SDG&E Supplemental Comments at 3–4.

[455] The UL 1741 Standard is intended for use with distributed energy resources. *See* UL 1741, Standard for Inverters, Converters, Controllers, and Interconnection System Equipment for Use with Distributed Energy Resources, *https://standardscatalog.ul.com/standards/en/standard_1741_2*. The Commission discusses the applicability of the final action to distributed energy resources in Section II.H.3.

[456] Sunrun Supplemental Comments at 3–4.

[457] NRECA Supplemental Comments at 4.

[458] WIRAB Supplemental Comments at 6–7.

[459] *Id.* at 7.

frequency response requirements for small generating facilities will not present a barrier to entry.[460]

222. In response to the Commission's question about whether PJM's recent modifications to its interconnection agreements address concerns regarding possible disproportionate costs resulting from applying the NOPR to all small generating facilities, ISO–RTO Council states that PJM has not experienced any decrease in the number of interconnection requests of small non-synchronous generators since requiring non-synchronous generating facilities to install enhanced inverters that include primary frequency response capability.[461] ISO–RTO Council states that in the last year, 30 new generating facilities were placed into service, and of those, 25 were small generating facilities and five were large generating facilities.[462]

c. Commission Determination

223. We will not exempt small generating facilities from the requirements. The Commission has previously acted under FPA section 206 to remove inconsistencies between the *pro forma* LGIA and *pro forma* SGIA where there is no economic or technical basis for treating large and small generating facilities differently.[463] The record indicates that small generating facilities are capable of installing and enabling governors or equivalent technologies at low cost in a manner comparable to large generating facilities; therefore it would be unduly discriminatory or preferential to not impose the requirements of this final action on small generating facilities. There is limited and unpersuasive information in the record indicating that certain small generating facilities would face disproportionate costs to install, maintain, and operate equipment capable of providing primary frequency response. Moreover, the record demonstrates that small generating facilities are technically capable of providing primary frequency response. No commenter provided evidence to suggest that imposing the requirements of this final action on small generators would be disproportionately costly or otherwise unduly burdensome.

224. In particular, we are persuaded by commenter assertions that that small generating facilities are making up a growing percentage of the generation resource mix,[464] and that as the market penetration of small generating facilities increases, there will be a growing need for primary frequency response from these generating facilities.[465] We are also persuaded by commenter assertions that there is no economical or technical basis for treating large and small generating facilities differently when they are both capable of installing and enabling governors at comparable costs.[466] Finally, we do not believe that the actions we take here will present a barrier to entry to small generating facilities. We note ISO–RTO Council's assertion that ''PJM has not experienced any decrease in the number of interconnections requests or interconnections of small non-synchronous generators since requiring nonsynchronous generating facilities to install enhanced inverters that include primary frequency response capability.'' [467]

8. Requests To Establish a Waiver Process and Consider Potential Impact on Load and New Technology

a. NOPR

225. In the NOPR, the Commission did not propose any waiver procedures.

b. Comments

226. NRECA requests that the Commission consider permitting transmission providers to establish ''penetration level thresholds'' for primary frequency response because ''[g]enerators can differ in their impact on the transmission grid based on factors such as size and technology.'' [468] NRECA contends that in areas with sufficient primary frequency response capability, including the cost of primary frequency response in new generating facilities may not necessarily be warranted and should therefore not be required as a condition of interconnection.[469] NRECA further asserts that the Commission should ''bear in mind that the costs for frequency response capability will be recovered from load. Customers should not have to pay for capability that is not necessary for reliability.'' [470]

227. Both NRECA and AES Companies express concern about the potential impact of the proposed requirements on new technologies and innovation. AES Companies assert that the proposed requirements for new generating facilities to install primary frequency response capability as well operate with specified droop and deadband settings will ''stymie the use of more efficient technology solutions as they become available and impose unnecessary costs on load.'' [471] Similarly, NRECA is concerned that the Commission's ''all-encompassing proposal'' could risk limiting ''the deployment of the sorts of technologies and innovation which the Commission has pledged to encourage, without conferring reliability benefits that warrant such risks.'' [472]

228. NRECA contends that the Commission should adopt ''a waiver process whereby if a new interconnecting generating facility is neither needed for primary frequency response capability, nor causes any harm to the reliability of the grid in this regard, primary frequency response capability would not be a condition of interconnection.'' [473]

c. Commission Determination

229. We decline to adopt a waiver process for new generating facilities. Considering the dynamic and evolving nature of primary frequency response, we are not persuaded by NRECA's suggestion that the current specific needs of individual balancing authority areas within each Interconnection should determine whether to adopt minimum uniform primary frequency response requirements as a condition of interconnection. While the level of primary frequency response capability may be adequate in certain individual areas, NERC assessments indicate that the Bulk-Power System as a whole has experienced a decline in primary frequency response. In this regard, we reject NRECA's suggestion that ''an imminent reliability threat'' must exist to justify new primary frequency requirements such as those we adopt in this final action.[474] We clarify that this final action is intended to ensure that the overall level of primary frequency response capability remains adequate as the generation resource mix continues to change. Accordingly, we decline NRECA's request to develop a generic waiver process to exempt newly interconnecting generating facilities from the requirements of this final action.

230. In addition, we disagree with NRECA and AES Companies that this

[460] SoCal Edison Supplemental Comments at 3.

[461] ISO–RTO Supplemental Comments at 6.

[462] *Id.* at 7.

[463] *See* Order No. 828, 156 FERC ¶ 61,062 (revising the *pro forma* SGIA such that small generating facilities have frequency and voltage ride through requirements comparable to large generating facilities).

[464] APPA et al. Comments at 5.

[465] EEI Comments at 8.

[466] SoCal Edison Comments at 3.

[467] ISO–RTO Council Supplemental Comments at 7.

[468] NRECA Comments at 8.

[469] *Id.*

[470] *Id.* at 9.

[471] AES Companies Comments at 12.

[472] NRECA Comments at 6.

[473] *Id.* at 8–9.

[474] *Id.* at 7.

final action will result in unreasonable or unnecessary costs to load, based on the record indicating that cost of installing primary frequency response capability for new generating facilities is minimal. As explained in Section II.E.2 above, many commenters agree that costs associated with primary frequency response are minimal for new generating facilities.

231. Finally, we find NRECA's and AES Companies' assertions regarding the potential adverse impact of the new primary frequency requirements adopted in this final action on technology and innovation to be speculative and unsupported. In this regard, we clarify that should the new primary frequency response requirements present obstacles to new, more efficient generating facilities that may be developed in the future, nothing in this final action prohibits prospective interconnection customers owning such facilities from seeking appropriate relief from the Commission.

I. Regional Flexibility

1. NOPR Proposal

232. In the NOPR, the Commission proposed that public utility transmission providers must either comply with the final action, demonstrate that previously-approved variations continue to be consistent with or superior to the *pro forma* LGIA and *pro forma* SGIA as modified by the final action, or seek ''independent entity variations'' from the proposed revisions to the *pro forma* LGIA and *pro forma* SGIA.[475]

2. Comments

233. Some commenters object to the proposal to make operating requirements uniform, contending that such uniformity fails to account for differences across regions and generating facilities—particularly those utilizing new technology and fuel sources—and the actual need for primary frequency response.[476]

3. Commission Determination

234. As explained above in Section II.B.3.a, we disagree with commenters who support a completely regional approach. We believe that the most effective approach to addressing concerns regarding primary frequency response is to establish and maintain minimum, uniform requirements for all newly interconnecting generating facilities. However, we recognize that unique circumstances or needs of some individual regions or areas may warrant different operating requirements. Therefore, we adopt the NOPR proposal and will allow transmission providers to propose variations to the operating requirements adopted in this final action. Specifically, the following methods for proposing variations adopted in Order No. 2003 will be available here: (1) Variations based on Regional Entity reliability requirements; (2) variations that are ''consistent with or superior to'' the final action; and (3) ''independent entity variations'' filed by RTOs/ISOs.[477]

235. Finally, we clarify that the Commission will also consider requests for ''regional reliability variations,'' provided they are supported by references to regional Reliability Standards. In addition, in any such request, the transmission provider shall explain why these regional Reliability Standards support the requested variation, and shall include the text of the referenced Reliability Standards.[478]

J. Miscellaneous Comments

1. Uniform System of Accounts

a. Comments

236. Xcel states that the Commission should add a new account to the FERC Uniform System of Accounts to allow the identification and tracking of cost information associated with primary frequency response. Xcel argues that a new FERC account would allow for the collection of installed cost information ''so that the Commission can ensure that any rates reflect those costs and recover the costs form the appropriate customer base (*i.e.,* transmission versus production customers).'' [479]

b. Commission Determination

237. We deny this request. First, the costs of installing, maintaining, and operating a governor or equivalent controls is not significant and is captured by other accounts.[480] Second, synchronous generating facilities have installed, maintained, and operated governors for many years and Xcel has not demonstrated why changed circumstances require new accounts to capture these costs. It is also not clear why these existing accounts could not similarly be applied to non-synchronous generating facilities.

2. Capability of Load To Provide Primary Frequency Response

a. Comments

238. Union of Concerned Scientists asserts that while it believes that the NOPR proposal is ''an important step'' and the Commission should ''complete this rulemaking,'' the NOPR proposal ''omit[s] discussion of how the utility industry may draw on the capability of loads to provide frequency response.'' [481] Accordingly, Union of Concerned Scientists urges the Commission to ''guide utilities to include load resources in the development of primary frequency response services and requirements.'' [482] Union of Concerned Scientists maintains that the NOPR proposal is a necessary, but insufficient, step in addressing primary frequency response because: (1) The NOPR excludes load from consideration as a primary frequency response resource; and (2) the reliance on headrooT from generating facilities for the provision of primary frequency response results in a greater economic cost to generating facilities compared to the zero marginal cost of load as a resource for providing primary frequency response.[483]

b. Commission Determination

239. We decline in this final action to address the need for load resources to provide primary frequency response. While we note that there are many complicated issues related to the provision of primary frequency response by load resources, we find that these issues are beyond the scope of this proceeding, which is limited to modifications to the *pro forma* LGIA and the *pro forma* SGIA. We recognize that currently some load resources can and do provide some primary frequency response. Nothing in this final action is meant to discourage or prevent them from doing so.

3. Primary Frequency Response Obligations and Pools

a. Comments

240. AES Companies state that NERC's Essential Reliability Services Task Force recommended that all new generating facilities should support the capability to manage frequency control, not that they should provide primary

[475] NOPR, 157 FERC ¶ 61,122 at P 59. *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 822–827.

[476] *See, e.g.,* APS Supplemental Comments at 5–6; MISO TOs Comments at 2; SoCal Edison Comments at 3; Xcel Comments at 7; NYTO Supplemental Comments at 3–4.

[477] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 822–827. A very similar approach was taken in Order No. 827, FERC Stats. & Regs. ¶ 31,385 at P 69 and Order No. 828, 156 FERC ¶ 61,062 at PP 40–41.

[478] *See* Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 546.

[479] Xcel Comments at 9–10.

[480] Examples of these other accounts are described in Appendix C of this final action.

[481] Union of Concerned Scientists Comments at 3.

[482] *Id.* at 8.

[483] *Id.* at 7–8.

frequency response themselves.[484] As a result, AES Companies suggest that the Commission modify the NOPR proposal to allow the interconnection customer to demonstrate that they can provide its proportional share of primary frequency response, either through self-supply from other generating facilities within its fleet or via procurement from a third party.[485] AES Companies further suggest that utilities and other generation owners should then be allowed to form pools and/or aggregate their resources to meet an allocated proportionate share of their primary frequency response responsibility.[486]

b. Commission Determination

241. We reject AES Companies' suggestions. Adopting these suggestions would add complications and create substantial uncertainty for generating facilities providing primary frequency response, which will detract from one of the Commission's goals (*i.e.,* minimizing complexity and uncertainty with regard to primary frequency response).

K. Specific Revisions to the Pro Forma LGIA and Pro Forma SGIA

1. NOPR Proposal

242. To implement the proposed primary frequency response requirements, the Commission proposed in the NOPR to revise Sections 9.6 and 9.6.2.1 of the *pro forma* LGIA and add new Sections 9.6.4, 9.6.4.1, and 9.6.4.2 to the *pro forma* LGIA.[487] Similarly, the Commission proposed to revise Section 1.8 of the *pro forma* SGIA and add new Sections 1.8.4, 1.8.4.1, and 1.8.4.2 to the *pro forma* SGIA.[488]

2. Comments

243. As noted above in Sections II.B.2.a, II.B.2.b, II.B.2.c, II.C.2, II.H.1.b, and II.H.2.b of this final action, Bonneville, EEI, ELCON, NERC, ISO–RTO Council, and WIRAB request certain modifications to the proposed changes to *pro forma* LGIA and *pro forma* SGIA as discussed in the NOPR. AES Companies also request to modify Section 9.6 of the *pro forma* LGIA.[489]

3. Commission Determination

244. We deny AES Companies' request to modify Section 9.6 of the *pro forma* LGIA as the request is related to reactive power and thus beyond the scope of this proceeding. We also deny AES Companies other proposed modifications to the *pro forma* LGIA and *pro forma* SGIA.

245. Further, as explained in Sections II.B and II.C above, we conclude that EEI's requested modifications to the proposed revisions in the *pro forma* LGIA and *pro forma* SGIA that undermine uniformity are not consistent with the objectives explained herein and therefore are denied. However, we adopt EEI's requested language pertaining to timely and sustained response, particularly the phrase ''shall not block or inhibit governor or equivalent controls.''

246. In light of the above discussion, we revise the *pro forma* LGIA to modify Sections 9.6 and 9.6.2.1 and adds new Sections 9.6.4, 9.6.4.1, 9.6.4.2, 9.6.4.3, and 9.6.4.4. This section contains the totality of the revised revisions the *pro forma* LGIA. The revisions, with bracketed deletions from and italicized additions to the *pro forma* LGIA are as follows:

9.6 Reactive Power *and Primary Frequency Response*

9.6.2.1 [Governors and] *Voltage* Regulators. Whenever the Large Generating Facility is operated in parallel with the Transmission System [and the speed governors (if installed on the generating unit pursuant to Good Utility Practice)] and voltage regulators are capable of operation, Interconnection Customer shall operate the Large Generating Facility with its [speed governors and] voltage regulators in automatic operation. If the Large Generating Facility's [speed governors and] voltage regulators are not capable of such automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Large Generating Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits. Interconnection Customer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis. (Bracketed text is deleted, italicized text are additions.)

9.6.4 Primary Frequency Response. Interconnection Customer shall ensure the primary frequency response capability of its Large Generating Facility by installing, maintaining, and operating a functioning governor or equivalent controls. The term ''functioning governor or equivalent controls'' as used herein shall mean the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the Large Generating Facility's real power output in accordance with the droop and deadband parameters and in the direction needed to correct frequency deviations. Interconnection Customer is required to install a governor or equivalent controls with the capability of operating: (1) With a maximum 5 percent droop and ±0.036 Hz deadband; or (2) in accordance with the relevant droop, deadband, and timely and sustained response settings from an approved NERC Reliability Standard providing for equivalent or more stringent parameters. The droop characteristic shall be: (1) Based on the nameplate capacity of the Large Generating Facility, and shall be linear in the range of frequencies between 59 to 61 Hz that are outside of the deadband parameter; or (2) based an approved NERC Reliability Standard providing for an equivalent or more stringent parameter. The deadband parameter shall be: the range of frequencies above and below nominal (60 Hz) in which the governor or equivalent controls is not expected to adjust the Large Generating Facility's real power output in response to frequency deviations. The deadband shall be implemented: (1) Without a step to the droop curve, that is, once the frequency deviation exceeds the deadband parameter, the expected change in the Large Generating Facility's real power output in response to frequency deviations shall start from zero and then increase (for under-frequency deviations) or decrease (for over-frequency deviations) linearly in proportion to the magnitude of the frequency deviation; or (2) in accordance with an approved NERC Reliability Standard providing for an equivalent or more stringent parameter. Interconnection Customer shall notify Transmission Provider that the primary frequency response capability of the Large Generating Facility has been tested and confirmed during commissioning. Once Interconnection Customer has synchronized the Large Generating Facility with the

[484] AES Companies Comments at 12.

[485] *Id.*

[486] *Id.*

[487] NOPR, 157 FERC ¶ 61,122 at P 52.

[488] *Id.* P 53.

[489] AES Companies Comments at 15.

Transmission System, Interconnection Customer shall operate the Large Generating Facility consistent with the provisions specified in Sections 9.6.4.1 and 9.6.4.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Large Generating Facilities.

9.6.4.1 Governor or Equivalent Controls. Whenever the Large Generating Facility is operated in parallel with the Transmission System, Interconnection Customer shall operate the Large Generating Facility with its governor or equivalent controls in service and responsive to frequency. Interconnection Customer shall: (1) In coordination with Transmission Provider and/or the relevant balancing authority, set the deadband parameter to: (1) A maximum of ±0.036 Hz and set the droop parameter to a maximum of 5 percent; or (2) implement the relevant droop and deadband settings from an approved NERC Reliability Standard that provides for equivalent or more stringent parameters. Interconnection Customer shall be required to provide the status and settings of the governor or equivalent controls to Transmission Provider and/or the relevant balancing authority upon request. If Interconnection Customer needs to operate the Large Generating Facility with its governor or equivalent controls not in service, Interconnection Customer shall immediately notify Transmission Provider and the relevant balancing authority, and provide both with the following information: (1) The operating status of the governor or equivalent controls (i.e., whether it is currently out of service or when it will be taken out of service); (2) the reasons for removing the governor or equivalent controls from service; and (3) a reasonable estimate of when the governor or equivalent controls will be returned to service. Interconnection Customer shall make Reasonable Efforts to return its governor or equivalent controls into service as soon as practicable. Interconnection Customer shall make Reasonable Efforts to keep outages of the Large Generating Facility's governor or equivalent controls to a minimum whenever the Large Generating Facility is operated in parallel with the Transmission System.

9.6.4.2 Timely and Sustained Response. Interconnection Customer shall ensure that the Large Generating Facility's real power response to sustained frequency deviations outside of the deadband setting is automatically provided and shall begin immediately after frequency deviates outside of the deadband, and to the extent the Large Generating Facility has operating capability in the direction needed to correct the frequency deviation. Interconnection Customer shall not block or otherwise inhibit the ability of the governor or equivalent controls to respond and shall ensure that the response is not inhibited, except under certain operational constraints including, but not limited to, ambient temperature limitations, physical energy limitations, outages of mechanical equipment, or regulatory requirements. The Large Generating Facility shall sustain the real power response at least until system frequency returns to a value within the deadband setting of the governor or equivalent controls. A Commission-approved Reliability Standard with equivalent or more stringent requirements shall supersede the above requirements.

9.6.4.3 Exemptions. Large Generating Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from Sections 9.6.4, 9.6.4.1, and 9.6.4.2 of this Agreement. Large Generating Facilities that are behind the meter generation that is sized-to-load (i.e., the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirements of its host facility) shall be required to install primary frequency response capability in accordance with the droop and deadband capability requirements specified in Section 9.6.4, but shall be otherwise exempt from the operating requirements in Sections 9.6.4, 9.6.4.1, 9.6.4.2, and 9.6.4.4 of this Agreement.

9.6.4.4 Electric Storage Resources. Interconnection Customer interconnecting an electric storage resource shall establish an operating range in Appendix C of its LGIA that specifies a minimum state of charge and a maximum state of charge between which the electric storage resource will be required to provide primary frequency response consistent with the conditions set forth in Sections 9.6.4, 9.6.4.1, 9.6.4.2, and 9.6.4.3 of this Agreement. Appendix C shall specify whether the operating range is static or dynamic, and shall consider (1) the expected magnitude of frequency deviations in the interconnection; (2) the expected duration that system frequency will remain outside of the deadband parameter in the interconnection; (3) the expected incidence of frequency deviations outside of the deadband parameter in the interconnection; (4) the physical capabilities of the electric storage resource; (5) operational limitations of the electric storage resource due to manufacturer specifications; and (6) any other relevant factors agreed to by Transmission Provider and Interconnection Customer, and in consultation with the relevant transmission owner or balancing authority as appropriate. If the operating range is dynamic, then Appendix C must establish how frequently the operating range will be reevaluated and the factors that may be considered during its reevaluation.

Interconnection Customer's electric storage resource is required to provide timely and sustained primary frequency response consistent with Section 9.6.4.2 of this Agreement when it is online and dispatched to inject electricity to the Transmission System and/or receive electricity from the Transmission System. This excludes circumstances when the electric storage resource is not dispatched to inject electricity to the Transmission System and/or dispatched to receive electricity from the Transmission System. If Interconnection Customer's electric storage resource is charging at the time of a frequency deviation outside of its deadband parameter, it is to increase (for over-frequency deviations) or decrease (for under-frequency deviations) the rate at which it is charging in accordance with its droop parameter. Interconnection Customer's electric storage resource is not required to change from charging to discharging, or vice versa, unless the response necessitated by the droop and deadband settings requires it to do so and it is technically capable of making such a transition.

247. Similarly, the Commission modifies Section 1.8 of the *pro forma* SGIA and adds new Sections 1.8.4, 1.8.4.1, 1.8.4.2 and 1.8.4.3, and 1.8.4.4. This section contains the totality of the revised revisions the *pro forma* SGIA. The revisions, with italicized additions to the *pro forma* SGIA are as follows:

1.8 Reactive Power *and Primary Frequency Response*

1.8.4 Primary Frequency Response. Interconnection Customer shall ensure the primary frequency response capability of its Small Generating Facility by installing, maintaining, and operating a functioning governor or equivalent controls. The term ''functioning governor or equivalent controls'' as used herein shall mean the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the Small Generating Facility's real power output

in accordance with the droop and deadband parameters and in the direction needed to correct frequency deviations. Interconnection Customer is required to install a governor or equivalent controls with the capability of operating: (1) With a maximum 5 percent droop and ±0.036 Hz deadband; or (2) in accordance with the relevant droop, deadband, and timely and sustained response settings from an approved NERC Reliability Standard providing for equivalent or more stringent parameters. The droop characteristic shall be: (1) Based on the nameplate capacity of the Small Generating Facility, and shall be linear in the range of frequencies between 59 to 61 Hz that are outside of the deadband parameter; or (2) based an approved NERC Reliability Standard providing for an equivalent or more stringent parameter. The deadband parameter shall be: the range of frequencies above and below nominal (60 Hz) in which the governor or equivalent controls is not expected to adjust the Small Generating Facility's real power output in response to frequency deviations. The deadband shall be implemented: (1) Without a step to the droop curve, that is, once the frequency deviation exceeds the deadband parameter, the expected change in the Small Generating Facility's real power output in response to frequency deviations shall start from zero and then increase (for under-frequency deviations) or decrease (for over-frequency deviations) linearly in proportion to the magnitude of the frequency deviation; or (2) in accordance with an approved NERC Reliability Standard providing for an equivalent or more stringent parameter. Interconnection Customer shall notify Transmission Provider that the primary frequency response capability of the Small Generating Facility has been tested and confirmed during commissioning. Once Interconnection Customer has synchronized the Small Generating Facility with the Transmission System, Interconnection Customer shall operate the Small Generating Facility consistent with the provisions specified in Sections 1.8.4.1 and 1.8.4.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Small Generating Facilities.

1.8.4.1 Governor or Equivalent Controls. Whenever the Small Generating Facility is operated in parallel with the Transmission System, Interconnection Customer shall operate the Small Generating Facility with its governor or equivalent controls in service and responsive to frequency. Interconnection Customer shall: (1) In coordination with Transmission Provider and/or the relevant balancing authority, set the deadband parameter to: (1) A maximum of ±0.036 Hz and set the droop parameter to a maximum of 5 percent; or (2) implement the relevant droop and deadband settings from an approved NERC Reliability Standard that provides for equivalent or more stringent parameters. Interconnection Customer shall be required to provide the status and settings of the governor or equivalent controls to Transmission Provider and/or the relevant balancing authority upon request. If Interconnection Customer needs to operate the Small Generating Facility with its governor or equivalent controls not in service, Interconnection Customer shall immediately notify Transmission Provider and the relevant balancing authority, and provide both with the following information: (1) The operating status of the governor or equivalent controls (i.e., whether it is currently out of service or when it will be taken out of service); (2) the reasons for removing the governor or equivalent controls from service; and (3) a reasonable estimate of when the governor or equivalent controls will be returned to service. Interconnection Customer shall make Reasonable Efforts to return its governor or equivalent controls into service as soon as practicable. Interconnection Customer shall make Reasonable Efforts to keep outages of the Small Generating Facility's governor or equivalent controls to a minimum whenever the Small Generating Facility is operated in parallel with the Transmission System.

1.8.4.2 Timely and Sustained Response. Interconnection Customer shall ensure that the Small Generating Facility's real power response to sustained frequency deviations outside of the deadband setting is automatically provided and shall begin immediately after frequency deviates outside of the deadband, and to the extent the Small Generating Facility has operating capability in the direction needed to correct the frequency deviation. Interconnection Customer shall not block or otherwise inhibit the ability of the governor or equivalent controls to respond and shall ensure that the response is not inhibited, except under certain operational constraints including, but not limited to, ambient temperature limitations, physical energy limitations, outages of mechanical equipment, or regulatory requirements. The Small Generating Facility shall sustain the real power response at least until system frequency returns to a value within the deadband setting of the governor or equivalent controls. A Commission-approved Reliability Standard with equivalent or more stringent requirements shall supersede the above requirements.

1.8.4.3 Exemptions. Small Generating Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from Sections 1.8.4, 1.8.4.1, and 1.8.4.2 of this Agreement. Small Generating Facilities that are behind the meter generation that is sized-to-load (i.e., the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirements of its host facility) shall be required to install primary frequency response capability in accordance with the droop and deadband capability requirements specified in Section 1.8.4, but shall be otherwise exempt from the operating requirements in Sections 1.8.4, 1.8.4.1, 1.8.4.2, and 1.8.4.4 of this Agreement.

1.8.4.4 Electric Storage Resources. Interconnection Customer interconnecting an electric storage resource shall establish an operating range in Attachment 5 of its SGIA that specifies a minimum state of charge and a maximum state of charge between which the electric storage resource will be required to provide primary frequency response consistent with the conditions set forth in Sections 1.8.4, 1.8.4.1, 1.8.4.2 and 1.8.4.3 of this Agreement. Attachment 5 shall specify whether the operating range is static or dynamic, and shall consider: (1) The expected magnitude of frequency deviations in the interconnection; (2) the expected duration that system frequency will remain outside of the deadband parameter in the interconnection; (3) the expected incidence of frequency deviations outside of the deadband parameter in the interconnection; (4) the physical capabilities of the electric storage resource; (5) operational limitations of the electric storage resource due to manufacturer specifications; and (6) any other relevant factors agreed to by Transmission Provider and Interconnection Customer, and in consultation with the relevant transmission owner or balancing authority as appropriate. If the operating range is dynamic, then Attachment 5 must establish how frequently the operating range will be

reevaluated and the factors that may be considered during its reevaluation.

Interconnection Customer's electric storage resource is required to provide timely and sustained primary frequency response consistent with Section 1.8.4.2 of this Agreement when it is online and dispatched to inject electricity to the Transmission System and/or receive electricity from the Transmission System. This excludes circumstances when the electric storage resource is not dispatched to inject electricity to the Transmission System and/or dispatched to receive electricity from the Transmission System. If Interconnection Customer's electric storage resource is charging at the time of a frequency deviation outside of its deadband parameter, it is to increase (for over-frequency deviations) or decrease (for under-frequency deviations) the rate at which it is charging in accordance with its droop parameter. Interconnection Customer's electric storage resource is not required to change from charging to discharging, or vice versa, unless the response necessitated by the droop and deadband settings requires it to do so and it is technically capable of making such a transition.

248. The Commission is also modifying the *pro forma* LGIP and *pro forma* SGIP to require newly interconnecting electric storage resources to include the details of the operating range in their interconnection request.

249. In particular, the Commission is modifying the following sections of the *pro forma* LGIP as indicated below:

Appendix 1 to LGIP Interconnection Request for a Large Generating Facility

5. Interconnection Customer provides the following information:

h. Primary frequency response operating range for electric storage resources.

Attachment A to Appendix 1 Interconnection Request

Unit Ratings

Primary frequency response operating range for electric storage resources:

Minimum State of Charge: ____
Maximum State of Charge: ____

250. Similarly, the Commission is modifying the following sections of the *pro forma* SGIP as indicated below. The revisions, with italicized additions to *pro forma* SGIP are as follows:

Attachment 2 Small Generator Interconnection Request (Application Form)

Small Generating Facility Information

Primary frequency response operating range for electric storage resources:

Minimum State of Charge: ____
Maximum State of Charge: ____

III. Compliance and Implementation

251. Section 35.28(f)(1) of the Commission's regulations requires every public utility with a non-discriminatory OATT on file to also have a *pro forma* LGIA and *pro forma* SGIA on file with the Commission.[490]

252. We reiterate that the requirements of this final action apply to all newly interconnecting large and small generating facilities that execute or request the unexecuted filing of a LGIA or SGIA on or after the effective date of this final action as well as all existing large and small generating facilities that take any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after the effective date of this final action. We are not requiring changes to existing interconnection agreements that were executed, or filed unexecuted, prior to the effective date of this final action.

253. We require each public utility transmission provider that has a *pro forma* LGIA and/or *pro forma* SGIA within its OATT to submit a compliance filing within 70 days following publication of this final action in the **Federal Register**.[491] The compliance filing must demonstrate that it meets the requirements set forth in this final action.

254. Some public utility transmission providers may have provisions in their existing *pro forma* LGIAs and *pro forma* SGIAs or other document(s) subject to the Commission's jurisdiction that the Commission has deemed to be consistent with or superior to the *pro forma* LGIA and *pro forma* SGIA or are permissible under the independent entity variation standard or regional reliability standard.[492] Where these provisions would be modified by this final action, public utility transmission providers must either comply with this final action or demonstrate that these previously-approved variations continue to be consistent with or superior to the *pro forma* LGIA and *pro forma* SGIA as modified by this final action or continue to be permissible under the independent entity variation standard or regional Reliability Standard.[493]

255. We find that transmission providers that are not public utilities must adopt the requirements of this final action as a condition of maintaining the status of their safe harbor tariff or otherwise satisfying the reciprocity requirement of Order No. 888.[494]

IV. Information Collection Statement

256. The following collection of information contained in this final action is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d).[495] The Paperwork Reduction Act (PRA)[496] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons, or contained in a rule of general applicability. OMB's regulations require the approval of certain information collection requirements imposed by agency rules.[497] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this proposal will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number. Transmission providers and generating facilities are subject to the proposed revisions to the *pro forma* LGIA and *pro forma* SGIA.

257. This final action revises the Commission's *pro forma* LGIA and *pro forma* SGIA in accordance with § 35.28(f)(1) of the Commission's regulations,[498] and applies to all newly interconnecting large and small generating facilities that execute or request the unexecuted filing of a LGIA or SGIA on or after the effective date of this final action as well as all existing large and small generating facilities that

[490] 18 CFR 35.28(f)(1) (2017).

[491] For purposes of this final action, a public utility is a utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce, as defined by the FPA. *See* 16 U.S.C. 824(e). A non-public utility that seeks voluntary compliance with the reciprocity condition of an OATT may satisfy that condition by filing an OATT, which includes a LGIA and SGIA.

[492] *See* Order No. 792, 145 FERC ¶ 61,159 at P 270.

[493] *See* 18 CFR 35.28(f)(1)(i).

[494] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,760–63 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[495] 44 U.S.C. 3507(d) (2012).

[496] 44 U.S.C. 3501–3520 (2012).

[497] 5 CFR 1320.11 (2017).

[498] 18 CFR 35.28(f)(1) (2017).

take any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after the effective date of this final action. Generating facilities subject to this final action will be required to install, maintain, and operate equipment capable of providing primary frequency response, consistent with certain operating requirements for droop, deadband, and timely and sustained response. The reforms adopted in this final action would require filings of *pro forma* LGIAs and *pro forma* SGIAs with the Commission. We anticipate the revisions required by this final action, once implemented, will not significantly change existing burdens on an ongoing basis. With regard to those public utility transmission providers that believe they already comply with the revisions adopted in this final action, they can demonstrate their compliance in the filing required 70 days after the effective date of this final action. The Commission will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[499] In the NOPR, the Commission used FERC–516B as a temporary ''placeholder'' information collection number.[500] The Commission is now using FERC–516 information collection because it is no longer pending at OMB in any actions.

258. While the Commission expects the revisions adopted in this final action will provide significant benefits, the Commission understands that implementation would entail some costs. The Commission solicited comments on the collection of information and the associated burden estimate in the NOPR. The Commission did not receive any comments concerning its burden or cost estimates.

Burden Estimate[501]: *Costs to Comply with Paperwork Requirements:* The estimated annual costs are as follows: FERC–516: 74 entities * 1 response/entity (10 hours/response * $74.50/hour) = $56,610.[502]

FERC 516 IN FINAL ACTION, RM16–6

	Number of respondents[503]	Annual number of responses per respondent	Total number of responses	Average burden (hours) and cost ($) per response	Total annual burden hours and total annual cost ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
LGIA & SGIA changes/revisions	74	1	74	10 hours; $765.00	740 hours; $56,610.00.
Total			74		740 hours; $56,610.00.

Title: FERC–516, Electric Rate Schedules and Tariff Filings.

Action: Revision of currently approved collection of information.

OMB Control No.: 1902–0096.

Respondents for this Rulemaking: Businesses or other for profit and/or not-for-profit institutions.

Frequency of Information: One-time during year 1.

259. *Necessity of Information:* The Commission is modifying the *pro forma* LGIA and *pro forma* SGIA to require all newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection. Specifically, the Commission is modifying the *pro forma* LGIA by revising Sections 9.6 and 9.6.2.1 and adding new Sections 9.6.4, 9.6.4.1, 9.6.4.2 and 9.6.4.3, and is modifying the *pro forma* SGIA by revising section 1.8 and adding new Sections 1.8.4, 1.8.4.1, 1.8.4.2, and 1.8.4.3.

260. *Internal Review:* The Commission has reviewed the changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

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

262. Comments on the collection of information and the associated burden estimate in the final action should be sent to the Commission in this docket and may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], at the following email address: *oira_submission@omb.eop.gov.* Please reference OMB Control No. 1902–0096 and the docket number of this rulemaking in your submission.

V. Regulatory Flexibility Act

263. The Regulatory Flexibility Act of 1980 (RFA)[504] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

264. The Small Business Administration (SBA) revised its size

[499] 44 U.S.C. 3507(d).

[500] The reporting requirements in the NOPR were included under FERC–516B (OMB Control No. 1902–0286), because FERC–516 was pending review at OMB in an unrelated action. The reporting requirements in this final action are included under FERC–516 (OMB Control No. 1902–0096).

[501] Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency, including: The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.,* in compiling and maintaining business records) will be excluded from the ''burden'' if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.

[502] The estimates for cost per response are derived using the following formula: 2017 Average Burden Hours per Response * $76.50 per Hour = Average Cost per Response. The hourly cost figure of $76.50 is the average FERC employee wage plus benefits. We assume that respondents earn at a similar rate.

[503] The NERC Compliance Registry lists 80 entities that administer a transmission tariff and provide transmission service. The Commission identifies only 74 as being subject to the proposed requirements because 6 are Canadian entities and are not under the Commission's jurisdiction.

[504] 5 U.S.C. 601–612 (2012).

standards (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates. Under SBA's standards, some transmission owners will fall under the following category and associated size threshold: Electric bulk power transmission and control, at 500 employees.[505]

265. The Commission estimates that the total number of public utility transmission providers that would have to modify the LGIAs and SGIAs within their currently effective OATTs is 74.[506] Of these, the Commission estimates that approximately 27.5 percent are small entities. The Commission estimates the average cost to each of these entities would be minimal, requiring on average 10 hours or $765.00. According to SBA guidance, the determination of significance of impact ''should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.'' [507] The Commission does not consider the estimated burden to be a significant economic impact. As a result, the Commission certifies that the reforms adopted in this final action would not have a significant economic impact on a substantial number of small entities.

266. The Commission estimates that the total annual number of new non-synchronous interconnections per year for the first few years of potential implementation under this rule would be approximately 200, representing approximately 5,000 MW of installed capacity. For this analysis, the Commission assumes that all new non-synchronous interconnections would be small entities.[508] The Commission estimates the average total cost to each of these entities would be minimal, requiring on average approximately $3,300 per MW of installed capacity for new equipment and software to meet the requirements of this rule, or an average of $82,500 per entity (this assumes 200 equally sized new non-synchronous interconnections of 25 MW, actual costs will vary proportionate to the size of the interconnection).[509] According to SBA guidance, the determination of significance of impact ''should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.'' The Commission does not consider the estimated burden to be a significant economic impact on these entities because the cost is relatively minimal compared to the average capital cost per MW for wind and solar PV generation (approximately 0.20 and 0.19 percent of total capital costs for wind and solar, respectively).[510] Additionally, the Commission does not believe that there would be substantial additional costs for new synchronous generators because synchronous generators already come equipped with governors that provide the capability to provide primary frequency response. Finally, the Commission does not believe that there would be any overlap between entities that are public utility transmission providers and new non-synchronous interconnections. Accordingly, because the Commission believes that this rule would not have a significant economic impact on a substantial number of small entities that are public utility transmission providers and would not have a significant economic impact on a substantial number of small entities that are new non-synchronous interconnections, the Commission believes that this rule in its entirety would not have a significant economic impact on a substantial number of small entities.

VI. Environmental Analysis

267. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[511] As we stated in the NOPR, the Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for the revisions adopted in this final action under § 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.[512] The revisions adopted in this final action would update and clarify the application of the Commission's standard interconnection requirements to large and small generating facilities.

268. Therefore, this final action falls within the categorical exemptions provided in the Commission's regulations, and as a result neither an Environmental Impact Statement nor an Environmental Assessment is required.

VII. Document Availability

269. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern Standard Time) at 888 First Street NE, Room 2A, Washington, DC 20426.

270. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

271. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VIII. Effective Date and Congressional Notification

272. The final action is effective May 15, 2018. However, as noted above, the requirements of this final action will apply only to all newly interconnecting large and small generating facilities that

[505] 13 CFR 121.201, Sector 22 (Utilities), NAICS code 221121 (Electric Bulk Power Transmission and Control) (2017).

[506] The NERC Compliance Registry lists 80 entities that administer a transmission tariff and provide transmission service. The Commission identifies only 74 as being subject to the proposed requirements because six are Canadian entities and are not under the Commission's jurisdiction.

[507] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act,* at 18 (May 2012), *https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf.*

[508] The threshold for solar and wind generation companies to be defined as small entities is having less than 250 employees. *See* 13 CFR 121.201, Sector 22 (Utilities).

[509] These costs are not relevant to the Paperwork Reduction Act.

[510] LBNL estimates that capital cost per MW of installed wind capacity is $1,690,000. *See* LBNL 2015 Wind Market Report (Aug. 2016), *https://emp.lbl.gov/sites/all/files/2015-windtechreport.final_.pdf.* NREL estimates that the capital cost per MW of installed solar PV capacity is $1,770,000. *See* NREL U.S. Photovoltaic Prices and Cost Breakdowns (Sep. 2015), *https://www.nrel.gov/docs/fy15osti/64746.pdf.*

[511] *Regulations Implementing National Environmental Policy Act,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[512] 18 CFR 380.4(a)(15) (2017).

execute or request the unexecuted filing of an LGIA or SGIA on or after the effective date of this final action as well as all existing large and small generating facilities that take any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after the effective date of this final action. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this final action is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final action is being submitted to the Senate, House, Government Accountability Office, and Small Business Administration.

By the Commission.

Issued: February 15, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

I. Appendix A: List of Substantive NOPR Commenters (RM16–6–000)

AES Companies	AES Corporation/AES Energy Storage/Dayton Power and Light Company/Indianapolis Power and Light Company.
APPA et al	American Public Power Association/Large Public Power Council/Transmission Access Policy Study Group.
AWEA	American Wind Energy Association.
API	American Petroleum Institute.
Bonneville	Bonneville Power Administration.
Chelan County	Chelan County Public Utility District.
California Cities	City of Anaheim/City of Azusa/City of Banning/City of Colton/City of Pasadena/City of Riverside.
EEI	Edison Electric Institute.
Competitive Suppliers	Electric Power Supply Association/Independent Power Producers of New York/New England Power Generators Association/Western Power Trading Forum.
ELCON	Electricity Consumers Resource Council.
ESA	Energy Storage Association.
First Solar	First Solar, Inc.
Idaho Power	Idaho Power Company.
ISO–RTO Council	ISO–RTO Council.
MISO TOs	Midcontinent Independent System Operator Transmission Owners.
NRECA	National Rural Electric Cooperative Association.
NERC	North American Electric Reliability Corporation.
PG&E	Pacific Gas and Electric Company.
Public Interest Organizations	Public Interest Organizations.
R Street	R Street Institute.
SDG&E	San Diego Gas & Electric Company.
SoCal Edison	Southern California Edison Company.
Sunflower and Mid-Kansas	Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC.
SVP	City of Santa Clara doing business as Silicon Valley Power.
TVA	Tennessee Valley Authority.
Union of Concerned Scientists	Union of Concerned Scientists.
WIRAB	Western Interconnection Regional Advisory Body.
Xcel	Xcel Energy Services Inc.

II. Appendix B: List of Substantive Supplemental Commenters (RM16–6–000)

AES Companies	AES Corporation/AES Energy Storage/Dayton Power and Light Company/Indianapolis Power and Light Company.
APS	Arizona Public Service Company.
Berkshire	Berkshire Hathaway Energy.
CESA	California Energy Storage Alliance.
EEI	Edison Electric Institute.
EPRI	Electric Power Research Institute.
ESA	Energy Storage Association.
Idaho Power	Idaho Power Company.
ISO–RTO Council	ISO–RTO Council.
ITC	International Transmission Company.
MCAES	Magnum CAES, LLC.
NRECA	National Rural Electric Cooperative Association.
NYTOs	New York Transmission Owners.
NERC	North American Electric Reliability Corporation.
NAGF	North American Generator Forum.
SDG&E	San Diego Gas & Electric Company.
SoCal Edison	Southern California Edison Company.
Sunrun	Sunrun, Inc.
Tri-State	Tri-State Generation and Transmission Association, Inc.
WIRAB	Western Interconnection Regional Advisory Body.

III. Appendix C: Uniform System of Accounts

Governor controls and similar electric equipment can be recorded within the following Uniform System of Accounts account numbers by function:

Production Plant

a. steam production
- 313 Engines and engine-driven generators.
- 314 Turbogenerator units.
- 315 Accessory electric equipment.
- 316 Miscellaneous power plant equipment.

b. nuclear production
- 323 Turbogenerator units (Major only).
- 324 Accessory electric equipment (Major only).
- 325 Miscellaneous power plant equipment (Major only).

c. hydraulic production
- 333 Water wheels, turbines and generators.
- 334 Accessory electric equipment.
- 335 Miscellaneous power plant equipment.

d. other production
- 344 Generators.
- 345 Accessory electric equipment.
- 346 Miscellaneous power plant equipment.

Transmission Plant

353 Station equipment.

Distribution Plant

362 Station equipment.

[FR Doc. 2018–03707 Filed 3–5–18; 8:45 am]

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FEDERAL REGISTER

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Part IV

The President

Memorandum of February 20, 2018—Delegation of Authorities Under Section 1245 of the National Defense Authorization Act for Fiscal Year 2018

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Tuesday, March 6, 2018

Presidential Documents

Title 3—

The President

Memorandum of February 20, 2018

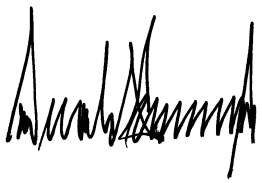
Delegation of Authorities Under Section 1245 of the National Defense Authorization Act for Fiscal Year 2018

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Director of National Intelligence[, and] the Chairman of the Joint Chiefs of Staff

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State, in coordination with the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the Director of National Intelligence, the functions and authorities vested in the President by section 1245 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91).

The delegations in this memorandum shall apply to any provisions of any future public law that are the same or substantially the same as the provision referenced in this memorandum.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, February 20, 2018

[FR Doc. 2018–04641
Filed 3–5–18; 11:15 am]
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